

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF MWANZA  
AT MWANZA**

**CIVIL CASE No 17 OF 2010**

**LIVINGSTONE ENOCK & 5 OTHERS.....PLAINTIFFS**

**VERSUS**

**1. GENERAL MANAGER**

**2. SERGE SMOLONOGOV**

**(Geology Manager.....DEFENDANTS**

**RULING**

**MRUMA, J.**

The plaintiffs instituted this suit against two defendants who are named as the General Manager and Serge Smolonogov (Geology Manager). In paragraph 3 of the plaint it is stated that the defendant is a limited liability company incorporated in Tanzania under the Companies Ordinance Cap 212.

At paragraph 4 of the plaint it is stated that the plaintiffs were in continuous service of to the first defendant's company

known as North Mara Gold Mine or Barrick Tanzania as Major known company without any grudges or warning for the all time they were working with the defendant.

Then comes paragraph 5 under which the plaintiffs avers that:-

*“That the 1<sup>st</sup> defendants [sic] a manager of the said company by using 2<sup>nd</sup> defendant deformed (defamed?) both plaintiffs [sic] by written, printed and publication through internet by e-mail message and place names of plaintiffs into security data base that will make it near impossible for them to lawfully obtain work in any other major mine in Tanzania which is tort to the plaintiff”.*

This paragraph is followed by ten other paragraphs and the prayer clause under which the plaintiffs are claiming against the defendants for the following reliefs:-

- (a) General damages at T.shs 1,000, 000, 000/= (i.e. One billion Tanzanian money)
- (b) Interest on the decretal sum at court's rate from date of Judgment until payment in full
- (c) Costs of the suit and;
- (d) Any other or further relief the honourable court may deem fit and just.

Upon being served with the plaint together with its annexes, the defendant has filed a written statement of defence containing a preliminary objection on the point of law that the suit is bad in law for reasons that the plaint contravenes the mandatory requirement of the Rules of the Civil Procedure Code [Cap 33 R.E. 2002], thus cannot be entertained. Further and subsequent to this preliminary point of objection on the point of law, the defendants raised another point of law challenging the Jurisdiction of this court in that this court lacks

jurisdiction to hear and determine this matter as the dispute arose from employment and under the Written laws (Miscellaneous Amendment), Act No 8 of 2006, which amends section 94 of the Employment and Labour relations Act, Jurisdiction to hear matters arising from labour relations is vested exclusively to the Labour Division of the High Court.

I beg to start with the second point which challenges the Jurisdiction of this court. I find this more pertinent because as it was held in the case of **Fanuel Mantiri N'gunda Vs Herman Mantiri Ng'unda and 20 others Civil Appeal No 8 of 1995 CAT (Unreported)**, the jurisdiction of the court is so fundamental that if this court will find that it has no jurisdiction to entertain the matter before it, then determining the first preliminary point of objection will be rendered an academic exercise. It has been submitted that, in terms of the provisions of section 94 of the Employment and Labour Relations Act with its amendment provided in the Written Laws (Miscellaneous

Amendment) Act No 8 of 2006, the Labour Division of the High Court have exclusive Jurisdiction over application, interpretation and implementation of the provisions of the Act and over any employment or labour matter falling under common law, tortuous liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court. I have an advantage of reading the provisions of section 94 of the Employment and Labour Relations Act as amended by Written Laws (Miscellaneous Amendment) Act, No 8 of 2006, and in my view the question that logically follows is whether the complained tortuous liabilities are matters of employment or labour relation within the ambit of section 94 of the Employment and Labour Relations Act. If one reads between the lines of annex "A" there can be no dispute that it contains some serious allegations of facts which can only be determined after some evidence has been adduced to see whether they fall squarely under that law. That being the case therefore,

this point does not qualify to be raised as a preliminary point of law. I also agree with the view expressed by the High Court Labour Division (Rweyemamu J) in the case of **General Manager Tanita Ltd Vs Robert Rugumbirwa Revision No 38 of 2007** where the court held that Written Laws (Miscellaneous Amendment) No 8 of 2006 does not extend to cover the tort of defamation because that tort cannot be categorized as a labour matter. For that reason, I dismiss, the last preliminary objection,

Regarding the first preliminary objection, Rule 1 of Order VII of the Civil Procedure Code, provides that:-

*“The plaint shall contain the following particulars*

*“(a).....[not relevant]*

*(b) The name, description ,and place of residence  
of the plaintiff*

(c) *The name, description and place of residence so as far as they can be ascertained;*

(d).....[not relevant]

(e).....[not relevant]

(f).....[not relevant]

(g).....[not relevant]

(h).....[not relevant]

(i).....[not relevant]”

As I had recently held in the case of **Arusha Arts Limited Vs.Alliance Insurance Corporation Limited** Arusha Registry Commercial Case No 12 of 2011(Unreported) compliance to the requirement of provisions of the law enumerated under Rule 1 of Order VII of the Civil Procedure Code is mandatory. The language used by the law is “shall” which means that compliance is a must.

In the case at hand, the first defendant is mentioned simply as General Manager. In its ordinary meaning the term general manager means a person who is in charge of running a business. It is a title, therefore not a person in the eyes of the law. In law only legal and/or natural persons can be sued. A title cannot be sued.

The second defendant is named as Serge Smolonogov (Geology Manager). On the face of it one can guess that Serge Smolonogov (Geology Manager) is a natural person probably with a Russian name, but when this is read together with paragraphs 2 of the plaint which states that the defendant is a limited liability company there can be a second thought that probably, the second defendant is a limited liability company. A further reading of paragraph 4 of the plaint would suggest that the plaintiff were in continuous service of another company known as North Mara Gold Mine or Barrick Tanzania who is

mentioned as the first defendant company. Paragraph 5 states that the 1<sup>st</sup> defendant is the manager of the said company and that he used the 2<sup>nd</sup> defendant to deform (defame?) the plaintiffs. Now the question is; which company is the plaintiff talking about? Is general manager (the 1<sup>st</sup> defendant) a company? Or is Serge Smolonogov (Geology Manager), a company? By any standard the plaint in this suit is ambiguous and not clear on who are the defendants in this matter. This contravenes the provisions of Rule 1 of Order VII of the Civil Procedure Code. I accordingly find that the plaint as presented by the plaintiff is unnecessary and scandalous. If it is left the way it is, it may prejudice, embarrass or delay the fair trial of the suit.

I accordingly and in terms of Rule 16 of Order VI of the Civil Procedure Code, *strike it out.*

*Mwambi*  
*A. R. Muma*

**JUDGE**

At Mwanza

20<sup>th</sup> May, 2012

**Date** : 20<sup>th</sup> May, 2012

**Coram** : Hon. A.R. Mruma, J.

For Plaintiffs: 1<sup>st</sup>  
2<sup>nd</sup>  
3<sup>rd</sup>  
4<sup>th</sup>  
5<sup>th</sup>  
6<sup>th</sup>

All present but 1<sup>st</sup> plaintiff.

For Defendants:- 1<sup>st</sup>  
2<sup>nd</sup>

Absent

**B/C** : Rose

**COURT:-**

Ruling delivered in presence of 2 – 6 plaintiffs but in absence of the defendants and their advocate this 29<sup>th</sup> day of May, 2012.

  
A.R. Mruma

**JUDGE**

At Mwanza

20<sup>th</sup> May, 2012