

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL CASE NO.67 OF 2004**

**TROPICAL PESTICIDES
RESEARCH INSTITUTE.....PLAINTIFF
VERSUS
1. NATIONAL BANK (NBC) 1997 LTD.}
2. P.S.R.C. }.....DEFENDANTS**

RULING

SHANGWA, J:

In this case, the 2nd defendant PSRC has raised a preliminary objection that the plaintiff's suit before the Court does not disclose any cause of action against it as it is based on a claim which arose after the cut off date 1st April, 2000 when it was no longer to be held legally responsible for the debts of (NBC) 1997 Ltd.

From the out set, I would like to point out that I have been puzzled by learned Counsel for the 2nd defendant who framed this point of objection in which the court is being required to

reject or strike out the plaintiff's suit against its client or strike out its client's name out of these proceedings.

It appears to me that this particular point of objection is novel to Civil litigations. Usually, in such litigations, the defendants associate objections of this kind with the Complaint but not the suit. The reason for them to do so is not far fetched. They do so because there is no where it is provided in the Civil Procedure Code, 1966 that the suit may be rejected or struck out in cases where it does not disclose a Cause of action. What is provided therein is that the complaint shall be rejected where it does not disclose a cause of action. See O.VII. r.11(a) of the said Code. The suit itself has to be instituted by presentation of a Complaint. See PART 1 S.22 of the same Code.

Lack of a legal right to sue someone and lack of a cause of action in a document which has to be presented on institution of a suit are two different things which should not be taken to mean one and the same thing. According to **MITRA'S**

LEGAL AND COMMERCIAL DICTIONARY Fifth Edition at Page 452, the term 'legal right' is defined in its wider sense to mean any advantage or benefit conferred upon a person by a rule of law. According to the same Dictionary at Page 128, the term 'Cause of action' is defined to mean every fact which is material to be proved to entitle the Plaintiff to succeed.

I have gone through the plaint and I am satisfied that it contains all material facts which it is necessary for the Plaintiff Company to prove before it can succeed. In short, the plaint which was presented for filing by the plaintiff discloses a cause of action. Whether or not the plaintiff has a legal right as against the 2nd defendant is a matter to be determined by the court at a later stage.

In Civil matters, the decision as to who is to be sued belongs to the plaintiff. It goes without saying that the plaintiff is the one who knows from whom he can obtain redress. Sometimes, the plaintiff may be in doubt as to the person from

whom he is entitled to obtain redress. In such cases, the plaintiff may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties. See O.1 r.7 of the Civil Procedure Code which was cited by learned Counsel for the plaintiff DR. A. M. Mapunda in his reply to the written submissions filed by the 2nd defendant on the preliminary objection.

Before this suit was presented for filing, the plaintiff, who appears to have been in doubt as to the person from whom it is entitled to obtain redress, sought leave to join the 2nd defendant and this court **Rugazia,J** did grant such leave on 29.4.2004. It was submitted by learned Counsel for the plaintiff that one of the reasons which entitles his client to join the 2nd defendant to the suit is that NBC (1997) Ltd is still a specified Public Corporation. He contended that as there is no law that removes NBC (1997) Ltd. from the list of specified Public Corporations, the plaintiff is entitled to join it in the suit.

This list is found under the **FIRST SCHEDULE to the PUBLIC CORPORATIONS ACT 1992** (No.2 of 1992) and NBC (1997) is No.1 on the list.

From this submission, I have gathered that despite the 2nd defendant's objection that it is no longer the official Receiver of the 1st defendant, and that the cause of action arose after the cut off date i.e 1.4.2000 when it could no longer be held legally responsible for the 1st defendant's debts, yet still, learned Counsel for the plaintiff wants the question as to which of the defendants is liable, and to what extent, be determined by the court.

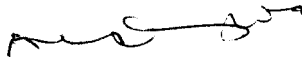
At the very beginning of his written submissions learned Counsel for the plaintiff submitted that in law, the 2nd defendant should have raised this objection when the application to join and sue it was heard inter partes. He contended that since it did not do so at that time, it should be taken to have waived the right to object.

With respect, notwithstanding the fact that the 2nd defendant's objection is bound to fail, I do not agree with the said contention. By not doing so, the 2nd defendant should not be taken to have waived its right to raise this objection. On the contrary, it should be taken to have reserved it so that it may exercise it in the near future at the hearing of the intended suit just as it did. Moreover, it could not have raised it at the time of the plaintiff's application for leave to join it in the suit because at that time it had no knowledge of the facts which the plaintiff intended to raise in the plaint.

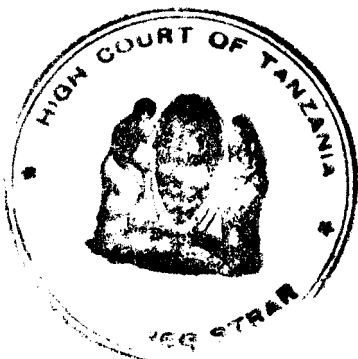
All in all, it will not be wise for this court to strike out the 2nd defendant's name from the proceedings as this will amount to going back to our decision in which leave to join it was granted before filing the suit.

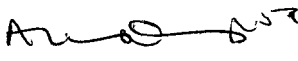
The question as to which of the defendants is liable will be determined by the Court at a later stage unless the plaintiff decides to withdraw the suit as against any of them before judgment.

In conclusion, I dismiss this preliminary objection but I order that each Party should bear its own Costs.


A. Shangwa
JUDGE
4.3.2005.

Delivered in open Court at Dar es Salaam this 4th day of
March, 2005.




A. Shangwa
JUDGE
4.3.2005.