

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
(ORIGINAL JURISDICTION)**

**CIVIL CASE NO. 69 OF 2016**

**DÉCOR TECH TANZANIA LIMITED ..... PLAINTIFF  
VERSUS  
REGENT ESTATE PROPERTIES LTD ..... DEFENDANT**

Date of Last Order: 14/07/2016  
Date of Ruling: 26/08/2016

**RULING**

**FELESHI, J.:**

The plaintiff sues the defendant for payment of Tshs. 457,286,381/= being money not paid for extra work in Regent Business Park, Value Added Tax (VAT) at 18%, interest at 30% from the date of completion of the extra work to the date of Judgment, interest at 12% from the date of Judgment until payment in full, general damages and costs of the suit.

In his Written Statement of Defence, the defendant raised two (2) points of Preliminary Objection namely:-

- 1. That, the plaint is bad in law for not disclosing the pecuniary basis showing that the Court has jurisdiction.**
- 2. That, the suit is in the name of a wrong Defendant.**

The hearing of the Preliminary Points of Objection was conducted by way of Written Submissions whereas parties complied with, hence, this Ruling. To argue for the Preliminary Points, the defendant engaged the services of RM Corporate, Business & Maritime Attorneys while the plaintiff was represented by Massame N.K, advocate.

Addressing the 1<sup>st</sup> point, the defendant's counsel submitted that, the suit at hand contravenes Order 7 Rule 1 of the Civil Procedure Code, [CAP. 33 R.E, 2002] which requires a suit to disclose the name of the Court, cause of action, facts showing that the Court has jurisdiction and the reliefs sought. In substantiation, he cited a High Court decision in the case of **Mrs. Mary Kahama & Another vs. HAM Import & Export (T) Ltd & Others**, Land Case No. 139 of 2008, (Unreported), (Dar es Salaam, Land Division) where likewise, the Court struck out the suit on the same footing.

Regarding the 2<sup>nd</sup> point of objection, the defendant's counsel submitted that, the defendant's name appearing in the plaint (Regent Estate Properties Limited) does not feature in the annexed documents (Regent Properties Limited). He urges the suit to be dismissed with costs.

In reply, the plaintiff's counsel submitted for the 1<sup>st</sup> point of objection that, the plaint clearly discloses the claimed amount forming pecuniary jurisdiction of this Court. In respect of the 2<sup>nd</sup> point, the plaintiff's counsel was of the view that, the said objection is a matter that requires evidence thus cannot be raised by way of a Preliminary of Objection. In alternative, she argued that, such defect is curable at any stage of the proceedings in terms of Order VI Rule 17 of the Civil Procedure Code (supra).

Having gone through the pleadings with their annextures and the respective submissions by counsels for the parties in respect of the raised Preliminary Points of Objection, this Court has the following deliberations in disposal.

As to the 1<sup>st</sup> point, going through the plaint, it is undoubtedly clear as correctly submitted by the plaintiff's counsel that, the pecuniary jurisdiction

forming jurisdiction of the Court has been made clear in paragraphs 3, 5, 6, 7 and 9 of the plaint to be Tshs. 457,286,381/=.

That suffices the requirements of the law for the purposes of pointing out the amount construing pecuniary jurisdiction of the Court. As correctly submitted by the plaintiff's counsel, there is no hard and fast rule that the amount stating pecuniary jurisdiction of the Court has to feature in the last paragraph. As such, that is just a matter of drafting style. Thus, the 1<sup>st</sup> limb of Preliminary Objection is non meritorious and it is hereby overruled.

In respect of the 2<sup>nd</sup> limb of Preliminary Objection, as correctly submitted by the defendant's counsel, the name appearing in the plaint (Regent Estate Properties Limited) does not feature in the annexed documents (Regent Properties Limited) thus connoting two (2) different entities which cannot be one and the same thing.

