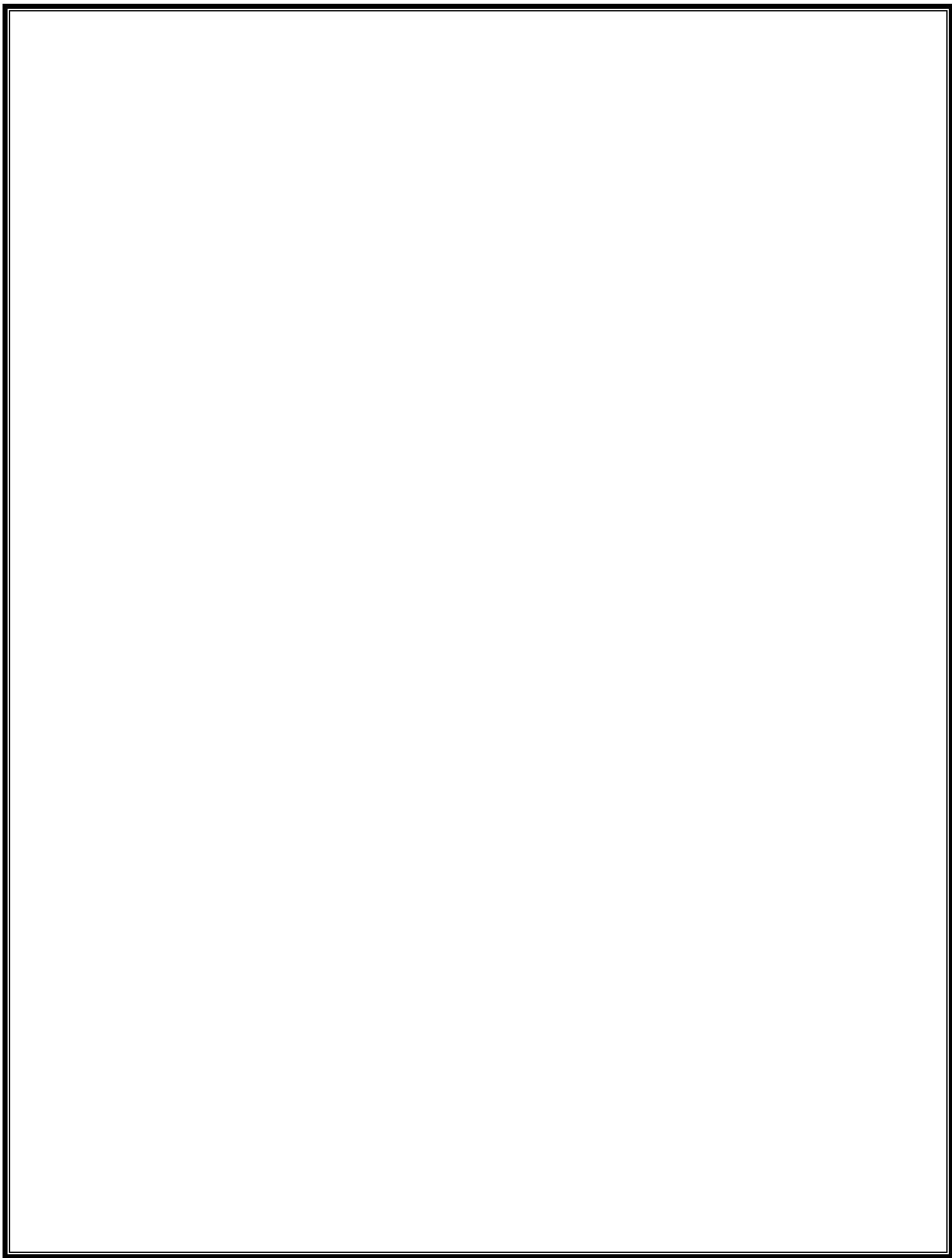




INTRODUCTION TO CIVIL PROCEDURE

Meaning of Civil procedure: -

Is one among of the procedural law, or it can be defined to mean a body of law concerned with methods, procedures and practices used in civil litigation.

Governing law in Civil Procedure in Tanzania

Civil procedure in Tanzania is governed by the Civil Procedure Code Cap 33 of the Laws of Tanzania, shortly referred as C.P.C.

SOURCES OF CIVIL PROCEDURE IN TANZANIA

- United Republic of Tanzania Constitution [Cap 2 R.E 2002] specifically under Article 107A.
- Statutes

Statutes are Acts of parliament which can either be principal legislation or subsidiary legislation.

