

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA
LAND CASE NO. 7 OF 2019**

**HASSAN SAID 1ST PLAINTIFF
HUSSEIN SAID 2ND PLAINTIFF
ASHA SAID 3RD PLAINTIFF**

VERSUS

**ABDILLAHI RAMADHANI KIMARO..... 1ST DEFENDANT
ARUSHA CITY COUNCIL 2ND DEFENDANT
THE REGISTRAR OF TITLES 3RD DEFENDANT
THE ATTORNEY GENERAL ARUSHA4TH DEFENDANT**

RULING

19/2/2021 & 5/3/2021

ROBERT, J:-

The Plaintiffs herein filed this Land case against the Defendants claiming to be the lawful owners of Plot No. 10 Block "J" Area "F" Arusha Municipality and prayed for the following reliefs:-

- (a) A declaration that the Plaintiffs are the lawful owners of the suit property described as Plot No. 10 Block "J" Area "F" Arusha City;*

- (b) That 1st Defendant is ordered to pay Plaintiffs Tshs 500,000,000/= being payment of the Value of the Plaintiffs' demolished house as pleaded in paragraph 19 of the Plaint;*
- (c) That 1st Defendant is ordered to pay to the Plaintiffs Tshs 20,000,000/=being value of the destroyed properties of the Plaintiffs when the 1st Defendant demolished their house.*
- (d) Order to delete the name of the 1st Defendant on certificate of Title No. 4509 in respect of Plot No. 10 Block "J" Area "F" Arusha city and an order to substitute it with the names of the Plaintiffs.*
- (e) Any other relief(s) which this Honourable Court may deem fit and just to grant.*

Before the matter came up for hearing, the Plaintiffs case was slapped with a Notice of Preliminary Objection on points of law from the 2nd, 3rd, and 4th Defendants to the effect that:

- i. The plaint is incurably defective for contravening order VII Rule 1 (e) of the Civil Procedure Code Cap 33 R.E 2019.
- ii. The matter is hopelessly time barred.

The hearing of the preliminary objection was conducted by way of written submissions whereby the Plaintiffs' written submissions were drawn and filed by Ms. Mariam Saad, learned counsel for the Plaintiffs

whereas the written submissions for the 2nd, 3rd and 4th Defendants was drawn and filed by Sifael Tuluwene Kulanga, Solicitor from Arusha City Council.

Submitting on the raised points of preliminary objection, counsel for the Defendants abandoned the 1st point of preliminary objection and argued on the remaining 2nd point. He contended that, the plaint as filed by the Plaintiffs does not disclose the cause of action against the 2nd, 3rd and 4th Defendants as it failed to generate the facts and transaction that may justify their claims and the reasons for the said Defendants to be sued.

He argued that where the Plaintiff sues more than one Defendant in a suit, the Plaintiff's cause of action must touch all Defendants in a suit so that when the decree is pronounced against the Defendants it should have the same effect to all the parties to the proceedings.

Submitting further, he argued that the importance of a plaint to contain cause of action is provided for under Order VII, Rule 1(e) of the **Civil procedure Code**, Cap. 33 R.E 2019. He maintained that in the present case, the plaint did not disclose any legal rights which the Plaintiffs have against the 2nd, 3rd and 4th Defendants. The Plaintiffs' claims based on the ownership of the suit land against the 1st Defendant whereas the 2nd, 3rd,

and 4th Defendants have never claimed to be the legal owners of the suit property and they never declared any interest with regards to the suit property or rejected any order of the court regarding the said property.

He submitted that it is a requirement of the law for the Plaintiffs to show facts which give rise for them to seek redress from the Defendants and not the other way around. He referred the court to the case of **Stanbic Finance Tanzania Limited vs Glussepe Trupya and Ghara Malavas** (2002) TLR at page 221 where the Court described cause of action as facts which exist to give rise or occasion to a party to make a demand or seek redress.

He observed that, in the present case, the 2nd and 3rd Defendants as well as the 4th Defendants were mentioned only in paragraph 23 of the Plaintiff to the effect that they were served with 30 days' notice and 90 days' notice respectively which do not in itself amount to a cause of action against the said Defendants and submitted that the Defendants need to be discharged. He referred the court to the case of **J.B Shirima & C thers Expressess Bus Services vs Humphrey Meena t/a Comfort Bus Services** TLR Case No. 290 of 1992 where this Court stated that:

".... it's not for the defendant to figure out from the plaintiff the possible wrong complained of. It is for the plaintiff to make it

absolutely clear in the plaint what the cause of action is so as to enable the defendant to file a proper defence...”

He argued that, the law is very clear under Order VII Rule 11 of the Civil Procedure Code, Cap. 33 R.E. 2019 that, where the plaint does not disclose a cause of action it will be rejected and the defendants will be discharged. He therefore prayed for the court to reject the plaint filed by the Plaintiffs and discharge the Defendants.

