

IN THE HIGH COURT OF TANZANIA

AT MBEYA

LAND CASE NO. 15 OF 2014

**RAPHAEL JOSEPH MBUGI ..... PLAINTIFF**

**VERSUS**

**NATIONAL MICROFINANCE BANK PLC ..... DEFENDANT**


**RULING.**

*Date of last order: 11/02/2015*

*Date of Ruling: 16/02/2015*

**A.F. NGWALA, J.**

The Plaintiff, RAPHAEL JOSEPH MBUGI had entered into the Loan Agreement with the National Microfinance Bank PLC who is the Defendant. The Defendant granted the Plaintiff a loan amounting to a sum of Tshs.15,000,000/=. The Plaintiff had surrendered some securities which are lawfully held by the defendant. It was agreed between the parties that, the High Court of Tanzania Commercial Court Division shall have jurisdiction to hear and determine any suit action or Proceedings and to settle any dispute which may arise out of or in connection with their Loan Agreement.

The Defendant is alleged to have breached a term of the Loan Agreement. The Plaintiff has therefore brought this suit in this court. The Defendant filed a written Statement of Defence, disputing the claims. He also, raised three Preliminary Objections on Points of Law in accordance the provisions of Order 18 Rule 2 of the Civil Procedure Code, CAP. 33 R. E. 2002. 

Mr. Mwakolo the learned Counsel for the Defendant, submitted that this court has no jurisdiction to entertain the matter, because the suit was supposed to be filed in the District Court, Resident Court or Primary Court. He contended that under paragraph 11 of the Complaint, the Plaintiff has annexed the Demand Notice Annexure "A3" dated 22/07/2014, which shows that, the Bank (Defendant) was claiming a sum of Tshs.2,374,337.92/=. Hence, under the provisions of Section 13 of the Civil Procedure Code, Act (CAP. 33 R. E. 2002), he ought to have filed this matter in the court of the lowest grade competent to try it.

Mr. Mwakolo submitted further that, the Complaint, has not stated the pecuniary jurisdiction of this court. In reply the Plaintiff, a lay person, stated that, this suit is a land case as per paragraph 3 of the Complaint. He argued that, the High Court has jurisdiction to entertain it because the pecuniary value is above the jurisdiction of the District Land and Housing Tribunal of Tshs.50,000,000/=. He further argued that, the High Court has the Registrar who admitted this matter, knowing that the matter was within the jurisdiction of the court.

As regards the claims of the Bank on the Demand Notice, he submitted that, there was only a dispute between the Bank and the Plaintiff, and not otherwise.

Mr. Mwakolo contended that, paragraph 3 of the Complaint is contrary to Order VII Rule 3 of the Civil Procedure Code, CAP. 33 R. E. 2002, because the Plaintiff had not mentioned the immovable properties. He insisted that, the Plaintiff has not


mentioned any of those properties such as Houses, Shamba's which are securities.

On the other Preliminary Objection, Mr. Mwakolo, submitted that, the Plaintiff is defective, for contravening the provisions of Order VII Rule 1 (e) (f) and (i) of the Civil Procedure Code, CAP. 33 R. E. 2002. He insisted that, the Plaintiff has not disclosed the facts constituting the cause of action and when it arose. In reply, Plaintiff, was of the view that, there is a Loan Agreement which shows that, all this in the paragraph 3, 9 and 10 of the Plaintiff. The security offered have been mentioned as the Land Title No. 25 MB 217240 of 8.345 acres and 25 MB 217241, 5 acres located at Itindi Village and Residential House located at Mlowo Town, in his name of Raphael Joseph Mbugi.

Mr. Mwakolo insisted that, the valuation report should have been annexed if that is the case. According to him the Banking Offer Letter, is not a Loan Agreement to be used as security.

On the last point of Preliminary Objection, Mr. Mwakolo contended that, the Plaintiff has no cause of Action. He cited the case of **STANBIC FINANCE TANZANIA LTD Vrs. GIUSEPPE TRUPIA AND CHIARA MALAVASI [2002] TLR, 217**, which gives the meaning of cause of action and when it arises as follows:-

*"A cause of action arises when facts exist which give rise or occasion to a party to make a demand or seek redress, all depending on the kind of claim; a cause of action arises when facts on which liability is founded do exist and its disclosure is reflected in the claims as presented in the plaint and not as weighed against the defence statement".*



The Plaintiff responded on this by saying that, the demand letter of his Advocate shows that, the dispute regarding the banks demand of tshs. 15,000,000/= as per paragraph 5, which is in the Loan Agreement. The Plaintiff has no other Loan Agreement other than what has been annexed in Annexure "A2" which is the "Banking Offer Letter" dated 09/09/2013.

The 1<sup>st</sup> preliminary point of objection on law for the courts determination is whether or not the High Court has jurisdiction to entertain this matter?