Confronted with a similar situation, the High Court of Tanzania (Arusha Registry) in the case of **Registered Trustees of The Catholic Diocese of Arusha vs. The Board of Trustees of Simanjiro Pastoral Education Trust**, Civil Case No. 3 of 1998 cited the decision in another High Court case of **Registered Trustees of Arusha Hellenic Community and Another vs. George Tsakris and 26 Others**, Civil Case No. 15 of 1995, (Arusha Registry), (Unreported) where it was held at page 2 of the Ruling that:-

**"Although the title to this case shows there is a second plaintiff who goes by the name of Registered Trustees of Meru Club, there is in law no such entity. Without a certificate of incorporation granted in respect of the Trustees of Meru Club, the Meru Club will not be a corporate body under the Trustees Incorporation Ordinance. .... Since there is not in existence a certificate granted to what is described in the plaint as Registered Trustees of Meru Club, it follows that there is no legal entity which is**

**known as The Registered Trustees of Meru Club. So, what purports to be the 2<sup>nd</sup> plaintiff in this case is not in fact and in law a plaintiff at all".**

Expounding in the same case, the Court specifically at page 5, the Court had the following:-

**"I fully subscribe to these sound sentiments of Mrosso, J and I find them of the highest persuasive authority in the matter at hand, and proceed to hold that the current plaintiffs are not plaintiffs in fact and in law, in view of the fact that they are not legal persons capable of suing or being sued. I accordingly uphold the preliminary point of objection on the incompetence of the plaintiffs and on this ground alone, I am disposed of to strike out (same) with costs. As the suit has been brought in the name of a non-existing person as distinguished from a wrong plaintiff, the provisions of Order 1 Rule 10 of The C.P.C. 1966 are inapplicable".**

In the same line, in the case of **Christina Mrimi vs. Coca Cola Kwanza Bottlers Ltd**, Civil Appeal No. 112 of 2008 (Unreported), (Dar es Salaam Registry) the Court of Appeal had the following under observation:-

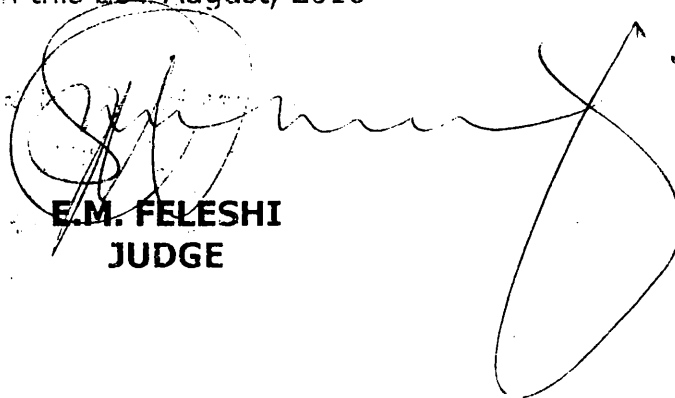
**" ..... Companies like human beings, have names. They are known and differentiated by their registered names. In the instant case, it is apparent that the names "Coca Cola Kwanza Bottles", "Coca Cola Kwanza Bottlers Ltd" or "Coca Cola Bottlers Ltd" have been used interchangeably. Although the appellant wants this Court to hold that they mean one and the same Company, strictly, this view cannot be accepted without some risk of inexactitude. ..... Some technical irregularities cannot be ignored as they touch on the very fundamentals of the issue at hand. .... It is our considered opinion that in the instant appeal, the REGISTERED NAME is fundamental to the whole case. There would be either different companies or simply a confusion in the use and application of the correct name of a company which bottles "Sprite" soft drink".**

From the above lineage in composite, there is no gainsaying that the plaintiff has improperly impleaded the correct defendant. This Court fully

subscribes to the holding in the cited case of **Registered Trustees of Arusha Hellenic Community and Another vs. George Tsakris and 26 Others** (supra) that the said anomaly cannot be cured under the provisions of Order VI Rule 17 of the Civil Procedure Code (supra) for the same is not on a wrong defendant, rather, a non existing defendant and it is risk to hold, as suggested by the plaintiff's counsel, that future amendment can remedy the defect.

Albeit brief as to question raised by the plaintiff's counsel that the raised issue need evidence and thus cannot be raised as a Preliminary Point of Objection for it is not a pure point of law, this Court finds that point non meritorious because the issue of the defendant's name is clear from the annexed documents. This is from the trite position of the law as expounded in the case of **Castelino versus Rodrigues** [1972] E.A 223 that the plaint and whatever annexed to the plaint forms part of the plaint. Therefore, the suit is incompetent and is consequently struck out with costs. Order accordingly.

DATED at Dar es Salaam this 26<sup>th</sup> August, 2016



**E.M. FELESHI**  
**JUDGE**