

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**CIVIL APPEAL NO. 08 OF 2020**

*(Originating from Civil Case No. 03 of 2020 of Songea District Court)*

**ANGELINA CHOWO ..... APPELLANT**

**VERSUS**

**BLANDINA MGIMBA ..... RESPONDENT**

*Date of last hearing: 16/03/2021*

*Date of Judgment: 25/03/2021*

**EX PARTE JUDGMENT**

**I. ARUFAN, J.**

The appellant, Angelina Chowo filed in this court the appeal at hand to challenge the decision of the District Court of Songea (hereinafter referred as the trial court) delivered on 9<sup>th</sup> July, 2020 vide Civil Case No. 03 of 2020. For better appreciation of the issues involved in this matter the court has found it is proper to start by looking into the background of the matter as can be deduced from the record of the trial court.

The appellant averred in her plaint that she was a lawful tenant of African Benedictines Hanga and she had rented one room in their building

located at CCM Sokoni Street for business purpose. She averred further that, her tenancy agreement commenced on January, 2018 to 6<sup>th</sup> January, 2020 when the respondent approached her business premises and without justification broke, entered and parted with her properties. The appellant stated to have demanded the respondent to return the said properties through her advocate namely Alex Nyoni without success.

Thereafter the appellant sued the respondent, Blandina Mgimba who was the employee of the African Benedictines Hanga before the trial court for tort of conversion of her properties. The claim of the appellant as stated in her plaint against the respondent was for payment of Tshs. 35,233,000/= being specific damage and value of the properties converted by the respondent, Tshs. 100,000,000/= being general damages, interest on decretal sum at the court rate from the date of judgment to the date of full payment and costs of the suit. The respondent disputed the claim of the appellant by filing in the trial court her written statement of defence accompanied by a notice of preliminary objection on point of law which states the appellant had no cause of action against the respondent.

After hearing the counsel for the parties on the said point of preliminary objection through written submissions the trial court upheld the



preliminary objection and rejected the plaint of the appellant with costs after finding is not disclosing cause of action. The appellant was aggrieved by the decision of the trial court and filed in this court a memorandum of appeal containing one ground of appeal which states that, the trial court erred in law and fact to reject the plaint which disclosed cause of action. The effort of tracing the respondent so that he can be summoned to appear in this court for hearing of the appeal at hand proved futile and after being served through publication of notice in the newspaper without success the court ordered hearing of the appeal to proceed ex parte.

When the appeal came for ex parte hearing the appellant was represented by Mr. Disckson Ndunguru, learned advocate who told the court that, the trial court erred in rejecting the plaint of the appellant. He argued that, if you read paragraphs 3 to 5 of the plaint you will find they states clearly what the appellant was claiming from the respondent. He argued that, as the respondent disputed the claim of the appellant in her written statement of defence it is crystal clear that cause of action which was conversion of the properties of the appellant without justification was well disclosed in the plaint of the appellant.

He went on arguing that, if there was justification for the respondent to take and convert the properties of the appellant into her own use that justification would have been proved by way of bringing evidence to the trial court and not by way of preliminary objection. The counsel for the appellant based on the above argument to submit that, the trial court erred in finding the plaint of the appellant had not disclosed cause of action. At the end he prayed the court to allow the appeal with costs.

After giving due consideration to the submission made to the court by the counsel for the appellant and after going through the record of the trial court the court has found the issue to determine in this appeal is whether the appeal of the appellant is meritorious. As the plaint of the appellant was rejected basing on the ground that it had not disclosed cause of action the court has found proper to start by looking into what is the meaning of the term cause of action. The term cause of action is not defined in our Civil Procedure Code. However, it is defined in the **Black's Law Dictionary**, 8<sup>th</sup> Edition at page 235 to mean:-

*"A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person."*



A more comprehensive meaning of the term cause of action has been given by our courts in number of cases. Some of them are the cases of **Musanga Ng'andwa V. Chief Japhet Wanzagi & Eight Others**, [2006] TLR 351, **Stanbic Finance Tanzania Ltd V. Giuseppe Trupia & Another**, [2002] TLR 217 and **John M. Byombalirwa V. Agency Maritime Internationale (Tanzania) Ltd**, [1983] TLR 1. The court held inter alia in the case of **Musanga Ng'andwa** that:-

*"A cause of action means every fact which would be necessary for the plaintiff to prove in order to support his title to a decree; in other words, a cause of action is the sum total of those allegations upon which the rights to relief claimed is founded."*

From the above quoted authorities it is crystal clear that, cause of action is established by facts which if are proved the plaintiff will be entitled to the relief is claiming from the court. In determine whether a cause of action has been disclosed the court is required to look only in the plaint together with anything attached to it and not the defence which might be available to the defendant. The above stated position of the law can be seeing in the case of **Musanga Ng'andwa** (supra) where it was stated further that:-

*"In determine a cause of action, only the plaint together with anything attached should be looked at. The plaintiff is under no obligation to anticipate any special defence which might be available to the defendant."*

The similar meaning of the term cause of action was stated in the case of **Stanbic Finance Tanzania Ltd** (supra) where it was stated inter alia that:-

*"It may be said that a cause of action reflects the claims as presented in the plaint and not as weighted against the defence statement."*