The answer to this question cannot be easily given without reading the Plaint and determining if it is in accordance with the provisions of the Civil Procedure Code, CAP.33 R. E., specifically PARTS I. A and PART I of the code regarding the jurisdiction of the courts, procedure to institute suits, pecunniary jurisdiction of courts, resjudicata objection to jurisdiction, institution of suits etc read together with the first schedule, containing the Civil Procedure Rules under Orders IV, Rules I, Order VI Rules I and II of the said Code.

In this suit, the argument by the Plaintiff that this is a Land case could have a meaning only and only if his Plaint had disclosed clearly that it was a land case under the provisions of Part X of the Land Act No. 4 of 1999 [Cap. 114] of the Laws, R. E. 2002 on Mortgages and **"The Mortgage Financing (Special Provisions) Act No. 17 of 2008"**.

More so if his Plaint had complied with the Rules contained in Order VI and VIII of the Civil Procedure Rules under the Civil Procedure Code (CAP.33 R. E. 2002).

In this suit it is evident from paragraph 11 of the Plaint, that the Plaintiff has annexed a Demand Notice which shows that the Defendant was claiming a sum of Tshs.2,374,337.92 from the Plaintiff. It is also very clear from the Plaint that the Plaintiff has not stated the jurisdiction of the Court. He has not mentioned the pecunniary jurisdiction of the Court. The fact that the Plaintiff lives in Mbeya Region is not a fact which allows the High Court to entertain this matter without stating the pecunniary jurisdiction of the Court. The Plaintiff must state the value of the subject matter of the suit for the purposes of jurisdiction and of Court fees, so far as the case admits as provided for under Order VII Rule 1 (i) of the Civil Procedure Code. This is a mandatory requirement as the particulars to be contained in the Plaint.

The Plaintiff's claim was for Judgment and Decree that the Defendant be ordered to return Right of occupancy and to pay damages to the fine of Tshs.30,000,000/= (thirty million). The Plaintiff has however contradicted himself by attaching annexure A1, a demand letter in his Plaint showing that the Defendants were claiming a sum of Tshs.2,374,337.92 for his failure to repay the loan through equal months installments of Tshs.1,382,348.67/= as shown in the Loan Repayment Schedule which he had annexed to the Plaint as Annexure "A2". On this account it is quite clear the Plaintiff has not stated why he is claiming the said damages. Worse, if the sum of Tshs.2,374,337.92 is the sum that claimed by the Defendant and the Plaintiff is praying for the sum of Tshs.30,000,000/= as damages, as indicated in his prayer, then Plaintiff ought to have



instituted this suit in the court of the lowest grade competent to try it, being the Resident Magistrate Court, and a District Court and Primary Court as per Section 13 of the Civil Procedure Code CAP. 33 R. E. 2002.

This point on pecunniary jurisdiction of courts especially the High Court was emphasized in the case of **Tanzania – China Friendship Textile Co. Ltd Vrs. Our Lady of the Usambara Sisters [2006] TLR 70**. Where the Court of Appeal of Tanzania held that *“Although there is no specific provision of law stating expressly that the High Court had no pecuniary jurisdiction to entertain claims not exceeding Tshs.10,000,000/=, according to the principle contained in Section 13 of the Civil Procedure Code that every suit must be instituted in the court of the lowest grade competent to try it, the trial Court could not have properly invoked its inherent powers under the provisions of Sections 95 of the Civil Procedure Code to vest itself with jurisdiction which it didnot have. Since the trial Court had not jurisdiction, all the Proceedings and Decisions were null and void”*.

The Plaintiff believed that this court has pecunniary jurisdiction to detemine this matter. In his arguments he relied on the demand letter of his advocate which shows that there was a dispute regarding the Bank demands of Tshs.15,000,000/= as per paragraph 5 of their Loan Agreement. He has also argued that this is a land case as per paragraph 5 of the Plaint, because the High Court has jurisdiction to entertain land matters whose value is above Tshs. 50,000,000/=.

His argument on the pecunniary jurisdiction of the High Court in land cases could be vital if his claims were above the value of Tshs.50,000,000/= as provided for under the provisions of Section 37 (a), 37 (b) and 37 (e) of the Land Disputes Courts Act, 2002 which reads as follows:-

*“ Subject to the provisions of this Act the High Court shall have and exercise jurisdictions:-*

- (a)In proceedings for recovery of possession of immovable property in which the value of the property exceeds fifty million shillings.*
- (b)In other proceedings where the subject matter capable of being estimated at a money value in which the value of the subject matter exceeds fourty million shillings*
- (c) .....*
- (d).....*
- (e)In all such other proceedings relating to land under any writen law in respect of which jurisdiction is not limited to any particular court or tribunal”.*

The Plaintiff's Advocate who had prepared the Plaint and instructed him to argue these points of law as he did, ought to have observed the contents of their loan agreement in the banking offer letter which was accepted by the parties, that the parties had bound themselves in mandatory terms that their disputes arising out of their Loan Agreement to be determined in the Commercial Division of the High Court of Tanzania. This is stated under paragraph 8 of the Loan Agreement on the governing law and jurisdiction. Though under the provisions of Order IV

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Rule 4 of the Civil Procedure Code, CAP 33 R.E. 2002 it is provided that it shall not be mandatory for a commercial case to be instituted in the Commercial Division of the High Court, however under Rule 3 of the same Order of the code it is provided that no suit shall be instituted in the Commercial Division of the High Court concerning a commercial matter which is pending before another Court or tribunal of competent jurisdiction or which falls within the competency of a lower court.

