

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT DAR ES SALAAM

LAND CASE NO. 59 OF 2012

QUALITY GROUP LTD APPLICANT

v.

IMAGE PROPERTIES AND ESTATE LTD. . RESPONDENT

Date of last order – 26/7/2013

Date of Ruling – 2/9/2013

R U L I N G

Shangwa, J.

In his written statement of defence, counsel for the defendant Mr. Mandele raised three points of preliminary objection against the plaintiff's suit for determination by this court. These are as follows:-

- (i) That the plaint is incurably defective in law for not stating the facts relating to jurisdiction of the court.
- (ii) That the plaint is bad in law for being re-subjudice.
- (iii) That the plaintiff has no cause of action against the defendant.

These points were argued by learned counsel on both sides by way of written submissions as ordered by this court on 24th April, 2013. On the 1st point of preliminary objection, counsel for the defendant submitted that the plaint does not state the fact that the court has jurisdiction to try the case as required by O. VII r. 1 (f) of the Civil Procedure Code Cap. 33 R.E. 2002. He argued that the provision of O. VII r. 1 (f) of the code is mandatory and that a failure to comply with it renders the plaint incurably defective. In support of his argument, he cited the case of

Ahmed Chilambo v. Murray & Roberts Contractors (T)

Ltd – Civil Case No. 44 of 2005 in which this court Manento Principal Judge (rtd) dismissed the plaint for not being in conformity with the requirement of O. VII r. 1 (f) of the Code.

On the other side, counsel for the plaintiff Dr. Tenga submitted that the plaint is in conformity with O. VII r. 1 (f) of the Code and that counsel for the defendant misinterpreted it. He said, although it is a common practice in drafting of plaints to have a single and separate paragraph stating that the court has jurisdiction to try the suit which paragraph is missing in the plaint, it is not mandatory that this common practice must be followed. He said, in drafting a plaint, what is needed is to state the facts showing jurisdiction in the body of the plaint which was done by the plaintiff in this case. He distinguished this case with the case of ***Ahmed Chilambo v. Murray &***

Roberts contractors (T) Ltd by saying that whereas in this case the plaintiff is claiming for specific damages of Tzs.300,000,000/= and identifies where the cause of action arose, i.e. Dar es Salaam, in the case of **Ahmed Chilambo**, the plaintiff was claiming for general damages which do not determine the jurisdiction of court. In order to show that general damages do not determine the jurisdiction of court, he cited the case of **M/S Tanzania – China Friendship Textile Co, Ltd v. Our Lady of Usambara sisters – Civil Appeal No. 84 of 2002 DSM (2006) TLR 70**. In order to show that the plaintiff stated the facts showing jurisdiction in the plaint, he referred the court to paragraphs 3 and 4 of the plaint in which it is respectively indicated that the plaintiff is claiming for specific damages of Tzs.300,000,000/= and that the plaintiff has been occupying the suit premises as tenant.

The following are my views on the 1st point of preliminary objection. First of all, I agree with Dr. Tenga that in cases where the plaint does not contain a single and separate paragraph stating that the court in which the suit has been instituted has jurisdiction cannot render it defective. This is because one might formally state in a single and separate paragraph that the court has jurisdiction whereas in actual fact, it has no jurisdiction to try the suit. Secondly, I agree with him that O. VII r. 1 (f) of the Civil Procedure code does not make it mandatory that there should be a single and separate paragraph in the plaint to show that the court has jurisdiction. What O. VII r. 1 (f) requires is that the plaint should contain facts which show that the court has jurisdiction. It provides as I quote herein below:

“The plaint shall contain the following particulars –

(a) to (e) . . . not applicable.

(f) The fact showing that the court has jurisdiction.”

As submitted by Dr. Tenga, the facts showing that the court has jurisdiction are found in the body of the plaint at paragraphs 3 and 4. These facts are as follows:-

First, a claim for specific damages of Tzs.300,000,000/= which is within the pecuniary jurisdiction of this court. ***Second,*** the tenancy agreement between the plaintiff and the defendant which shows that this is a land case which this court has jurisdiction to try. ***Third,*** that the cause of action arose in Dar es Salaam at Quality Plaza Building on Plot No. 189/2 which is within the territorial jurisdiction of this court.

I agree with Dr. Tenga also that the case of ***Ahmed Chilambo v. Murray & Roberts contractors (T) Ltd***

which was cited by Mr. Mandele for the defendant is distinguishable from this case. Whereas in this case, the plaintiff company is claiming for specific damages of Tzs.300,000,000/= which show that this court has jurisdiction to try its case, in the case of **Ahmed Chilambo**, the claim was for general damages of Tzs.400,000/= which could not determine the jurisdiction of the court to try the suit. On top of that, unlike in this case in which the plaint discloses the cause of action against the defendant namely a refusal by the defendant to remove its furniture, fixtures and fittings from the suit premises, in the case of **Ahmed Chilambo**, the plaint did not disclose the cause of action against the defendant namely unlawful imprisonment and malicious prosecution. Thus, the 1st point of preliminary objection has no merit and it fails.

