

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
AT SUMBAWANGA
CIVIL CASE NO 05 OF 2021**

LUPILA ENTERPRISES LIMITED PLAINTIFF

VERSUS

BANK OF AFRICA DEFENDANT

Date of last Order: 28/05/2021

Date of Ruling: 16/06/2021

RULING

C.P. MKEHA, J

The present ruling results from a preliminary point of objection raised and argued by Mr. Jackson Ngonyani learned advocate for the defendant to the effect that, this Honourable court does not have territorial jurisdiction to entertain this suit. On the other hand, the plaintiff is being represented by Mr. James Lubusi learned advocate.

Submitting in support of the preliminary point of objection, Mr. Jackson Ngonyani learned advocate told the court that it does not have territorial jurisdiction to entertain the present suit because of the following reasons: That, in terms of the plaint, the alleged cause of action occurred in Mbeya and not in Sumbawanga. Reference was made to paragraph 14 of the plaint.

The learned advocate went on to submit that, although the plaintiff had mortgaged land situated in Sumbawanga, the dispute is purely contractual, following cancellation of loan sought to obtained by the plaintiff from the defendant, an act which took place in Mbeya Region. According to the learned

advocate, the suit contravenes section 18 of the Civil Procedure Code. The learned advocate insisted that in the present case, the defendant conducts business in Mbeya and Dar es salaam and not in Sumbawanga. The learned advocate pressed for striking out of the suit for want of territorial jurisdiction.

Mr. James Lubusi learned advocate for the plaintiff submitted in reply that the suit is pegged under section 17 of the Civil Procedure Code hence it could be filed at any of the places subject to the plaintiff's choice. The learned advocate submitted that the plaintiff resides in Sumbawanga, whereas the defendant has an agent in Sumbawanga.

The learned advocate went on to submit that, not only is the mortgaged property situated in Sumbawanga but also, the agreement between the parties was executed in Sumbawanga. In view of the learned advocate, the High Court at Sumbawanga Registry has territorial jurisdiction to entertain the suit.

When Mr. Jackson Ngonyani rose to rejoin, reference was made to paragraph 5 of the plaint which indicates that the defendant does not have an agent in Sumbawanga. He then insisted that the present case is purely contractual and that, nowhere in the plaint is the defendant explained to have an office in Sumbawanga.

The only determinative issue is **whether a suit founded on breach of contract can be pegged under section 17 of the Civil Procedure Code.**

While the parties are at one that the dispute is contractual one, it was the learned advocate for the plaintiff's position that the suit is pegged under section 17 of the Civil Procedure Code hence it could be filed at any of the registries, Mbeya or Sumbawanga subject to the plaintiff's choice. I respectfully disagree. Section 17 of the Civil Procedure Code provides as hereunder:

*"Where a suit is for compensation **for a wrong done to the person or to movable property**, if the **wrong** was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said courts".*

The above quoted provision is in perimateria with section 19 of the Indian Civil Procedure Code. The word **wrong** in the context used under section 17 of our Civil Procedure Code has been defined to mean a tort or actionable wrong. That is, an act which is legally wrongful, as prejudicially affecting a legal right of the plaintiff. But it must be a tort affecting the plaintiff's person, or his reputation or his movable property. **See: Mulla, Code of Civil Procedure (Abridged) 14th Edition at pages: 153. See also: ABDALLAH ALLY SELEMAN t/a OTTAWA ENTERPRISES (1987) Versus TABATA PETROL STATION CO. LTD AND ANOTHER, CIVIL APPEAL NO. 89 OF 2017 at page 17.**

Therefore, through the plaintiff's admission in his pleadings and the learned advocate's concession that the dispute is contractual one, the suit is excluded from the purview of section 17 of the Civil Procedure Code under which a suit can be instituted at any of the two courts at the option of the plaintiff.

As correctly submitted by Mr. Jackson Ngonyani learned advocate, upon re-reading the plaintiff's pleadings, one finds that, the present suit is one whose territorial jurisdiction depends upon the residence of the defendant or the accrual of the cause of action. To be specific, the suit contravenes section 18(c) of the Civil Procedure Code.

Reasons for the foregoing finding are found in the plaintiff's own pleadings. Paragraphs 5 and 7 of the plaint indicate that the defendant does not have an office in Sumbawanga but in Mbeya. Paragraph 24 of the plaint indicates that, the cause of action arose in Mbeya.

For the foregoing reasons, I uphold the objection that this court does not have the requisite territorial jurisdiction to entertain the present suit. The same is struck out with costs.

Dated at **SUMBAWANGA** this 16th day of June, 2021.




C.P. MKEHA

JUDGE

16/06/2021

Date - 16/06/2021
Coram - Hon. J.O. Ndira – Ag DR.
For Plaintiff - Mr. James Lubusi – Advocate
Plaintiff
For Defendant - Tunu Mahindi – Advocate
Defendant
B/C - Zuhura

Mr. Lubusi: Advocate for plaintiffs

Ms. Mahindi: I am holding brief for Mr. Jackson Ngonyani Advocate for defendant.

Mr. Lubusi: The matter is coming for ruling we are ready.




J.O. NDIRA

AG, DEPUTY REGISTRAR

16/06/2021

Court: Ruling is delivered this 16th June, 2021 in presence of Mr. James Lubusi Advocate for Plaintiff and Ms. Tunu Mahindi Advocate who is holding brief for Mr. Jackson Ngonyani Advocate for the Defendant. Right of appeal is explained.




J.O. NDIRA

AG, DEPUTY REGISTRAR

16/06/2021