In this case therefore the Plaintiff should have instituted his claims within a court a tribunal of competent jurisdiction or which falls within the competency of the lower court to entertain a case of a Banker and Borrower arising out of the credit terms and conditions in their said Loan Agreement.

It is a cardinal principle in law that, the court must always be satisfied or ensure that it has jurisdiction to determine the matter before it. In their Loan Agreement the parties had agreed in mandatory terms that, "the High Court of Tanzania Commercial Division shall have jurisdiction to hear and determine any suit action or proceeding and to settle any dispute which may arise out or in connection with this agreement".

The Commercial Division of the High Court in my considered view should have been the proper forum for the Plaintiff to institute his claims to determine this matter and or any dispute arising out of the said Agreement. I have taken up this view from The Halsbury's Laws of England 3<sup>rd</sup> Edition Vol. 7 at page 73 which states:-


*“Where the parties expressly stipulate that the contract shall be governed by a particular law, that law will be the proper law of contract, provided the section is bonafide and there is no objection on the ground of Public Policy”.*

In my reflection of what is pleaded in the Complaint, this suit remains to be a suit based on contract which this court lacks jurisdiction to entertain it as per the holding of the Court of Appeal of Tanzania in the case of **Tanzania – China Friendship Textile Company Ltd** (Supra) which I am bound by it. The Plaintiff therefore was obliged to institute the suit before the Commercial Division of the High Court or a lower court or tribunal competent to try it as per the provisions of Section 40 of the **Magistrate’s Courts Act CAP. 11 R. E. 2002**, as amended by Act No. 4/2002 which added a new subsection (3) to Section 40 regarding jurisdiction of District Courts over commercial cases. Section 40 (3) of the Magistrate 5 Courts Act, CAP. 11. R. E. 2002 reads:-

*“40 (3) Notwithstanding sub-section (2) the jurisdiction of the District Court shall, in relation to commercial cases be limited:-*

*(a).....*

*(b) In the proceeding where the subject matter is capable of being estimated at a money value, to proceedings in which the value of subject matter does not exceed thirty million shillings”.*

The Second issue for determination is whether or not the Complaint discloses a cause of action in respect of the Defendant. It is quite clear from the definition of a cause of action as frequently defined in the Black’s Law Dictionary 8<sup>th</sup> Edition to mean, “A group of 

*operative facts giving rise to one or more bases for suing, factual situation that entitles one person to obtain a remedy in court from another person”, or “the fact or facts which give a person a right to judicial redress or relief against another” – 6<sup>th</sup> Edition – Blacks Law Dictionary.*

This is in line with what is provided for under paragraph (e) of Order VII Rule I of the Civil Procedure Code which reads:-

“The Complaint shall contain the following particulars:-

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) The facts constituting the cause of action and when it arose”.

On this I have taken most of my time to peruse the Complaint together with all its annexure to see if it discloses the cause of action to no avail. The paragraphs on the Complaint do not show “Those facts which would be necessary for the Plaintiff to prove in order to support his title to a decree” as held in the case of **Musangang’andwa Vrs. Chief Japhet Wanzagi and Eight Others (2006) TLR, 351** and the above cited case by the Senior learned Counsel Mr. Mwakolo of **STANBIC FINANCE TANZANIA LTD Vrs. GIUSEPPE TRUPIA AND CHIARA MALAVASI (2002) TLR, 217** which defines a cause of action as quoted above.


*[Handwritten signature]*

In deed the Plaintiff is silent on this matter. The Plaintiff therefore in his arguments is asking this court to peruse beyond the Plaintiff and its annextures, (a fact which I have done in order to satisfy myself in order not to prejudice the Plaintiff who is unrepresented). Much as I understood that doing so will defeat the purposes of the Legislature as held in the case of **Serafin Antunes Affonso Vrs. Portain Enterprises and Others. Commercial Case No.17/2002** (unreported) that, *"the trite position of law is that when deciding on whether or not a cause of action is disclosed we only have to cast our eyes within the four corners of the Plaintiff. We only have to peruse the plaintiff alone together with its annextures if any ..... with this limited ambit"*

I am now satisfied that the Plaintiff in its present form doesnot disclose any cause of action against the Defendant.

For the foregoing reasons, the objections are upheld. This suit is incompetent and improperly before this court. It is accordingly struck with costs.



  
**A.F. NGWALA**  
**JUDGE**  
**16/02/2015**