1. Civil Procedure Code

This Code applies to all proceeding of civil nature, in the High Court, Resident Magistrate Court and District Court.¹

Note: - This Code does not apply in Primary Court and Court of Appeal.

2. The Magistrates' Courts Act Cap 11 of the Laws of Tanzania as amended from time to time, shortly referred to as M.C.A.

- Academic writings
- Received laws

¹ Refer Section 2 of the Civil Procedure Code [Cap 33 R.E 2002].

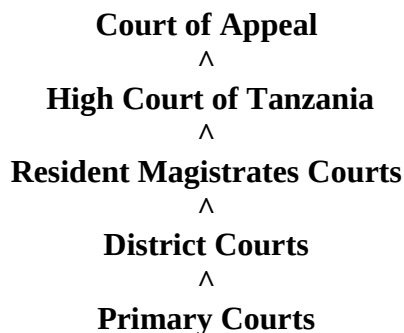
These are the laws we received from our colonial masters especially from England which were received in Tanzania (Tanganyika by then) through the Tanganyika Order in Council on 22nd July 1920. These laws apply in Tanzania through Section 2(3) of Judicature and Application of Laws Act shortly referred as JALA.

- Judicial precedent

A judgment of a court of law cited as an authority for deciding a similar set of facts; a case which serves as authority for the legal principle embodied in its decision. The common law has developed by broadening down from precedent to precedent.²

A judicial precedent is a decision of the court used as a source for future decision making. This is known as stare decisis (to stand upon decisions) and by which precedents are authoritative and binding and must be followed.³

HIERARCHY OF COURTS IN TANZANIA



Court of Appeal

The Court of Appeal of Tanzania, established under Article 117 of the Constitution, is the highest Court in the hierarchy of judiciary in Tanzania. It consists of the Chief Justice and other Justices of Appeal. The Court of Appeal of Tanzania is the court of final appeal at the apex of the judiciary in Tanzania. All appeals from the High Court go to the Court of Appeal.

High Courts

The High Court of Tanzania was established under Article 108 of the Constitution and it has unlimited original jurisdiction to entertain all types of cases. The High Court exercise original jurisdiction on matters of a constitutional nature and have powers to entertain election petitions. All appeals from subordinate courts go to the High Court of Tanzania.

² <https://www.lawteacher.net/lecture-notes/judicial-precedent-1.php>

³ Ibid.

Subordinate Courts

These include the Resident Magistrate Courts and the District Courts, which both enjoy concurrent jurisdiction. These courts are established under the Magistrate Courts Act. The District Courts, unlike the Resident Magistrates Courts, are found throughout all the districts in Tanzania. They receive appeals from the Primary Courts.

Primary Courts

The primary courts are the lowest courts in the hierarchy and are established under the Magistrates Courts Act. They deal with criminal cases and civil cases. Civil cases on property and family law matters which apply customary law and Islamic law must be initiated at the level of the Primary Court, where the Magistrates sit with assessors.

Tribunals

There are specialized tribunals, which form part of the judicial structure, they are known as quasi-judicial bodies. These for example include District Land and Housing Tribunal, Tax Tribunal and the Tax Appeals Tribunal, Labour Reconciliation Board, the Tanzania Industrial Court, and Military Tribunals for the Armed forces. Military Courts do not try civilians. A party who feels dissatisfied with any decision of the Tribunals may refer the same to the High Court for judicial review.

JURISDICTION OF CIVIL COURTS

Meaning of jurisdiction

Refers to the power and limit of the court to hear and determine certain matters.

Further the term jurisdiction can be defined to mean the extent to which, or the limits within which a particular court can exercise its powers and what powers.⁴

Court's jurisdiction is restricted in three main ways: *i.e.* Geographical location of the Court, Subject Matter, and Value of the subject matter.⁵

Note:- the question of jurisdiction is so fundamental to courts of law, that is to say before the Court entertain any matter before it, it has to ask itself whether it has jurisdiction or not.

⁴ Refer Chapter Two of the Civil Procedure In Tanzania, A Student Manual by B.D.Chipeta.

⁵ <http://www.jabashadrack.blogsopt.com/2010/05/brief-facts-about-courts-jurisdiction.html>

The effect of the decision made by the court in the matter which it has no jurisdiction to entertain it is a (nullity) - null and void as if nothing was done, this position is well explained in the case of *Melisho Sindiko v Julius Kaaya*.⁶

TYPES OF JURISDICTION

I. Territorial jurisdiction

Refers to a type of jurisdiction regarding geographical limits within which the court have in exercising its powers. Refers the case of *Mrisho Pazi v. Tatu Juma*⁷ in which Said.J as he then was had the following to say “The Primary Court had no jurisdiction to deal with the shamba at Kibaha which lies outside the district in which the court is located”.

