

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

**LAND CASE NO. 97 OF 2013**

**HUSSEIN MAGESA EKINGO.....PLAINTIFF**

**V**

**DODSAL HYDROCARBONS AND POWER**

**TANZANIA PVT LTD .....DEFENDANT**

Date of last Order            14 /5/2014

Date of Ruling                17/6 /2014

**RULING**

**A.Shangwa, J**

In his written statement of defence, the defendant has raised a preliminary point of objection against the hearing of the suit to the effect that the plaintiff does not have any cause of action against the defendant and prayed the Court to strike out the suit with costs.

In support of this point of objection, learned counsel for the defendant, Dr. Masumbuko Lamwai cited two reported cases in which the cause of action was defined namely the case of **John Byombalirwa V. Agence Maritime International (Tanzania) Ltd [1983] TLR 1 at page 4 and the case of Stanbic Finance Tanzania Ltd V. Giuseppe Trupia and Chiara Malavasi [2002] T.L.R. 217 at P. 221 B** where it was respectively observed by **Kisanga, J** as he then was and **Dr. Bwana, J** as he then was that the expression cause of action is not defined under the code and may be taken to mean essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit, and that a cause of action arises when facts which give rise or occasion to a party to make a demand or seek redress, all depending on the claim.

In the light of what was observed by their Lordships in the above mentioned authorities on the meaning of a cause of action, my business in this case becomes as simple as one plus one which is equal to two. My business is to consider now as to whether or not there exists essential facts in the plaintiff's suit which it is necessary for him to prove before he can succeed in the suit or whether or not there exists facts on which liability can be founded.

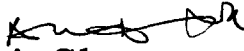
In order to find out as to whether or not such facts do exist in the plaintiff's suit, I have gone through the plaintiff paragraph after paragraph. At paragraph 7, the plaintiff alleges that the defendant company unlawfully and without bonafide claim of right whatsoever did trespass into the suit premises on farm NO. 2518 at Kerege area in Bagamoyo District which belongs to the plaintiff by creating unlawful and artificial easement measuring over seven (7) meters wide.

to two hundred and thirty (230) meters in length causing damage and destruction of properties therein against peaceful possession and enjoyment of the suit premises by the plaintiff.

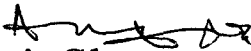
The allegation by the plaintiff in his plaint is denied by the defendant at paragraphs 4,5,6 and 7 of its written statement of defence where it is respectively stated that the plaintiff's right of occupancy only gave him surface rights and that what it has done has been done in the exercise of its rights under the licence issued to it under the Petroleum (Exploration and Production) Act cap 328 and that it did not destroy any of the plaintiff's properties.

In my opinion, the defendant's denial of the plaintiff's allegation of trespass into the suit premises signifies that there are facts in the plaint that the plaintiff has to prove in

order to succeed in the suit, and that there are facts in the  
plaint which make the plaintiff seek redress. That being the  
case, I hold that the plaintiff has a cause of action against  
the defendant. Thus, I overrule the point of preliminary  
objection raised by the defendant against the suit. Costs to  
be in the main cause.

  
A. Shangwa  
**JUDGE**  
17/6/2014

Delivered in Court this 17<sup>th</sup> day of June, 2014 in the  
presence of Advocate Neema Kaji for Dr. Lamwai for the  
defendant and for Mr. Malima for the plaintiff.

  
A. Shangwa  
**JUDGE**  
17/6/2014

