

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF MBEYA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA

CIVIL CASE NO. 6 OF 2019

**1. MARWA MASANGA PATRICK }
2. WITNESS DAMAS TSHA } PLAINTIFFS**
VERSUS
STANBIC BANK (T) LTD DEFENDANT

RULING

Date of Ruling: 28.08.2020

DR. A. J. MAMBI, J.

This ruling emanates from the preliminary objection raised by the defendant. Earlier, the Plaintiff filed his civil Suit at this court for the breach of contract. The plaintiff in his plaint claimed for the sum of 63,678,000/- from the defendant for breaching the contract that arose from the loan agreement between the parties.

Addressing his points of preliminary objection, the defendant counsel Mr Emmanuel Nasson submitted that this court has no jurisdiction to entertain the matter which is purely commercial in nature. He was of the view that the plaintiff wrongly filed the matter on the court that has no jurisdiction. He averred that the only court

that could have jurisdiction on this matter is the high court (Commercial Division). He argued that the High Court (Commercial Division) Procedure Rules, 2012, GN No. 250 of 13/07/2012 gives an interpretation of a commercial case under Rule 3 by reproducing the interpretation under section 2 of the MCA. The learned Counsel averred that being the position of the law, the Plaintiffs' case is a commercial case not only as they verify under paragraph 17 of the plaint but also in accordance with the law. He argued that since it is a civil case involving a matter considered to be of commercial significance then this court has no jurisdiction. The learned counsel also submitted that since the matter involves the contractual relationship of a business or commercial organization between the Defendant as a corporate body and the Plaintiffs who are from outside the Defendant, then this court has no jurisdiction. He argued that the case is on the liability of the Defendant as a commercial or business organization arising out of its commercial or business activities with the Plaintiffs as verified under paragraph 16 of the plaint.

In response, the plaintiff Counsel Mr Isaya Mwanry briefly submitted that the claim that this court has no jurisdiction has no merit. He submitted that there is no dispute that the case filed by the Plaintiffs is a commercial case as the Plaintiffs verified themselves under paragraph 17 of their plaint, which is the jurisdiction clause as required by the law. The learned Counsel was of the view that the issue is whether this Honourable Court has

jurisdiction to determine the commercial case filed before it by the Plaintiff. He argued that Rule 5A of the High Court Registries Rule G.N 96 of 2005 is couched in a discretionary term that commercial cases may be instituted in commercial division. He was of the view that the use of a word may as per section 53 of the Law of Interpretation Act Cap 1 [R.E 2002] means the power is optional. The plaintiff Counsel argued that this means that if a person cannot file a case at the Commercial division, he or she has option to file it in general division which has the concurrent powers.

He argued that both the ordinary and Commercial court have concurrent jurisdiction on civil and commercial cases. He argued that Rule 5 of the High Court Commercial division does not waive the jurisdiction of the ordinary High court to deal with commercial cases.

I have carefully perused and considered points on the preliminary objection raised by the defendant in line with the submission by the plaintiff. In my considered view the preliminary objection raise one key issue that is whether the matter the this court fall under the ambit of commercial cases or not and whether this court has jurisdiction to deal with the matter or not. I wish to briefly highlight that jurisdiction is the matter of law. Briefly, jurisdiction in law can be briefly defied as the authority of a court to hear and determine cases. This authority is derived from the constitution and the law. It is vital to determine before a lawsuit is filed which court has jurisdiction. The jurisdiction of a legal case depends on geographical jurisdiction and subject matter or pecuniary

jurisdiction. In this regard, a court must have subject matter jurisdiction the matter to hear a case. The defendant in his point of objection has claimed that it was wrong for the plaintiff to file a case in this court since the matter involves the commercial. On the other hand, the plaintiff argued that this court has jurisdiction.

The question before this court does this court has jurisdiction to entertain the matter?. To answer this question, I don't need to peruse more documents as the position of the law is now clear that this court has jurisdiction in both civil and commercial matters under the constitution and other laws. I am aware that Rule 5A of The High Court Registries (G.N.No.96 of 2005) gave birth to the commercial Division of the High Court of Tanzania charged with the adjudication of commercial disputes. However, it should be pointed out that the High court (Commercial Division) has no exclusive mandatory jurisdiction to hear and determine commercial dispute. It should also be noted that Order IV rule 4 of the Civil Procedure Code, 1966 (as amended) provides that:-

*"It **shall not be mandatory** for a commercial case to be instituted in the Commercial Division of the High court."*

This means that, a potential commercial litigant has the option of instituting a commercial case either in the ordinary Registry of the High Court or in the Commercial Division of the High Court. Even the Rule 5 Rule 5A of The High Court Registries (G.N.No.96 of 2005) provides option for parties to file their cases of commercial nature

at the High Court (Commercial Division) or at the ordinary High Court. Indeed that Rule provides that:

*"There shall be a Commercial Division of the High Court within the Registry at Dar es Salaam and at any other registry or sub-registry as may be determined by the Chief Justice, in which proceedings concerning commercial cases **may be instituted.**"*

The word "**may**" under the provision implies non-mandatory or option as per the Interpretation of Law of Interpretation Act Cap 1 [R.E.2002]. In this Regard, the Plaintiff was right in filing the suit at this court and this court has exclusive jurisdiction to deal with the matter at hand whether it is a civil or commercial dispute by its nature. I thus entirely agree with the plaintiff Counsel that this court has exclusive jurisdiction to deal with the matter at hand. The claim by the defendant that this this court has no jurisdiction to deal with the matter at hand on the mere ground that it is a commercial case is unmerited.

With due respect I find the point of preliminary objection by the defendant is no-meritorious and I hold so. From the above reasoning, I overrule the defendant's preliminary objection as raised and order the matter to proceed on merit as will be scheduled by this court. I make ~~no orders as to costs.~~ It is so ordered.



DR. A. J. MAMBI

JUDGE

28.08. 2020

Ruling delivered in Chambers this 28th day of August, 2020 in presence of both parties.




DR. A. J. MAMBI

JUDGE

28.08. 2020

Right of appeal explained.


DR. A. J. MAMBI

JUDGE

28.08. 2020