

TANZANIA / JUDGMENT

ABRAHAM SYKES VS ARAF ALLY KLEIST

COURT
TANZLIIDECIDED
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (DAR ES SALAAM SUB-REGISTRY) AT PAR ES SALAAM CIVIL CASE NO. 221 OF 2023 ABRAHAM SYKES..... PLAINTIFF VERSUS ARAF ALLY KLEIST SYKES..... .1st DEFENDANT CNI SECURITY AND PUBLIC CIVIL INVESTIGATION LIMITED.....2nd DEFENDANT

RULING

19th & 27th June, 2024 DYANSOBERA, J.: The defendants have, by notice filed on 20th November, 2023, raised a preliminary objection in respect of the suit filed by the plaintiff on the ground that: This Honourable Court lacks pecuniary jurisdiction to entertain this matter in terms of section 13 of the Civil Procedure Code [Cap. 33 R.E.2019] and by virtue of reasoning of the Court of Appeal of Tanzania decision of M/S Tanzania-China Friendship Textile Co. Ltd Vs. Our Lady of the Usambara Sisters, Civil Appeal No. 84 of, 2002. In the plaintiff's suit in which the cause of action is trespass to chattels, the claims presented are a declaratory order, payment of TZS i 500,000,000/= as general damages, payment of TZS 500,000, 000/= as punitive damages, interests and costs of the suit During the hearing of this preliminary objection, Mr. Octavianus Mushukuma, learned counsel, held brief for Mr. Chacha Murungu, learned Advocate for the plaintiff but with instructions to proceed. Mr. Ashiru Lugwisa, learned counsel, stood for both defendants. Submitting in support of the preliminary objection, counsel for the defendants contended that under paragraphs 5, 6, 7 and 8 of the plaint, the plaintiff's claims are, in essence, based on tort whereby the prayers under (b) and (c) are for 500m/-, each, for general damages and punitive damages, in that order. The issue he posed is whether this court has pecuniary jurisdiction to entertain a tortious claim whose value has been quantified. Making reference to the case of M/S Tanzania-China Friendship Textile Co. Ltd Vs. Our Lady of the Usambara Sisters (supra), counsel for the defendants pointed out that it is the substantive claim and not the general damages that determines the jurisdiction of the court. Reliance was also placed on Civil Appeal No. 126/01/2016 between Mwananchi Communications Ltd and 2 others Vs. Joshua K. Kajula and 2 others. 2 It is asserted on part of the respondents that the plaintiff has not pleaded how much he wishes to be paid in case he wins the case and that he has erroneously quantified general damages. The court's attention was drawn to the provisions of section 13 of the Civil Procedure Code [Cap. 33 R.E.2019] on the requirement that suits should be filed in the courts of the lowest grade competent to try them. On this account, Counsel for the defendants was of the view that the

District Court and the Court of a Resident Magistrate are competent courts to try this suit by virtue of the provisions of Section 40 (2) (b) of the Magistrates' Courts Act [Cap. 11 R.E.2019], On this exposition, counsel for the defendants urged the court to strike out the suit with courts as it lacks jurisdiction to entertain it. On his part, Mr. Octavinus Mushukuma urged the court to find the preliminary objection without any merit at all. He reasoned that the claims against the two defendants are jointly and severally for a declaratory order on tortious wrong committed by the defendants against the plaintiff, a fact reflected under paragraphs 5, 8, 7 and 8 of the plaint and that the reliefs claimed are, inter alia, 500m/- as general damages and 500m/- as punitive damages. Counsel argued that the court is vested with general jurisdiction 3 by virtue of the proviso to Section 13 of the Civil Procedure Code. He was of the view that this case is properly before this court. To buttress his argument counsel cited the case of General Manager, African Barrick Goldmine Limited v. Chacha Kiguha and 5 others, Civil Appeal No. 99 of 2019. With respect to the two cases cited by counsel for the defendants, Mr. Octavianus sought to distinguish them from the circumstances of this case. He contended that the more recent decision in the case of General Manager, African Barrick Goldmine Limited (supra) should be followed because it is certain and consistent. Mr. Octavianus also made reference to the 1st Schedule to the Court Fees Rules, 2018 in Government Notice No. 249 which came into effect after section 13 of the CPC had been amended. He expressed that the law is dynamic and not static. On the application of Section 40 (2) (b) of the MCA, Mr. Octavianus was confident that the provisions apply to specific damages and not general damages as is the case here. Rejoining, counsel for the defendants observed that the case of General Manager, African Barrick Goldmine Limited referred to by 4 Mr. Octavianus is distinguishable. He argued that decisions cited therein dealt with the situation where the High Court had erroneously entertained a case which would have been otherwise entertained by the subordinate courts and the Court therein stated that the conduct could not vitiate the proceedings. It was in the counsel's view that in the case under consideration, the court is entertaining this case while violating section 13 of the CPC and the preliminary objection amounts to putting notice to the court on the legal requirements under the said section. Counsel for the defendants refuted the argument that the decisions of the Court of Appeal are conflicting insisting that it is only a matter of interpretation. He was also of the view that even the case of Mwananchi Communications Ltd and 2 others (supra) is also recent. Respecting the GN No. 247 of 2018, counsel for the defendants submitted that the instrument is a subsidiary legislation which cannot supersede parent Acts, that is the CPC and MCA. On the changing of laws, counsel for the defendants contented that if the laws are to change, it is the Parliament and not the court which is responsible to effect the changes. He sought inspiration from the wisdom of Shakespear that there is time for every season. 5 I have considered the preliminary objection and the rival submissions of both Counsel for the defendants and the plaintiff. I must, at the outset, borrow the wisdom of the court in the case of Shym Thanki and others v. New Palace Hotel (1972) HCD No. 92 which commented that:- 'All courts in Tanzania are created by statutes and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court's jurisdiction which it does not possess'. Further, in the case of Fanuel Martin Ng'unda v. Herman Mngunda, Civil Appeal No. 9 of 1995, the court was clear that the question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain

and assured of their jurisdiction position at the commencement of the trial because any trial conducted with no jurisdiction will be declared a nullity on appeal or revision. It is common cause that the pecuniary jurisdiction of the High Court has been expressed in various legislations including the main law of the land that is the Constitution of the United Republic of Tanzania, Article 108

- (1) and (2), in particular. 6 The other laws include the Judicature and Application of Laws Act [Cap.358 R.E.2019] and the Civil Procedure Code [Cap.33 R.E.2019]. on the jurisdiction of the High Court, Section 2 (1) of the Judicature and Application of Laws Act provides thus: "2. Save as provided hereinafter or in any other written law, expressed, the High Court shall have full jurisdiction in civil and criminal matters." This provision must be read together with sub-section (3) which enacts that: '(3) Subject to the provisions of this Act, the jurisdiction of the High Court shall be exercised in conformity with the written laws which are in force in Tanzania../ The above cited law is, in my view, a statute governing sources of laws which Courts in Tanzania are obliged to apply. As amply demonstrated above, Sub-section (3) of section 2 of said Act begins with strong directive that Courts should apply any written law that is in force which is applicable to the matter before it. In relation the jurisdiction of the High Court, also the Civil Procedure Code (supra), stipulates under Section 7 (1) thus: 7 '7. -(1) The High Court has jurisdiction to try all suits of a civil nature unless expressly or impliedly barred'. Now, the question calling for determination by this court as far as the defendants' preliminary objection is concerned is whether the jurisdiction of this court has been wrongly invoked. According to the pleadings, parties are at one that this is a civil case involving a tortious liability. There is no substantive claim which can be the basis of determining the pecuniary jurisdiction of this court. The claims are only for a declaratory order, general and punitive damages which are not, in law, determinant factors of the court's pecuniary jurisdiction. As rightly argued by Counsel for the defendants, the High Court's jurisdiction ceases or stops where the law gives a particular court a mandate to deal with a certain matter. This, I think, is the gist of the decisions of the Court of Appeal in the case of General Manager, African Barrick Goldmine Limited (supra) referred to me by Mr. Octavianus Mushukuma and the case of Mwananchi Communications Ltd and 2 others (supra) cited by Mr. Ashiru Lugwisa. 8 As far as the suit in consideration is concerned, since there is no substantive claim that can be said to have vested the High Court with jurisdiction in exclusion of the District Court and the Court of a Resident Magistrate, then, in view of the provisions of Section 13 of the Civil Procedure Code read together with Section 40 (2) (b) of the Magistrates Courts Act, and taking into account the fact that the defendants have put this court on notice on the requirement of observing section 13 above, I find that the jurisdiction of this court has been wrongly invoked by the plaintiff. Indeed, one of the objects of enacting that provision is to prevent overcrowding in the court of higher grade where a suit may be filed in a court of lower grade. In consequence, I find the defendants' preliminary objection with substance and the same is upheld. On that account, the suit is struck out 9 This ruling is delivered under my hand and the seal of this Court on this 27th day of June, 2024 in the absence of Mr. Octavianus Mushukuma, learned counsel holding brief for Mr.

Chacha Murungu, learned advocate 10

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