Further you may read the provision of Section 3 & 4 of The Magistrates' Courts Act.

II. Pecuniary/Monetary jurisdiction

Is the jurisdiction governed by the value of money of the subject matter of the suit.

For example: - The Primary Court can only entertain matters which the value of the subject matter does not exceed Fifty Million for Immovable property and thirty million for movable property.

⁶ (1977) L.R.T No.18.

⁷ (1968) H.C.D 119.

THE CURRENT PECUNIARY LIMITS OF COURTS OF LAW IN TANZANIA

ACCORDING TO THE WRITTEN LAWS (MISCELLANEOUS AMENDMENT)

ACT, NO.6 OF 2016.

COURT	IMMOVABLE PROPERTY eg. Land	MOVABLE PROPERTY eg. Cars
PRIMARY COURT	FIFTY MILLION	THIRTY MILLION
DISTRICT COURT AND RESIDENT MAGISTRATE COURT	THREE HUNDRED MILLION-300 MILLION	TWO-HUNDRED MILLION-200 MILLION

Note:-

High court has unlimited pecuniary limits.

III. Original jurisdiction

Refer to the power of the court to certain matters for the first instance.eg the E.g. the H.C in murder cases and constitutional petitions.

IV. Concurrent jurisdiction

Means more than one Court has jurisdiction over the matter. Eg. Section 18(1)(a) (i) of the M.C.A gives power to primary court to hear matters arising out of Islamic law or customary law and the same power is vested to the High Court.

V. Extended jurisdiction

Is the Power given to a resident magistrate to hear matters that would otherwise fall in the original jurisdiction of the High Court. This type of jurisdiction is vested to the Resident magistrate; refer Section 45(1), (2) of the M.C.A.

OTHER TERMS USED IN JURISDICTION OF COURTS

- **Presumption to jurisdiction:-** No court is allowed to presume jurisdiction, that is to mean any court which exercise jurisdiction over any matter which it has no jurisdiction the decision made thereto shall be null and void.
- **Objection to jurisdiction:** - Any objection to jurisdiction should be raised in the earliest possible opportunity...refer Section 19 of the Civil Procedure Code.
- **Ouster clauses & Ouster of jurisdiction:** - Ouster clauses refers to clauses which excludes the power of the court to hear and entertain certain matters, that is to say the jurisdiction of the court is restricted. For example *Article 74(12) of the URT Constitution which oust the jurisdiction of courts from inquiring into discharge of the functions of the electoral commission in accordance with the provisions of this Constitution. Also Article 41(7).*

LEGAL BARS TO JURISDICTION/ LEGAL PRINCIPLES BARRING JURISDICTION

These legal principles includes:-

1. Plea of Res-Judicata
2. Plea of Res-subjudice

Res-judicata: - meaning the matter already decided, this principle bars the court as well as the parties not to dispute over the same issue again. Meaning once the court of competent jurisdiction has given a decision on a particular case, no court, parties are allowed to dispute over the same decided matter.

ESSENTIAL ELEMENTS/CONDITION TO BE MET INORDER FOR THE PLEA OF RES-JUDICATA TO STAND

- There was a decision given by a competent court.
- The matter in dispute in the subsequent suit is the same with the previous suit.
- It involves the same parties.
- The decision given was final.

THE AIM BEHIND THIS DOCTRINE/PLEA

- There must be an end to justice.
- No man should be convicted (vexed) twice over the same offence.

LAW GOVERNING THE DOCTRINE OF RES-JUDICATA

The doctrine is provided and governed by the Civil Procedure Code under Section 9 of the Code.

CASE LAW

*Karshe v. Uganda Transport Co Ltd*⁸ Sir Udo Udoma, C.J., had the following to say among other things.... “In general terms, the impression I form from these cases seems to me to be this: that once a decision has been given by a court of competent jurisdiction between two persons over the same subject matter, neither of the parties would be allowed to relitigate the issues again or to deny that the decision had infact been given, subject to certain conditions.

⁸ [1967] 1 EA 774, at page 564.

2. PLEA/DOCTRINE OF RES-SUBJUDICE

This doctrine is sometimes referred as “Stay of Suit”.

That is to say this doctrine precludes/ denies parties from opening another suit whenever there is a pending suit in any competent court over the same parties, same matter.