The wording of the above quoted excerpt makes the court to find that, in determine whether a cause of action has been disclosed in a plaint the court is required to look only on the facts pleaded in the plaint and anything attached thereto and assume those facts are true. The court is not required to look into what is stated in the statement of defence of the defendant. That position of the law was stated in the case of **Serafin Antunes Affonso V. Portan Enterprises & Others**, Com. Case No. 17 of 2000 cited in the case of **Stanbic Finance Tanzania Ltd** (supra) where it was stated that:-



*"The trite position of the law is that when deciding on whether or not a cause of action is disclosed, we only have to cast our eyes within the four corners of the plaint. We only have to peruse the plaint alone together with its annexures if any... With this limited ambit, we do assume that the factual allegations thus made, whether expressly or impliedly, are true."*

While being guided by the above stated meaning of the term cause of action the court has gone through the record of the trial court and find the trial magistrate found that, as annexure AC-1 to the plaint shows the appellant's tenancy agreement with the employer of the respondent ended way back on December, 2018 then the allegation of the conversion of the appellant's properties done on 6<sup>th</sup> January, 2020 was justifiable as the appellant was no longer a lawful tenant in the premises of the employer of the respondent. For purpose of clarity the trial magistrates stated at pages five and six of the judgment of the trial court that:-

*"In absence of the facts from the plaintiff's pleadings that, she is truly a lawful tenant of the premises in which the alleged act was committed, may be taken to construe that the interference has lawful justification and in my settled view, the preliminary objection raised by the defendant's advocate has a merit to*

*stand. Under the prevailing circumstance this suit cannot be left to stand."*

To the view of this court the learned trial magistrate erred in arriving to the above finding. The court has arrived to the above view after seeing that, the appellant averred at paragraph four of her plaint that she was a lawful tenant of the employer of the respondent. She averred further at paragraphs five and six of the plaint that, after her business premises being broken her properties were taken and when she demanded the same to be returned to her they were not returned. That being the facts pleaded in the plaint by the appellant the learned trial magistrate was required as stated in the case of **Serafin Antunes Affonso** (supra) to assume the averred facts were true.

To the view of this court the finding by the trial court magistrate that the conversion done by the respondent was justifiable as the appellant had no lawful tenancy agreement with the employer of the respondent shows the trial court magistrate assumed those facts were untrue instead of assuming were true as stated in the case of **Serafin Antunes Affonso** (supra). The finding of the trial court magistrate that, as annexure AC-1 to the plaint shows the appellant had no lawful tenancy agreement with the



employer of the respondent at the time alleged the conversion occurred was to assume the defence which might have been on the side of the defendant which is contrary to the definition of the term cause of action given in the cases of **Musanga Ng'andwa** and **Stanbic Finance Tanzania Ltd** cited earlier in this judgment.

The court has arrived to the above finding after being of the view that, determination of lawfulness of the appellant's tenancy agreement with the employer of the respondent was not required to be made by looking only on annexure AC-1. It was required to be made after giving the appellant chance to adduce evidence to prove lawfulness of her tenancy agreement with the employer of the respondent at the time of conversion of her properties as alleged in paragraph five of her plaint.

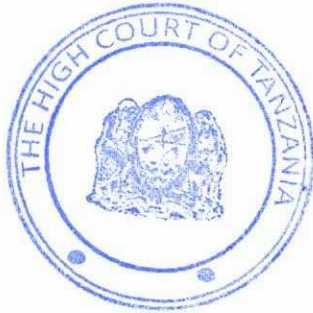
If lawfulness of the tenancy agreement of the appellant in the premises of the employer of the respondent at the time alleged the conversion was committed was required to be determined after getting evidence from the appellant to prove the fact averred in the plaint then the trial court erred in upholding the point of preliminary objection raised by the counsel for the respondent that the appellant had no cause of action against the respondent.

The court has also being of the view that, as for the issue as to whether the appellant was a lawful tenant in the premises of the employer of the respondent or not was required to be determined after receiving evidence from the parties then as stated in the case of **Mukisa Biscuit Manufacturing Co. Ltd V. West End Distributors**, [1969] EA 696 the point of preliminary objection raised by the counsel for the respondent was wrongly upheld. Besides, the issue as to whether the respondent had a justifiable reason to take away the properties of the appellant or not would have not been determined without receiving evidence from the parties.

All of what have been stated hereinabove caused the court to find the trial court erred in upholding the point of preliminary objection that the appellant had no cause of action against the respondent while he had a cause of action which was tort of conversion of her properties. In the premises the appeal of the appellant is hereby allowed and the decision of the trial court is accordingly set aside. The court is ordering the file of the trial court to be remitted to the trial court to continue before another magistrate with competent jurisdiction. The appellant is awarded costs of this appeal. It is so ordered.



Dated at Songea this 25<sup>th</sup> day of March, 2021



  
**I. ARUFANI**

**JUDGE**

**25/03/2021**

**COURT:-**

The ex parte judgment delivered today 25<sup>th</sup> day of March, 2021 in the presence of Mr. Dickson Ndunguru, learned advocate for the appellant and in the absence of the respondent. Right of appeal to the Court of Appeal is fully explained.



  
**I. ARUFANI**

**JUDGE**

**25/03/2021**