

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
CIVIL CASE No. 187 of 2011**

SCANIA FINANCE (SA) PTY LTD.....PLAINTIFF

VS.

A. M. COCH LIMITED.....DEFENDANT

RULING

Date of last Order: 12-06-2012

Date of Ruling: 05-07-2012

JUMA, J.:

This Ruling relates to a Notice of Preliminary objection which the defendant A.M. Coach Limited included in its Written Statement of Defence. The ground on which the objection is based is as follows:- . -

1. (a)- *This suit had been instituted contrary to section 18 (a), (b) & (c) of the Civil Procedure Code, 33 of the Laws of Tanzania Revised Edition, 2002.*

The plaintiff Scania Finance (SA) PTY LTD filed this suit on 16 November 2011 to claim that the defendant had breached three contracts known as AGREEMENTS OF LEASE. The plaintiff claims that on 27th November 2008, the plaintiff which is

a company registered in South Africa and carries out its business in Tanzania under the Companies Act, Cap. 212, entered into three Agreement of Lease with the defendant. Under the terms of the Lease Agreements, the plaintiff financed the purchase of three Buses. The plaintiff alleges that while it fulfilled its part of the agreement by supplying the three Buses on 2nd December 2008, the defendant has breached its part of the agreement by failing to remit monthly installments and accruing interest. The several demands for payment and demand to return the three Buses back to the plaintiff were all ignored by the defendant. The plaintiff also claims that the cause of action arose in Dar es Salaam and from its specific claim of Tshs 238,723,923.24, this court has jurisdiction to entertain the suit.

As regards the objection, Mr. Byamungu the learned Advocate submitted on behalf of the defendant that the cause of action of the plaintiff company arose within the jurisdiction of the High Court District Registry of Mwanza. The learned Advocate submitted further that the Agreements were signed in Mwanza as clearly shown in all annexure to the Plaint. Mr. Byamungu pointed out that the Post Office Box Number 66 Bunda similarly confirm that Bunda falls within the Mwanza High Court District Registry. Similarly, the delivery of the Buses (**annexure SLF-2**) according to Mr. Byamungu was done within the Mwanza High

Court Registry. The learned Advocate also submitted that all invoices (**annexure SLF-3**), correspondences (**annexure SLF-4**) were all addressed to the defendant at its address in Bunda in the Mwanza District Registry of the High Court. Mr. Byamungu is inviting me to strike out this suit with costs, because the plaintiff should have instituted this suit at Mwanza High Court Registry where the defendant resides and also where the cause of action arose.

Mr. Byamungu referred this Court to an earlier decision of this court in the case of **CR F. Lwanyantika Masha vs. The Attorney General, Civil Case Number 136 of 2001**(Manento, JK, as he then was) to support his submission that the plaintiff should have filed this suit at Mwanza District Registry consistent with section 18 (a), (b) and (c) of the **Civil Procedure Code, Cap. 33** which directs that suits should be instituted where the defendant resides or where the cause of action arose.

Plaintiff's submissions to oppose the preliminary points of objection were presented by Mr. Msumi the learned Advocate. Mr. Msumi submitted that the defendant has failed to read as a whole section 18 with its subsections (a), (b) and (c) in order to appreciate how the law provides for alternatives to the plaintiffs who desire to institute suits against the defendants.

In his replying submissions, Mr. Byamungu noted that Mr. Msumi has not submitted anything to show that the cause of action arose in Dar es Salaam. The learned Advocate warns of the danger of flooding the Dar es Salaam High Court Registry with cases which should rather be filed in District Registries of the High Court.

As stated by Sir Charles Newbold in the case of **Mukisa Biscuit Manufacturing Company Ltd Vs. West End Distributors Ltd (1969) EA 696 at page 701**, a preliminary objection raises pure point of law which, is argued on the assumption that all the facts pleaded by the other side are correct. From the submissions of the two learned Counsel, the main question for my determination is whether from the totality of pleadings as they now stand with their attachments, this court without further proof, can conclude that this suit contravenes section 18 (a), (b) & (c) of the **Civil Procedure Code, 33**. Pure point of law does not arise if any fact alleged in the pleadings has to be ascertained by evidence.

