

Affn: Mr. Kanyo ~~0406~~

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL APPEAL NO. 1 OF 2006

BETWEEN

ZANZIBAR INSURANCE
CORPORATION LIMITED.....APPELLANT

AND

RUDOLF TEMBA.....RESPONDENT

JUDGMENT

- 1. Date of hearing 4/12/2006
- 2. Date of Judgment 12/12/2006

MASSATI, J

This is an appeal against the exparte judgment of the District Court of Ilala, Dar es Salaam.

The Respondent had filed a suit against the Appellant to claim a sum of Tshs. 60,000,000/= as compensation for a stolen vehicle, and USD 60 per day as costs for hiring another car, interests and costs. According to the records the Appellant was duly served, but failed to file a written statement of defence. This was followed by an order for exparte hearing. An attempt to set aside this order was unsuccessful. So the case

proceeded exparte and on 8/9/2006 judgment was entered against the Appellant as prayed.

On 28/9/2006, the Appellant filed the present appeal. The Appellant has raised 9 grounds of appeal, but I think the major ones are the first two, which are:-

1. The trial court erred in entertaining a case for which it had no pecuniary jurisdiction in that at the time of filling of the case the pecuniary claim exceeded Tshs. 100,000,000/= which was beyond the power of the District Court.
2. The trial Court erred in delivering judgment and a decree of which it had no powers to grant in that it was beyond the pecuniary award therein as it was far beyond the pecuniary limits of the District Court.

At this juncture, I will pose to note that the second ground of appeal is really superfluous once a finding is made on the first one. So in this appeal I will confine myself to the first ground.

Mr. Laswai, learned counsel who appeared and argued the appeal, submitting on the first ground, said that although the District Court had jurisdiction under S. 40 (2) of the Magistrates Court Act to entertain claims not

exceeding Tshs. 100,000,000/- the Respondent's suit exceeded the Court's limit if the claim for USD 60 per day is also taken into account as demonstrated in the decree.

On the other hand, Mr. Shayo, learned counsel for the Respondent submitted that at the time of filing the suit, the District Court had jurisdiction, even if at the date of judgment the award exceeded the pecuniary limit of the trial Court. He further submitted that since the Appellant did not file a written statement of defence in which he would have raised the point of jurisdiction it cannot be raised at the appellate stage. For this proposition he cited the Court of Appeal decision in **GOVERNMENT OF VIETNAM VERSUS MOHAMED ENTERPRISES (T) LIMITED** (Civil Appeal NO. 122 of 2005 (Unreported) He also cited a decision of the High Court in **NIC VERSUS MBUNA** (Civil Case no. 82 of 1997 (Unreported)). Lastly, Mr. Shayo submitted that even if the trial Court had no jurisdiction, the Appellant was not prejudiced.

In reply Mr. Laswai, submitted by repeating that the principal sum together with the USD 60 per day claim put together far exceeded the Court's pecuniary limit. He also submitted that the Appellant was ready to file a statement of defence, but was denied the chance to do so. If the Appellant was given opportunity, the question of

jurisdiction would have been raised. He further submitted that the issue of jurisdiction was sacrosanct and paramount and overrides everything else and can be raised at any time even on appeal. For that proposition he cited of Court of Appeal decision in MAISHA MUCHUGUZI VERSUS SCANIA (T) LIMITED. He said, a Court without jurisdiction had no powers to make any decision.

From the submissions of the learned counsel, there are two issues that I have to determine here, regarding the ground of jurisdiction. The first is whether the point of jurisdiction can be taken up on appeal? The second is, if yes, whether the trial Court had jurisdiction to try the matter?

For the proposition that the point of jurisdiction could only be raised at the trial, Mr. Shayo relied on the Court of Appeal decision of THE GOVERNMENT OF VIETNAM (Supra) I have read that judgment. Admittedly, that was also an exparte judgment. A point of jurisdiction of the High Court was also taken on appeal for the first time. On that aspect the Court of Appeal observed.

“Then there is an issue of jurisdiction of the High Court of Tanzania under S. 18 of the Civil Procedure Act over the matter. Was there a cause of action on

the part of the appellant? If there was did it arise in Tanzania to give the High Court jurisdiction?

It is our considered opinion that the determination of these questions and others which we have not aired here need evidence. They are not matters for the determination of an Appellate Court but for a trial Court”.

In my view in that case, so long as the place where the cause of action arose was not established by evidence the Court of Appeal’s decision was distinguishable from the present case. Here, the place of case of action is not in issue. So the Court of Appeal did not say that as a general rule that, a point of jurisdiction could not be taken up on appeal for the first time. I think, that decision was quoted out of context.

