

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL CASE NO. 54 OF 2019

MGENI JADI KADIKA ----- PLAINTIFF

VERSUS

- 1. The Registered Trustees of the Civic
United Front (CUF Chama Cha Wananchi).....1st Defendant**
- 2. Prof Ibrahim Haruna Lipumba2nd Defendant**
- 3. Magdalena Hamis Sakaya3rd Defendant**
- 4. Masoud Omar Muhina4th Defendant**

RULING

Date of Last order: 10.06.2020

Date of Ruling: 10.07.2020

Ebrahim, J.:

The Plaintiff instituted a suit against the Defendants praying for declaratory orders that;

1. The 2nd, 3rd and 4th Defendants are not lawful members and leaders of CUF.
2. The 2nd, 3rd and 4th Defendants have no right whatsoever to summon and or request the Plaintiff to appear before the purported Ethics Committee chaired by the Defendant in the name of CUF.

3. Permanent injunction be issued against the 2nd, 3rd and 4th Defendants from calling, summoning or requesting the plaintiff to appear before the ethics committee headed under their leadership which exists illegally.

Upon being served with a copy of the plaint, the defendants jointly filed a Written Statement of Defense and raised three points of objection that:

1. The Plaint does not disclose cause of action against the Defendants;
2. The suit is bad in law for being brought in a wrong forum;
3. The sought reliefs on the determination of membership of the 2nd, 3rd and 4th Defendants is res judicata to Misc. Civil Cause No. 23 of 2016 between the Registered Trustees of the Civic United Front and Prof Ibrahim Lipumba and Others.

In this case the Plaintiff was represented by Ms. Kajola, learned advocate and the Defendants were represented by Ms. Sadick also a learned advocate.

On 19.05.2020 this Court ordered the points of objection to be disposed of by way of written submission and set a schedule thereat.

Both parties adhered to the set schedule.

Counsel for the Defendants submitted on the first point of objection on the allegation that the Plaintiff was summoned by Committee and no further action has been taken does not constitute cause of action

against the Defendants. To cement his argument he cited the case of **Joraj Sharif & Sons V Chotai Fancy Stores** (1960) E.A. 375 on the principle *that cause of action is determined upon looking at the plaint and its attachments forming part of it, and upon assumption that any express or implied allegations of facts in it are true.*

Counsel for the Defendant argued on the second point of objection that the relief of permanent injunction as prayed by the Plaintiff ought to have been applied through judicial review. Again the determination of the defendant's status ought to have been brought by way of petition and not a plaint.

Arguing the 3rd point of objection, Counsel for the Defendant submitted that the leadership status of the 2nd, 3rd and 4th Defendants has already been determined by this Court in Miscellaneous Cause No. 23 of 2016. He thus prayed for the case to be dismissed with costs.

Responding to the arguments by the Counsel for the Defendants, Counsel for the Plaintiff submitted that since she pleaded that the defendants are not lawful members and leaders of the Civil United Front and they have called her to appear before the ethics committee, it gives right of action for a declaratory orders made in the plaint.

He insisted on the 2nd point of objection that the Plaintiff has a right to seek a redress in terms of **Section 7(2) of the Civil Procedure Code, Cap 33 RE 2002**.

As for the issue of res judicata he stated that in terms of **Section 9 of the Civil Procedure Code, Cap 33 RE 2002** parties were not the same as in this case and cause of actions are different. Therefore the instant case is not resjudicata to Misc. Civil Cause No. 23 of 2016. She prayed for the points of preliminary objection to be dismissed with costs.

As to whether the plaint discloses cause of action or not, Court of Appeal had in the case of **M. Byombarilwa V Agency Maritime International** [1983] TLR 1 (CA) and in the case of **Stanbic Finance Tanzania Ltd V Giuseppe Trupiaa and Chiara Malavasi** [2002] TLR 217 held that whether the cause of action exists or not it has to be disclosed in the Plaint. Again as propounded further, cause of action is also considered from the attachments forming part of the Plaint (see - **Joraj Sharif & Sons V Chotai Fancy Stores** (supra)).

I have gone through the Plaint particularly paragraphs 6, 7, 8, 9 and 10. The Plaintiff is challenging being summoned by the 2nd, 3rd and 4th Defendants before the Ethics Committee and that they will strip off her membership and write a letter to the speaker of parliament to remove

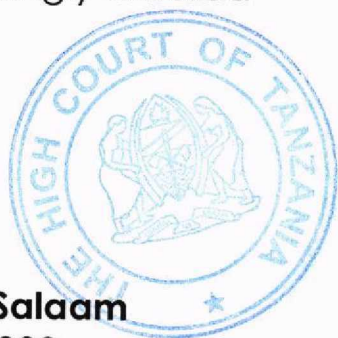
her from being a member of the parliament. She is also challenging that the defendants have been expelled from CUF membership hence have no mandate to summons her. Looking at the prayers by the Plaintiff, it is my outright observation that she has no cause of action against the Defendants. I am saying so because firstly the Plaintiff is alleging that she has been called by the Defendants to the Ethics Committee and the penalty that would happen whilst the said Committee has not even convened. It is also not even on record as to who is in the Committee apart from her allegations. In determining cause of action, it presupposes that the allegations are true hence the consideration of the annexures as forming part of the cause of action. In essence the Plaintiff is contemplating the results and in my opinion she has brought this case prematurely. It is premature because the court cannot at this stage interfere with the administrative and internal powers of the organization in the absence of proof of abrogation of procedures, rules of natural justice and unreasonableness. Evidently the abrogation of the stated rights would be revealed and/or evidenced after the said internal mechanism has sat of which the Plaintiff would have had the opportunity to question the composition and jurisdiction of the Committee. Otherwise, the Plaintiff is asking the

Court to contemplate the findings and interfere with the authority of the organization.

All in all without wasting much time I find that the Plaintiff has hurriedly rushed to the court without adhering to the arrangements of their organization where she would have had an opportunity to question and object on the composition of the Ethics Committee.

It is on that background I find that the Plaintiff has no cause of action against the Defendants for having brought the matter prematurely. From those circumstances, I would not belabour much to address the remaining two points of objection and I accordingly struck out Civil Case No 54/2019 with costs. That being the position of the court, Miscellaneous Civil Application No. 145 of 2019 serves no useful purpose and I accordingly struck it out.

Accordingly ordered



A handwritten signature in blue ink, appearing to read "R. A. Ebrahim", is written over the printed name.

**R. A. EBRAHIM
JUDGE**

**Dar Es Salaam
10.07.2020**