The relevant section 18 states:

18. Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

(a)- the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain;

(b)- any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution;

(c)- the cause of action, wholly or part, arises.

It is important to point out that on a plain reading, above-cited section 18 of the **Civil Procedure Code** provides alternatives of residence, place of business and cause of action available to a Plaintiff regarding where the plaintiff concerned can institute a suit against the defendant. In terms of subsection (a) and (b) of section 18, a plaintiff can institute a suit a court within the local limits whose jurisdiction where the defendant either resides, or carries on business, or personally works for gain.

Plaintiff may under subsection (c) institute a suit against a defendant in a court within the local limits of whose jurisdiction the cause of action either wholly or partly arose.

There is no doubt from pleadings that the defendant herein resides in Bunda which is within the High Court District Registry of Mwanza. But, it is not clear by looking at pleadings alone to establish whether the defendant carries on business, or personally works for gain within the High Court District Registry of Mwanza. With regard to the cause of action, Mr. Msumi (for the Plaintiff) urged me to note the significance of the words used in subsection of section 18: “(c) - *the cause of action, wholly or part, arises.*” Mr. Msumi submitted that the three Agreements of Lease were partially signed in Dar es Salaam on 27th November 2008 as clearly shown in annexure SFL-1.

From the pleadings, I propose to show why, with all due respect Mr. Msumi is correct when he cited subsection (c) of section 18 and submitted that the cause of action in part arose in Dar es Salaam. The Agreement of Lease (Annexure SFL-1) provides the context from which the Plaintiff bases its suit against the defendant. The Plaintiff claims that the act of the defendant contravening the Agreement of Lease gave the plaintiff its cause of complaint hence cause of action. Paragraph 3 of the Agreement of Lease-Annexure SFL-1 provides for DELIVERY. According to

its sub-paragraph (b), it is the LESSEE (i.e. the defendant A.M. Coach who at its own cost, procured and took delivery of the three Buses from the plaintiff.

Annexure "SFL-2" Final Delivery Note No. 08-168 dated 28th November 2008 but crossed by ink to be 02/12/2008 reads- ***"Delivered To: A.M. Coach Limited P.O. Box 66 Dar es Salaam one NEW SCANIA F114 HB 4X2 HZ 330 Registration No. T307 AWP"***. Its accompanying SCANIA DELIVERY CHECKLIST shows delivery was done at Dar es Salaam. Similarly, Annexure "SFL-2" being the Final Delivery Note No. 08-143 dated 28th November 2008 but crossed by ink to be 02/12/2008 reads:- ***"Delivered To: A.M. Coach Limited P.O. Box 66 Dar es Salaam one NEW SCANIA F114 HB 4X2 HZ 330 Registration No. T167 AWQ"***. Its accompanying SCANIA DELIVERY CHECKLIST shows delivery was done at Dar es Salaam. Annexure "SFL-2" Final Delivery Note No. 08-143 dated 28th November 2008 reads:- ***"Delivered To: A.M. Coach Limited P.O. Box 66 Dar es Salaam one NEW SCANIA F114 HB 4X2 HZ 330 Registration No. T106 AWQ"***. Its accompanying SCANIA DELIVERY CHECKLIST shows delivery was done at Dar es Salaam.

The foregoing extracts from the pleadings is consistent with the submission made on behalf of the plaintiff that part of the

Agreement (delivery of Buses) took place in Dar es Salaam when the Defendant travelled to Dar es Salaam and took the delivery of the three Buses. Further, the acknowledgment part of the Agreement of Lease shows that the Agreement was in fact executed in Dar es Salaam and Mr. Mohamed Hamed a Director of A.M. Coach executed the agreement on behalf of the defendant:

“ACKNOWLEDGEMENT

***In signing this agreement the LESSEE
ACKNOWLEDGES THAT HE HAS RECEIVED THE GOODS
as stated above and has satisfied himself that they are in good
order and condition.***

***Executed in Dar es Salaam on this 27th day of November
2008.”***

Having found that the cause of action of this suit in part arose in Dar es Salaam, the preliminary point of objection is not sustainable and it is consequently dismissed with costs.

DATED at DAR ES SALAAM this 5th July, 2012



**I.H. Juma
JUDGE**