In respect of the 2nd point of preliminary objection, counsel for the defendant, Mr. Mandele submitted that the plaint is bad in law for being res-subjudice. He said, the plaint is res subjudice because there are other three cases between the parties which are pending before this court for determination. ***That is Land Case No. 77 of 2012, Land Case No. 40 of 2011 and Land Case No. 33 of 2009.*** He said, among the reliefs claimed in those cases are substantially the same and the cause of actions are on the same Plot No. 189/2 (Quality Plaza Building). He therefore prayed the court to stay the proceedings in Land Case No. 59 of 2012 which is the subject of this preliminary objection.

In support of his submission and prayer, he cited S. 8 of the Civil Procedure Code which provides as follows and I quote:-

“No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties; or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in Tanzania having jurisdiction to grant the relief claimed.”

In reply, counsel for the plaintiff, Dr. Tenga submitted that the three land cases mentioned by Mr. Mandele are different in substance and that S. 8 of the Civil Procedure Code cited by Mr. Mandele is not applicable in this case.

The question to be determined on this point is whether or not the matter in issue in our Land Case No. 59 of 2012 is directly and substantially in issue in Land Case No. 33 of 2009, Land Case No. 40 of 2011 and Land Case No. 77 of 2012 which are between the same parties. The matter in issue in our Land Case No. 59 of 2012 is a claim for specific damages of Tzs.300,000,000/= being losses incurred by the plaintiff company due to the defendant's refusal to allow it to remove its furniture, fixtures and fittings from the suit premises.

In my view, although Land Case No. 40 of 2009, Land Case No. 40 of 2011 and Land Case No. 77 of 2012 are between the same parties before this court with competent jurisdiction to grant the reliefs claimed, the matter in issue in our Land Case No. 59 of 2012 which concerns a claim for specific damages of Tzs.300,000,000/= being losses incurred by the plaintiff due to the defendant's refusal to

allow it to remove its properties from the suit premises, is not directly and substantially in issue in those cases. Therefore, the suit between the parties herein this matter is not subjudice. Thus, the 2nd appoint of preliminary objection also has no merit and it fails.

On the 3rd point of preliminary objection, the court is asked to determine as to whether or not the plaintiff has a cause of action against the defendant. On this point, counsel for the defendant Mr. Mandele submitted that the plaintiff has no cause of action against the defendant because the lease agreement between it and the defendant expired on 31st March, 2010. He contended that as the lease agreement between them expired, the plaintiff is no longer the lawful tenant of the disputed premises and that as the plaintiff is no longer the lawful tenant, it has no cause of action against the defendant.

In reply to this point, Dr. Tenga for the plaintiff submitted that the plaintiff has a cause of action against the defendant and that the fact upon which the plaintiff's cause of action is based is the refusal by the defendant to allow the plaintiff to remove its furniture, fittings and fixtures from the suit premises.

In my opinion, I agree with Dr. Tenga that the plaintiff has a cause of action against the defendant which will entitle it to some reliefs once proved. The fact that the lease Agreement in respect of the suit premises which was entered into by the parties expired on 31st March, 2010, does not extinguish the plaintiff's right to claim for its furniture, fittings and fixtures from the suit premises which were leased by the defendant to it.

As the plaintiff's claim is not based on breach of any term of the expired lease agreement between the parties, it is not correct to state that the plaintiff has no cause of

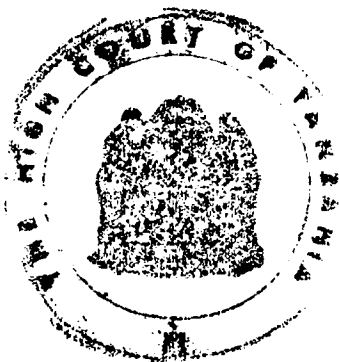
action against the defendant on grounds that the Lease Agreement between the parties has already expired. As already stated, the cause of action in this case arises from something else other than breach of the terms of the Lease Agreement which expired. I repeat to say that the cause of action in this case arises from the defendant's refusal to allow the plaintiff company to remove its furniture, fittings and fixtures from the suit premises.


The definition of what a cause of action means is indisputably given in many legal authorities. In this case, I wish to adopt the definition of what a cause of action means given at **page 251 of Black's Law Dictionary 9th Edition** *that it is a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person.* I also wish to adopt another definition of what a cause of action means which is given at **page 4 in MULLA'S CIVIL**

PROCEDURE CODE that it is every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgment of the court . . .

In this case, one does not need a microscope to see from the plaint the fact which gives rise to the cause of action. That is the defendant's refusal to allow the plaintiff company to remove its furniture, fittings and fixtures from the suit premises. Upon this fact, the plaintiff prays for remedy from this court. At this juncture, it can be seen that the 3rd point of preliminary objection raised by the defendant against the suit has no merit as well.

For these reasons, I dismiss the defendant's points of preliminary objection with costs.




A. Shangwa

JUDGE

2/9/2013

Delivered in open court this 2nd day of September, 2013 in the presence of Dr. Tenga and Mr. Ram for the plaintiff and Mr. Innocent Mwailelwa for Mr. Mandele for the defendant.




A. Shangwa

JUDGE

2/9/2013