

TANZANIA / JUDGMENT

20120607 TZHC Dar es Salaam

COURT
TZHCDECIDED
7 June 2012

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1 IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL CASE NO. 174 OF 2009 A. B. IMANI PHARMACY PLAINTIFF VERSUS MEDICAL EXPRESS TANZANIA LIMITED DEFENDANT Date of last order:- 15/ 12/ 2011 Date of Ruling - 7/6/2012

RULING

Shangwa, J. This is a preliminary objection raised by the defendant against the suit. The point of objection raised herein is that this court has no jurisdiction to hear or determine the suit between the parties. In his written submissions, counsel for the defendant submitted that the plaintiff is claiming from the defendant, Tshs. 59,805,103/50 which falls within the pecuniary jurisdiction of the court of the Resident Magistrate/District Court. He contended that as a claim of Tshs. 59,805, 103/50 falls within the pecuniary jurisdiction of the aforesaid courts as per S. 40 (2) of the Magistrates Courts Act as amended by Act No. 25 of 2002, the plaintiff's suit ought to have been filed either in the court of the Resident Magistrate or in the District Court even though this court has pecuniary jurisdiction to try a suit in which the claim involved is Tshs. 1 only. In support of his contention, he referred the court to S. 13 of the Civil Procedure Code Cap. 33 R.E. 2002 which provides as follows and I quote:- "S.13 Every suit shall be instituted in the court of the lowest grade competent to try it and, for the purposes of this section, a court of the Resident Magistrate and the District Court shall be deemed to be courts of the same grade". It is not in dispute as submitted by counsel for the defendant that the amount claimed by the plaintiff from the defendant in this case is Tshs. 59,805,103/50. It is true as submitted by counsel for the defendant that this amount falls within the pecuniary jurisdiction of the court of the Resident Magistrate and the District Court. This is as provided for under S. 40 (2) of the Magistrates Court Act as amended by Act No. 25 of 2002. Now, so long as the amount claimed in the suit falls within the pecuniary jurisdiction of the said courts and so long as it is a mandatory requirement of law that every suit shall be instituted in the court of the lowest grade

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