On the other hand, Mr. Laswai relied on the decision of the same Court in **MAISHA MUCHUNGUZI VERSUS SCANIA (T) LIMITED (At Civil Appeal No.....)** that a point of jurisdiction could be taken up at any time, even on appeal. In my view, Mr. Laswai is right. That this is the position of the law, is confirmed by an earlier decision of the Appellate Court in **M/S TANZANIA - CHINA FRIENDSHIP TEXTILE CO. LIMITED Versus OUR LADY OF THE**

USAMBARA SISTERS (At Civil Appeal No. 84 of 2002
(Unreported) on p. 10 where it said:-

**“ But since it is about jurisdiction of the Court,
it can be raised at any stage even before this
Court.”**

This shows a long chain of authorities set in the past. Thus is **MANDAVIA Versus SINGH (1965)** E.A. 118, it was also held that the issue of jurisdiction may be raised at any time. In **JOHN Versus R (1951)** 18 EACA 218 it was held that jurisdiction is always in issue. On the argument that the Appellant having failed to raise the point in the lower Court is now estopped from raising it, the answer is also provided by the Court of Appeal in Consolidated Civil Applications **(TANZANIA ELECTRIC SUPPLY CO. LIMITED VERSUS IPTL AND OTHERS)**, No. 19 of 1999 and 27 of 1999 that parties cannot by agreement or otherwise confer jurisdiction upon a Court.

So, for the above reasons I reject Mr. Shayo's arguments and uphold Mr. Laswai's submission that a point of jurisdiction may be raised at any stage even at an appellate stage and even if it was not raised in the lower Court. It is a principle of law that the primary duty of a Court is to investigate whether or not it has jurisdiction in a matter before proceeding to hear or determine it.

The next point for determination is whether the District Court had jurisdiction to try the suit.

From the submissions of the counsel there is no dispute that S. 40 (2) (b), of the Magistrates Courts Act (Cap 11) was amended by Act No. 25 of 2002 to confer jurisdiction on District Courts to try Civil suits whose claims do not exceed Tshs. 100,000,000/= . In the present case the Respondent filed a claim for the principal sum of Tshs. 60,000,000/= as compensation. Mr. Laswai submitted however, that if the claim of USD 60 per day costs for hiring from the date of reporting to the date of full compensation was considered, the claim would overshoot the Court's pecuniary jurisdiction. He did not specify what that amount would be. And the reason is obvious. The prayer for 60 USD per day hiring charge was "from the date of a report to the date of full compensation". Although the date of report could be ascertained; it was not easy to ascertain "**the date of full compensation**" because that date was uncertain. In my view, this figure could not be used to ascertain the Court's pecuniary jurisdiction nor the court fees. Although some figures were put in the claim, in my view the actual value was still at large and like in the case of general damages, was subject to proof and assessment by the Court. I would thus disagree with Mr. Laswai, in his submission that this part of the claim could also be considered

to inflate the value of the claim in total to over Tshs. 100/= million. I will instead adopt the figure of Tshs. 60/= million principal claim as determining the pecuniary jurisdiction of the District Court. And for purposes of S. 40 (2) (b) of the Magistrates Costs Act it would appear that the trial court had jurisdiction. To that extent therefore I would slightly differ with Mr. Laswai.

However, the Magistrates Courts, Act was further amended by Act NO. 4 of 2004. Section 2 was amended to add a definition of a "Commercial Case" and S. 40 was amended by adding a new sub – section 3 which now reads:-

“ (3) Notwithstanding sub-section (2) the jurisdiction of the District Court shall, in relation Commercial cases be limited:-

(a).....(not applicable)

(b) in the proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed thirty million shillings”.

So, while S. 40 (2) (b) of the Magistrates Court Act limits the Court's pecuniary jurisdiction in movable matters to Tshs. 100,000,000/= this is qualified by S. 40 (3) (b) in cases of commercial Cases.

From the above analysis, in my view, by virtue of this amendment to the Magistrates Courts Act, district Courts have no jurisdiction in commercial cases whose value exceeds Tshs. 30,000,000/= The present suit was instituted on 25/11/2005 well after the amendment became operative.

In a case of such a nature the primary duty of a subordinate court is first to determine whether or not the case before it, is a commercial one by reference to the definition of that term in S. 2 of the Magistrates Courts Act.

The claim before the Court, in my humble view, involved the determination of:-

“ The liability of a Commercial or business organization or its Officials arising out of its Commercial, or business activities”.

In the sense that the suit was set to determine the liability of the Appellant to indemnify the Respondent, which arises out of its commercial or business activities of insurance. It is therefore a matter of commercial significance; and therefore, by definition, a commercial case. Had the trial Court properly directed its mind to the applicable law and the facts;

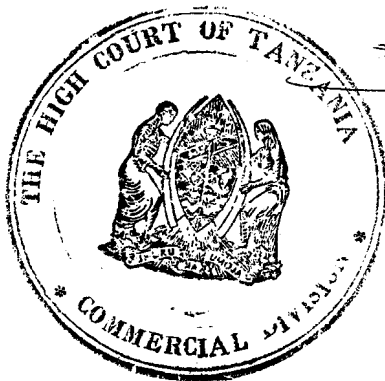
it would, I think, have found that it was a commercial case and that it had no pecuniary jurisdiction to try it.

For the above reasons I would agree with Mr. Laswai, although through a different path. I find that what was before the trial court was a commercial case involving more than 30/= million and in the circumstances it lacked pecuniary jurisdiction, to try the suit. Consequently I declare the proceedings, judgment and decree null and void and set them aside. I declare that the Respondent is at liberty to file a fresh suit in the appropriate division of the High Court, subject to limitation.

Since the first ground sufficiently disposes of the appeal, I find it unnecessary to determine the other grounds of appeal.

The appeal is therefore allowed with costs.

Order accordingly.




S.A. MASSATI

JUDGE

12/12/2006

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