

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

CIVIL CASE No. 127 OF 2019

SERAH E.M ENGSTROM PLAINTIFF

Versus

TWIGALPHA LIMITED..... DEFENDANT

RULING

19th June, 2020 - 9th July, 2020

J. A. DE - MELLO J;

The Defendant accompanied his defence with two points of law as Preliminary objection as hereunder;

- 1. That this Honorable Court lacks Pecuniary jurisdiction to entertain this matter.**
- 2. That, the Plaintiff's Complaint is defective for contravening the provision of Order VI Rule 14 of the Civil Procedure Code Cap. 33 R.E 2002**

Briefly the facts pertaining to this suit finds its basis from alleged breach of **Lease/Tenancy agreement** sealed on the **22nd of February 2016**, that, the two maintained on a **Plot No. 556 Mzimuni Kawe Beach**, within the **City of Dar Es Salaam** for a period of **five (5)** years. Two issues are contested here that, of non payment of rent and failure to vacate the premises on time notwithstanding notice to the Defendant forcing the Plaintiff to engage an Auctioneer to evict. It is the Plaintiff's

prayers for the judgment and, decree against the defendant to the tune of **TShs. 249,341,579.20** and, **USD\$ 25,000**, equivalent to **TShs. 56,375000**, totaling being **TShs. 305,716,579.20** being specific damage, whereas general damage be assessed by the Court, together with and, any other relief that the Court may deemed fit to grant.

On **16th April 2020** the Court ordered the said Preliminary objection to be heard by written submissions of which both are in compliance.

In support of the first point of objection, **Counsel Bandoma** for the Defendant stated that, the so called **Certificate of Urgency** in absence of proper authority in which the Advocate could sign on her behalf, contravene **Order VI, Rule 14** and, **15(1)** of the **Civil Procedure Code, Cap. 33** of **2002**. Borrowing **Order VI Rule 14** wholesale, Counsel further insist the need for signing by both, the Advocate as well as the Party as a fall back position in the event the client fails to appear. However and, for reasons well known to himself the second preliminary objection on pecuniary jurisdiction was dropped. Conceding to dropping of that objection, **Counsel Nzaro** for the Plaintiff addressed the second objection by observing that, nothing offensive has been occasioned towards **Order VI Rule 14** and **15** of the **Civil Procedure Code, Cap. 33**, as the advocate for the Plaintiff was dully authorized to sign on behalf of the Plaintiff, regardless of lodging '**Certificate of Agency**' and, not **Urgency** as alleged. He is of a further view that, as to how the said Advocate has been authorized is more of fact as opposed to matter of law, to sustain as a preliminary objection. He shared the case as well enshrined in the case of **Mukisa Biscuits (Uncited) that;**

“Point of preliminary objection should be on point of law and not point of fact”.

The raised preliminary objection, he reiterates is designed to delay justice which is against the settled principles established in the case of **Yakobo Magoiga Gichere vs. Peninah Yusuph, Civil Appeal No. 55 of 2017, Court of Appeal, at Mwanza (Unreported)** which was held that;

“With the advent principle of overriding objective brought by written laws (Miscellaneous Amendments) (No 3), Act 2018(Act No. 8 of 2018) which is now requires the court to deal with cases justly and to have regard to substantive justice”

It is his prayer that the objection has no merit justifying a Struck Out with costs.

Also after perusing the file, it is without objection that, the Plaintiff is being represented by learned **Counsel Kelvin Kidifu** as it is shown in the **‘Plaint’** and, also in the so called **‘Certificate of Agency.’** It is the **‘Certificate of the Agency’** that, authorizes and empowers **Counsel Kelvin Kidifu** to act on behalf of the Plaintiff. The **Plaint** indicates so as the Advocate administered while acting as Commissioner for Oaths, revealing **‘Certificate of Agency’** in the stamp. The Advocate as the Commissioner for Oaths or Affirmation may administer oath or affirmation in respect of any pleadings to be used in a judicial proceedings, but once he acts as a Commissioner for Oath in the proceedings, he cannot turn around and represent the same party in the same proceedings in which he

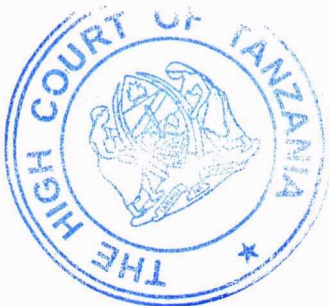
had attested. **Section 7** of the **Notaries Public and Commissioners for Oath Act, Cap 12, R E 2019** clearly states that, I quote;

“No commissioner for oaths shall exercise any of his powers as a commissioner for oaths in any proceedings or matter in which he is advocate to any of the parties or in which he is interested”.

This was evidencing in the case of **Joshua Samweli Nassari vs. The Speaker of the National Assembly of the United Republic of Tanzania & Another, Misc. Civil Cause No. 22 of 2019, High Court of Tanzania, at Dodoma (Unreported)** expounding that, no commissioner for oaths shall exercise any of his powers as a commissioner for oaths in any proceedings or matter in which he is advocate to any of the parties. See also the case of **Calico Textiles Industries Ltd vs. Zenon Investments Ltd and Others, Misc. Civil Cause No. 10 of 1998, High Court of Tanzania, at Dar Es Salaam**

With the above, this Court finds that, the preliminary objection raised by the Defendant to have merit, as proceed to **Struck Out** the Plaint with costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "J. A. De-Mello".

J. A. DE- MELLO

JUDGE

9th July, 2020