

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 62 OF 2019

GODFREY SAMSONPLAINTIFF

VERSUS

PRINCIPAL SECRETARY

MINISTRY OF HEALTH.....1ST DEFENDANT

ATTORNEY GENERAL.....2ND DEFENDANT

RULING

MASABO, J.:-

This ruling is in respect of the preliminary objection raised by the defendants that the plaintiff has no cause of action against the 1st defendant. The objection is in respect of a suit in which the Plaintiff is suing both Defendants for compensatory damages at a tune of Tshs 350,000,000/= in respect of negligence allegedly committed by the 1st Defendant's employees (the Chief Chemist) in testing DNA samples sought to establish the paternity of one Brightness G. Samson.

The Preliminary objection was heard in writing. Submitting in support of the preliminary objection Ms. Janeth Rajab Makondoo, learned state Attorney Makondoo submitted that the plaint as a whole does not contain facts implicating the 1st defendant. He cited the case of **John Byombalirwa V Agency Maritime Internationale (Tanzania) Ltd** 1983 TLR 1 (CA) and submitted that in deciding whether the plaint discloses a cause of action the court should look at plaint, not the written statement of defence. She

proceeded to argue that the claims in the instant suit emanated from an agreement between the plaintiff and Kinondoni Municipal Council premised in a letter to Chief Chemist with reference No: KMC/UJ/DNA/VOL.II/121 dated 22nd June, 2018 through which the Chief Chemist was requested to conduct a DNA test to establish the paternity of the said Brightness G. Samson which was a subject for contestation between the Plaintiff and one Lightness N. Akyoo. In a nutshell Ms. Makondoo's argument is that the collection of samples and testing emanated from a directive of Kinondoni Municipal Council which constitutes an agreement between the Council and the Plaintiff. Therefore, since the Chief Chemist was not a party to that agreement there can be no cause of action against the 1st Defendant. To fortify her argument she cited the case of **Mashado Game Fishing Lodge Limited and Two Others v The Board of Trustees of Tanganyika National Parks(t/a TANAPA)** 2002 TLR 319 where it was held that a person is said to have a cause of action against the other where that person has a right and the other person has infringed or breached that right. In conclusion she further submitted that since the plaint does not show any cause of action against the 1st defendant it contravenes Order VII Rule 1 (e) of the Civil Procedure Code RE 2002 and should consequently be struck out with costs.

Responding to the Preliminary Objection the Plaintiff submitted that to ascertain whether the plaint discloses a cause of action one has to look at the plaint and its annexures as it is stated in **John M Byombalirwa V Agency Maritime Internationale (Tanzania) LTD** [1983] TLR1. He also

cited the case of **Joraj Sharif & Sons v Chotal Fancy Stores** (1960) E.A 375 and **East African Overseas trading Co. vs Tansukh s Acharya** (1963) EA 468 where it was held that:

“the question whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone, together with anything attached so as to form part of the it and upon assumption that any express or implied allegation of fact in it are true”

Based on this he prayed that the preliminary objections be overruled.

I have read submissions from both parties. The issue to be determined before this court is *whether the plaintiff's plaint discloses a cause of action against the 1st Defendant*. It is a well-established principle in our jurisdiction that the plaint must disclose a cause of action against the defendant. The term “cause of action” was defined in the case of **John M. Byombalirwa V Agency Maritime Internationale (Tanzania) LTD** [1983] TZA 13 to mean “.....*essentially facts which it is necessary for the plaintiff to prove before he can succeed in the suit.*”

Ordinarily, disclosure or non-disclosure of cause of action raises a pure point of law. When this is raised, the court is basically invited to look at the content of the plaint and its annexures to see their compliance to Order VII Rule 1(e) of the Civil Procedure Code. If upon comparison of the two the court is satisfied that indeed no cause of action has been advanced, the matter will be rendered incompetent and consequently be rejected.

What is important in considering whether the cause of action is revealed by pleadings is the question to what right has been violated. In addition, the plaintiff must appear as a person aggrieved by the violation of his right and the defendant as a person who is liable (See **Auto Garage V Motokov** (No. 3) 1971 E.A P 51

In the instant case the defendant's preliminary objection is to the effect that the plaintiff does not disclose a cause of action against the 1st defendant because the 1st Defendant was not a party to the agreement entered between the plaintiff, Kinondoni Municipal Council and the Chief Government Chemist who collected and tested the DNA Samples. On perusing paragraph 4, 5,6 of the plaint it is clear that all the facts alleged by the plaintiff are against the Chief Government Chemist who collected and conducted the DNA.

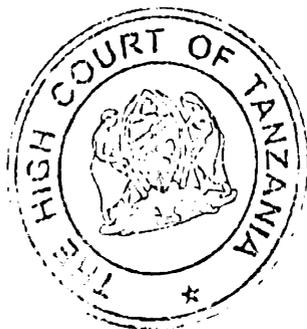
In my settled view, the point raised by Ms. Makondo is valid. Although I do not agree with her argument that the claims are premised on the contract between the Plaintiff and Kinondoni Municipal Council, in law the plaintiff does not have any claim against the 1st Defendant because, the Chief Government Chemist works under the Government Chemist Laboratory Authority which is a legal entity capable of suing and being sued in its own name as stipulated under Section 4(3) of The Government Chemist Laboratory Authority Act No 8 of 2016. This section clearly stipulates that the Authority shall be a body corporate with perpetual succession and shall

have a common seal and shall, in its own name, be capable of suing and being sued.

Having found that the plaint does not disclose a cause of action against the 1st Defendant, the next question to be determined is what consequences should follow. The answer to this is found under Order VII Rule 11 which states that a plaint which does not disclose a cause of action shall be rejected.

Guided by the principles above I hereby reject the plaint with costs. The Plaintiff is at liberty to file a fresh plaint pursuant to Rule 13 of Order VII.

DATED at DAR ES SALAAM this 26th day of May 2020.



A handwritten signature in black ink, consisting of a stylized, circular scribble with a horizontal line extending to the right.

J.L. MASABO

JUDGE