

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

AT DAR ES SALAAM

CIVIL CASE No. 26 OF 2019

SUNGURWA TRADERS.....PLAINTIFF

Versus

EQUITY BANK LTD.....DEFENDANT

RULING

21.04.2020 - 07.06.2020

J. A. DE-MELLO J;

The Defendant raised a Preliminary objection on a point of law against Plaintiff's suit that;

1.The amended Plaintiff filed is bad in law and, is abuse of Court process.

Following prayers by parties for it to be heard by way of written submissions, the Court duly granted, as scheduling order was set and, both are in compliance in as far as record is concerned.

In expounding his arguments, Counsel for Defendant submitted that, in absence of leave, the Plaintiff's went ahead to file an Amended Plaintiff, hence contravening Order **VI Rule 17** of **Civil Procedure Code Cap. 33**. However, **Order VI Rule 18** of **Cap. 33** provides time limit to file amendments, which the Plaintiff has not complied to, an abuse of Court process.

Responding, the Plaintiff's Counsel, rebuts the objection, claiming that, the Defendant Counsel is deceiving or else, misleading the Court as he draws the Court to order dated the 27th **May, 2019**, granting amendment of the Plaint, having been moved under **Order VI, Rule 17** of **Cap. 33**. He is of a further view that, notwithstanding, this time limit, if at all, the filling does not go to the root of the case at an expense of justice by imposing legal technicalities, considering the overriding objective brought in play under **section 3A of Written Laws Miscellaneous Provisions Act No. 3 of 2018** which amended section **4 of Cap. 33**. As such, he preliminary objection raised by the Defendant is baseless, as it holds no water and mere deception before the Court.

My perusal from Court file record has it that, a prayer for amendment of the Plaint was granted by this Court on **27th May, 2019** under **Order VI Rule 17**, for **fourteen (14)** days from the date of that Order. However, from the **27th of May, 2019** to the **4th of October, 2019** is evidently out of the days that the Court had ordered.

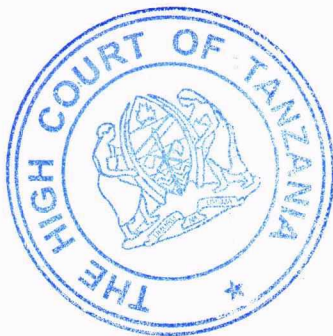
Much as I agree with the Overriding Objective Principle as laid down by the Constitution of the **URT** under **section 3A of Written Laws Miscellaneous Provisions Act No. 3 of 2018** which amended **section 4 of Cap. 33**, caution needs to be taken, not to defeat the spirit behind enactment of procedural laws. Needless to say, Parties are bound to the procedure and rules, which allows smooth running of Court proceedings. Failure by a Party to observe mandatory procedures tantamounts to negligence and, inactiveness, to justify consideration through overriding objective principle. In the case of **Martin Kumaliya & 117 Others vs. Iron and Steel Ltd Civil Application No. 70/18 of 2018** at page 9 of the ruling, remarked:

"While this principle is a vehicle for attainment of substantive justice, it will not help a party to circumvent the mandatory Rules of the Court.

The same position was taken in the case of **Mondorosi Village Council and 2 Others vs. TBL and, 4 Others** in **Civil Appeal No. 66 of 2017**

From the findings above, I conclude that, the Amended Plaintiff was filed beyond time granted by Court that of fourteen (14) days but worse even without leave, to do so.

I therefore **Struck Out** the Plaintiff with costs.




J. A. De-Mello

JUDGE

9/7/2020