

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**CIVIL CASE No. 86 of 2019**

(Arising from Civil Case No. 108 of 2019)

**BANK OF BARODA (TANZANIA) LIMITED.....PLAINTIFF**

Versus

**FARIDA SALUMU ABED**

**T/A FARIDA GENERAL TRADERS.....1<sup>st</sup> DEFENDANT**

**GEORGE JONAS TAMIGWE.....2<sup>nd</sup> DEFENDANT**

**AVELYN P. NGOWI.....3<sup>Rd</sup> DEFENDANT**

**RULING**

4<sup>th</sup> December - 12<sup>th</sup> May, 2020

**J. A. DE-MELLO J;**

It is a **Preliminary Objection** as raised by the **1<sup>st</sup>** and **3<sup>rd</sup> Defendant** against the Plaintiff's claim, in as far as the Plaintiff refers that;

**"This Court has no jurisdiction".**

It all discerned from the pleadings that, the **1<sup>st</sup> Defendant** has defaulted repayment of the overdraft facility up to **6<sup>th</sup> February, 2019**, depicting a debit balance of Tanzanian Shillings **Two Hundred sixty millions, eight thousands Six hundred Seventy three and seventy three Cent (TZS.260,080,673.73)** in form of a an **Overdraft**. This beside, **Didace Kanyabo** represented the **1<sup>st</sup>** and, **3<sup>rd</sup> Defendants** has

preferred an objection on that point of law, while **Sindilo Lyimo** appeared for the Plaintiff. Referring to **Order VI Rule 15** of the **Civil Procedure Code Act Cap. 33** and in absence of verification on the 11<sup>th</sup> paragraph which notwithstanding the remaining Court's jurisdiction is vividly wanting, more so territorial in which its cause of action arosed. In accordance t **Order VII Rue 1 (f)** of the **CPC** supported by the case of **Abdalah Ally Selemani T/A Ottawa Enterprises (1987) vs. Tabata Petro Station Co. Ltd And Another, Civil Appeal No. 89 Of 2017(Unreported)** at **page 19**, which the Court of Appeal upheld the decision of the **High Court in Civil Case No. 4 of 2016** that the Court had no jurisdiction for the reasons that the plaint was not properly verified. In such circumstances the suit is incompetent and justifies a dismissal.

However and, in rebuttal, Counsel for the Plaintiff submitted that, paragraphs **9** and **11** of the Plaint provides for the jurisdiction of the Court, with paragraph 9 clearly stating a claim, of **TZS. 260,080,673.73** specifically jointly and severally against the Defendant, it portraying the pecuniary jurisdiction of the Court in the substantive claim. He stressed his point by referring the case of **M/S Tanzania China Friendship Textile Co. Ltd. vs. Our Lady of Usambara Sisters [2006] TLR 70**, in compliance with **Order VII Rule 1** and **2** of the **CPC**. He further averred that, the High Court has full jurisdiction over Civil matters as provided by **section 2 of JALA**. However and, in the event the Court finds it so then the overriding objective principle introduced in the **Civil Procedure Code** by the **Written law (Miscellaneous Amendment No. 8 of 2018)** to avoid technicalities with a view of facilitating just, expeditious, proportionate and affordable resolutions of the Civil. The

case of **Yakobo Magoiga Gichere vs. Penina Yusuph, Civil Appeal No. 55 of 2017 CAT (unreported)** was relied upon to assert this position.

Rejoining, Counsel emphasized that, the Plaintiff has offended **Order VI Rule 15 and Order VII Rule 1 (f)** of the **CPC** and the case of **Yakobo Magoiga (supra)** to be is inapplicable. He further substantiated his argument based on the case of **Mandorosi Village Council and 2 Others vs. Tanzania Breweries Limited and 4 Others, Civil Appeal No. 66 of 2017 CAT (unreported)** and that of **Arcopar (O.M) S.A vs. Herbert Marwa and Family Investment Co. Ltd and 3 Others** which carter in the event of a provides for resolution where there is a conflicting decision, that the latest prevails.

Lest we end up confusing the objection, in as far as my understanding and bearing in mind **Order VII Rule 1 (f)** of the **CPC** requires the plaintiff to contain facts showing that Court has jurisdiction. Vivid from the pleading is verifications for the rest of the paragraphs except paragraph 11 which reads;

**"I, BONIFACE AMBROSE MACHA ,do hereby verify that all what is stated in paragraphs,1,2,3,4,5,6,7,8,9 and, 10 above is true to according to my own knowledge"**

**VERIFIED at Dar Es Salaam this 25<sup>th</sup> day of February,2019**

.....

**Principle ~~officer~~ of the Plaintiff able to depose the fact of this case**

To my understanding, I find this omission to be a mere slip of the pen which can be cured by a **slip rule**, in which the **overriding objective principle** can be applied as the omission did not go to the **root of justice**, as the Plaintiff in the reality contains the facts showing that the Court has both Pecuniary and Territorial jurisdiction. The cited cases of **Mandorosi Village Council (supra)** and, that of **Njake Enterprises Limited vs. Blue Rock Limited & Another, Civil Appeal No. 69 of 2017 CAT (unreported)** both distinguishable to the root of the matter. I fully subscribe to the case **Commissioner General Tanzania Revenue Authority vs. JSC ATOMREDMETZOLOTO (ARMZ), Consolidated Civil Appeal No. 2018 & No. 79 of 2018 CAT (Unreported)**, in which the Court of Appeal of Tanzania observed that, I quote;

**"To begin with, we entirely subscribe to the observation of the Court in the referred case of Mondorosi Village Council (supra). Nevertheless, we would wish to distinguish the details obtaining in that case from the particulars at hand. As we have already intimated, in the former case, the concern was over a copy of a letter which was completely missing from the record. Conversely, in the situation at hand, the impugned written submissions are actually reflected in the records of the two appeals but the raised concern is, rather, that the same fall short on account that the same do not meet the specific requirements of Rule 96 (1) of the Rules and, additionally, that the submissions are incomplete for want of its annexures."**

**Upon our mature consideration, we think that this is a case where the Court should have due regard to the need to achieve substantive justice in line with Rule 2 of the Rules as it is our well-considered view that the shortcomings we have pointed out should not lead to the drastic action of invalidating the entire record of appeal. Thus, in the spirit of the overriding objectives of the Court we, accordingly, grant leave to the appellant to lodge the omitted copies of written submission under Rule 96 (6) within twenty one (21) days from the date of this Ruling. In the meantime, the two appeals stand adjourned to a date to be fixed by the” (emphasis is mine)**

I therefore and, safely invoke the **oxygen principles** as I find the error affordable, hereby allowing the Plaintiff to amend the verification clause alone with a view of including **paragraph 11** in accordance with **Order VI Rule 17** of the **CPC** within **seven days (7)** from the date of this order. The objection is dismissed with no orders as to cost.

Hearing of the main suit to proceed forthwith soon after the said amendment.

I so order.

  
**J. A. DE-MELLO**

**JUDGE**

**12/5/2020**