- ❖ The only difference between res-subjudice and res-judicata is that in res-subjudice the matter is pending in a competent court and one of the parties open the same matter in another competent court, so the matter has to be stayed till the other is finally decided. While under Res-judicata the matter has already or finally been decided by a competent court and the party wants to re-open the same matter.

GOVERNING LAW UNDER THE DOCTRINE OF RES-SUBJUDICE

This doctrine is also governed by the Civil Procedure Code under Section 8 of the Code.

DIFFERENT STAGES IN THE CIVIL SUIT/ PROCEEDING

1. Institution of the suit to a competent court.
2. Service of summons.(Summons has to be served upon the defendant)..Requiring the defendant to appear and answer the case against him or her.
3. The defendant has to make his defence (filing written statement of defence-W.S.D).
4. Framing of issues.
5. Production of evidence.
6. Judgment
7. Decree has to be passed

8. Execution of decree.

TRANSFER OF CASES

Refers to the process of moving/ shifting the case from one court to another. Transfer of cases under Civil procedure is of two kinds:-

- Transfer of cases under Civil Procedure Code...Section 20 of the Code.
- Transfer of cases under The Magistrates' Courts Act (M.C.A)

Section 47(1) of M.C.A covers transfer of cases under M.C.A

Transfer of cases under Section 47 of M.C.A relates to transfer of cases from Primary Court to another primary court, Primary court to District Court, Primary Court to High Court.

THE ONLY CONDITION IS THAT:-

The suit has to be transferred at any stage of the proceeding before judgment.

Further Read the Provision of Section 47(1) (a), (b), (c).

NOTE

Whenever the court is making or ordering the transfer of case under M.C.A it has to record the reasons for the transfer.

GROUND / CIRCUMSTANCES FOR THE TRANSFER OF CASE FROM PRIMARY COURT

1. Gravity of the proceeding.
2. If the subject matter of proceeding has arose outside the jurisdiction of the primary court.
3. If there is reasonable ground to believe there will be failure of justice.

4. If the court is satisfied that the law applicable is neither customary law nor Islamic law to such a particular suit.

TRANSFER OF CASES UNDER CIVIL PROCEDURE CODE

Transfer of cases under Civil Procedure Code [Cap 33 R.E 2002] is governed by Section 20 of the Code. This Section provides that where a suit may be instituted in any one of two or more District Courts within the area of the jurisdiction of the Resident Magistrate Court. This Section allows transfer of cases from District Court to Resident Magistrate Court.

For example: - Mary lives in Lushoto and she instituted a suit at the District Court of Lushoto, she may make an application for the transfer of her suit to Resident Magistrate Court at Tanga...Because the District Court of Lushoto is within the jurisdiction of the Resident Magistrate Court of Tanga.

CONDITIONS FOR THE TRANSFER OF CASES UNDER SECTION 20 OF THE CODE

- I. The transfer has to be made before evidence is given.
- II. Both parties must consent (agree) that the case has to be transferred.
- III. The court where the suit has been instituted (District Court) must record the fact of the consent and transmit the record to the resident magistrate.

Note: This transfer is of two kinds

- i. **Application by the parties themselves:** - parties make an application for the suit to be transferred to resident magistrate court by way of chamber summons supported by an affidavit.
- ii. Resident magistrate on his own motion (Suo motto)...transfer the suit to himself.

NOTE: the transfer under this Section can only be made before evidence has been taken.

INSTITUTION OF SUIT

Meaning of the term suit

Is any proceeding by one person or persons against another in a court of law in which the plaintiff pursues the remedy that the law affords for the redress of an injury or the enforcement of a right.⁹

All suits shall be (shall here means mandatory) instituted by presentation of **plaint**. Refer Section 22 of the Civil Procedure Code and Order IV Rule 1(i).

CONTENTS OF PLAINT

You may ask yourself this question, what are the contents of a plaint?

Order VII Rule 1 of the Civil Procedure Code provides you with an answer.

RETURN AND REJECTION OF A PLAINT

The effect of returning the plaint by the Court is that the plaint needs to be filed to another court which has jurisdiction to try the matter. Eg; Asha has filed her plaint to the District Court while the court having jurisdiction to hear or try her suit is the Primary Court...in this circumstances the District Court will return the plaint. However on returning a plaint the judge or magistrate shall endorse the date of its presentation and return.

READ: Order VII Rule 10(1), (2) of the Civil Procedure Code.

REJECTION OF A PLAINT

The Court has power to reject the plaint for the following reasons:-

- I. where the plaint does not disclose cause of action.
- ii. Where the relief claimed is undervalued.
- iii. Where the suit appears to be barred by any law.

