

**IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL CASE NO. 167 OF 2004**

**SHANTILAL KANJI KOTECHEA ..... PLAINTIFF**

**VERSUS**

**NIC**

**}**

**PSRC**

**}**

**..... DEFENDANTS**

***Date of Ruling: 18/4/2007***

**RULING**

**MLAY, J.**

The plaintiff SHANTILAL JANJI KOTECHEA filed a suit against the National Insurance Corporation of Tanzania Limited ( 1<sup>st</sup> Defendant) and The Presidential Parastatal Sector Reform Commission (2<sup>nd</sup> Defendant) who are the Receiver Manager of the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant has raised a preliminary objection on two points of law that:

- (a) *That the Plaintiff has no cause of action against the 2<sup>nd</sup> Defendant.*

*(b) That the plaint is defective as the verification clause offends order V Rule 15 (3) of the Civil Procedure Code 1966.*

The parties we allowed to file written submissions on the preliminary objection. Having given due consideration to the first point of law raised in the preliminary objection and the learned written submissions by the parties on this point, I do not think that it has any merit. The 1<sup>st</sup> Defendant having been specified in accordance with Section 43 of the Public Corporation Act, the 2<sup>nd</sup> Defendant automatically becomes the Receiver Manager of the 1<sup>st</sup> Defendant and in terms of Section 9 of the Bankruptcy Act Cap. 25, R.E. 2002, the Receiver Manager has to be joined as a party in proceedings against the 1<sup>st</sup> defendant who is a specified corporation. The first point is without merit and is accordingly dismissed.

The second point is that the verification clause of the plaint offends the provisions of Order VI Rule 15 (3) of the Civil Procedure Code 1966. The plaintiffs counsel has argued that the provisions of Order VI Rule 15 (3) do not exist and therefore the preliminary objection should be dismissed. I do not know what version or print of the Civil Procedure Code which the plaintiffs counsel consulted. The version of the Civil Procedure Code contained in Volume 11 of the Laws of Tanzania Revised Edition of 2002, does contain Order VI Rule 15 (3) which provides as follows:

- 15 - (1) ..... (NA)  
 (2) ..... (NA)  
 (3) *The verification shall be signed by the person making it and shall state the date on which and the place at which it as signed.*"

The verification clause of the plaint in question is as following:

" *I SHANTILAL KANJI KOTECHA, being the Plaintiff herein, do hereby VERIFY that all what is stated in Paragraphs 1 to 18 herein above is true to the last of my knowledge. VERIFIED at Dar es Salaam this ..... this ..... day of ....., 2004.*"

The date and specified or which has the plaint was verified has not been supplied in the appropriate gaps. This plaint was drawn and filed by Law Associates ( Advocates) who should have known better. This was shere negligence. The verification clause clearly does not comply with the provisions of Order VI Rule 15 (3) quoted above. The issue is what are the consequences of such none compliance? If the plaint is struck out or rejected for non compliance, plaintiff, would be punished for the negligence of his advocate. This will not be fair.

Considering also that subject to the law of limitation the plaintiff can refile a fresh plaint which is properly verified, I think shortcoming the can be remedied by exercising the discretion of this court under Order VI Rule 17, to allow the plaintiff to amend the pleadings by dating the verification of the plaint.

I would partly uphold the 2<sup>nd</sup> preliminary point but allow the plaintiff to amend the pleadings by dating the verification clause. Costs to the 2<sup>nd</sup> Defendant. The amended plaint to be filed within 7 days of this order.



**J. I. Mlay**

**JUDGE**

**18/4/2007**