⁹ <http://legal-dictionary.thefreedictionary.com/suit>

READ: Order VII Rule 11(a)-(c) of the Civil Procedure Code

However Rule 12 of the same Order requires that “where a plaint is rejected the judge or magistrate shall record an order to the effect with the reasons for such order”.

NOTE:- where a plaint is rejected on any of the grounds provided for in Rule 11 shall not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

PLAINT (Sample) thanks to JABA SHADRACK

IN THE HIGH COURT OF TANZANIA

DISTRICT REGISTRY

AT DAR ES SALAAM

CIVIL CASE No.....OF 20.....

..... (As the Administrator of the Estate of)

.....PLAINTIFF

VERSUS

..... 1st DEFENDANT

..... 2nd DEFENDANT

..... 3rd DEFENDANT

PLAINT

The above named plaintiff states that;

1. The Plaintiff is an individual, an administrator of the estate of, deceased, and his address of service for the purpose of this suit is;

.....

Plot No.

P. O. Box

.....

2. The 1st Defendant is/was a driver of the motor vehicle with Registration No., at the time of the accident stated hereunder, which is owned by the 2nd Defendant, and his address of service for the purpose of this suit is in the care of:

.....

P.O. Box

.....

3. The 2nd Defendant is a limited liability Company established under the Companies Act, 2002, and its address of service for the purpose of this suit is in the care of:

.....

P.O. Box

.....

4. The 3rd Defendant is an Insurance Company alleged by the 2nd Defendant to have insured the motor vehicle in dispute at the time of the accident and its address of service is in the care of;

.....

.....

5. On the, 20..... at about hours at Road, a motor vehicle with Registration No., while being driven by the 1st Defendant in a reckless manner knocked down one and caused grievous bodily harm which led to his death, as per **Annexure, collectively.**

6. On the, 20....., the 1st Defendant was found guilty as charged by the Court, in Traffic Case No. of 20....., as per **Annexure, collectively.**

7. The initial records indicated that, the above motor vehicle was insured by the 3rd Defendant., as per **Annexure, collectively.**

8. The Plaintiff raised a demand letter for the payment of Tshs. as liquidated general damages to the Plaintiff by the above defendants, attached herewith as **Annexure**
9. The 2nd Defendant has categorically denied compensating the Plaintiff alleging that, his motor vehicle was insured by the 3rd Defendant, as per **Annexure** of this Plaintiff.
10. The 3rd Defendant is denying any liability alleging that, the Insurance Cover Note is fake as per **Annexure** of this Plaintiff.
11. The above act of the 1st Defendant has caused great loss and general damages to the heirs of the deceased, the Widow, and children of the deceased, ..., who is now years old and who is now years of age, whose affairs are being handled by the Plaintiff, as the administrator duly appointed under the law as per **Annexure** of this plaintiff.

Particulars of general damages;

- a. The heirs of the estate and the family of the deceased endured and are still enduring great pain and grief for the loss of their relative.
- b. The deceased was a sole bread earner to the heirs as such they have lost a bread earner.
12. The 2nd Defendant is vicariously liable for the reckless act of the 1st Defendant.
13. The 3rd Defendant is a necessary party in this proceeding as might be liable if it will be found out that, the motor vehicle at issue was insured by them.
14. In 20..... the Plaintiff instituted a civil suit against the Plaintiffs herein at Court, Civil Case No. of 20....., but the said Court declined jurisdiction as per **Annexure** of this Plaintiff, which was supplied to me on the, 20....., hence the filing of this suit at this honourable court.

15. The cause of action and the orders sought are within the jurisdiction of this honourable court.

WHEREFORE the Plaintiff prays for judgment and decree against the Defendants as follows,
for:

a. Payment of liquidated damages of Tshs.

b. Interest at court rate of 12% per annum from the date the cause of action arose to the date of judgment in (a).

c. Interest at commercial rate of 21% of item (b) above from the date of judgment to the date of payment.

d. Costs of this suit.

e. Any further orders and relief(s) as the courts may deem fit and just to grant

Dated at this..... day of June, 20.....

PLAINTIFF

PLAINTIFF'S ADVOCATE

VERIFICATION

What is stated in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 above is true to the best of my own knowledge.

Dated at, this..... day of, 20.....

PLAINTIFF

Presented for filing this day of, 20.....

.....

Registry Officer

Copy to be served upon;

.....

P.O. Box

.....

.....

P.O. Box

.....

.....

.....

.....

Drawn & filed;

.....

Plot No.

P. O. Box

.....

The end-Thanks