In reply, Counsel for the Plaintiff opposed the point of preliminary objection raised. He submitted that while cause of action is not defined under the Code, but as defined in the case of **John B. Byambaliwa Vs Agency Maritime International (T) Ltd (1983) TLR 4** it may be taken to mean facts which are necessary for the Plaintiff to prove before he can succeed in the suit. He therefore argued that for a cause of action to be established there must be facts which need to be proved. Therefore, in order to ascertain whether there is cause of action one has to evaluate the facts and bring about evidence to prove his or her case. He argued that, the point of preliminary objection raised by the Defendants’ counsel does not qualify to be raised as a preliminary objection as it contained **facts and evidence which need to be ascertained.**

He referred the court to the case of **Karata Ernest and Others Versus the Attorney General**, Civil revision No. 10 of 2010 (unreported) where Court of Appeal of Tanzania held that: -

“At the outset we showed that it is a trite law that a point of preliminary objection cannot be raised if any fact has to be ascertained in the course of deciding it. It only “consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings....”

~~He submitted further that, the same position was held in the case of **Mount Meru Flower Tanzania Limited vs Box Board Tanzania Limited**, Civil Appeal No. 260 of 2018 (Unreported) and **Mukisa Biscuits Manufacturing Co. Ltd vs West Ltd** 1969 EA 69.~~

Submitting further, he argued that, the 2nd, 3rd and 4th Defendants are necessary party to this case because the 2nd Defendant gave information to the 3rd Defendant concerning the suit land and he miserably failed and issued Granted Right of Occupancy to the 1st Defendant. He also noted that the 4th Defendant was sued because section 6(5) of the Government Proceedings Act, Cap. 5 R.E. 2019 requires that when the Government is sued the Attorney General must be a co-defendant. He cited the case of **Claude Roman Shikonyi vs Estomy A. baraka and**

3 others, civil revision No. 4 of 2012 (unreported) in support of his argument.

The learned counsel noted that he was surprised by the argument made by the Defendants that the Plaintiff did not establish cause of action while in the Defendants' Written Submissions it is clear that the 2nd Defendant was informed of the existence of unlawful sale of the suit land to the first Defendant and this is a fact which needs to be adjudicated by all parties. He maintained that the 2nd, 3rd and 4th Defendants are necessary parties if excluded from the case it will be irregular for the court to decide the matter in their absence. He therefore prayed for the preliminary objection to be dismissed with costs.

In a brief rejoinder, the learned counsel for Defendants maintained that Order VII Rule 1(e) of the Civil Procedure Code, Cap. 33 R.E. 2019 requires that a Plaintiff must disclose cause of action and in case of failure to do that, Rule 11 of the same Order allows the court to discharge the Defendants. He reiterated that the preliminary point of objection raised is in a pure point of law and it doesn't require any fact or evidence to be proved.

He submitted further that in order for a person to have a cause of action against another there must be two things which are infringement

of right and the person with the damage suffered by the person whose rights have been infringed. He argued that, in the present case the Plaintiffs sued the 2nd to 4th Defendants notwithstanding the breach of their right or denial of that right by the said Defendants. He cited the case of **Mashado Game Fishing Lodge & 2 others vs Board of Trustees of Tanganyika National Parks (t/a TANAPA) TLR 319** to support his argument.

Lastly, he noted that, the subject matter in this case is a family property in which the Government has no interest and had not involved itself in denying the Plaintiffs their right. The Plaintiffs have sued the 2nd to 4th Defendants on baseless claims. He therefore prayed for the court to find merit in the preliminary point of objection.

Having gone through the submissions of both parties, I should pose here and make a determination on whether the Plaint filed in this case contravenes the provisions of Order VII Rule 1(e) of the Civil Procedure Code, Cap. 33 (R.E. 2019). The cited provision requires a plaintiff to contain the facts constituting the cause of action and when it arose. Parties in this suit seem to rightly agree that a cause of action consists of facts which are necessary for the Plaintiff to prove before he can succeed in a suit

against the Defendant or simply put, facts giving rise to a Plaintiff to make a demand or seek redress from the Defendant.

The concern raised by the 2nd, 3rd and 4th Defendants in this case is that the Plaintiffs' pleadings failed to generate facts which disclose cause of action or justify their claim and the reasons for the said Defendants to be sued.

Having perused the ten pages Plaintiff filed by the Plaintiffs on 8th March, 2019, I must admit that the document misses the essential facts ~~or allegations that make up the grounds for filing the lawsuit against the~~ 2nd to 4th Defendants. ~~The Plaintiffs failed to express the facts constituting their rights and its infringement by the 2nd to 4th Defendants which entitles them to sue the said Defendants.~~ As rightly argued by the learned counsel for the Defendants, this court finds that the Plaintiffs' pleadings do not disclose the cause of action against the 2nd, 3rd and 4th Defendants.

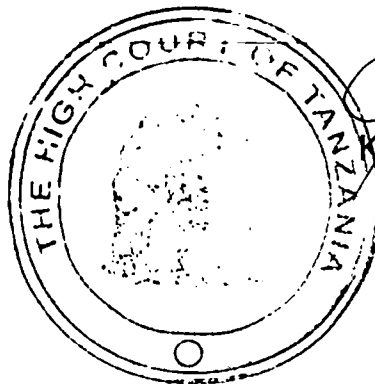
Coming to the question raised by the learned counsel for the Plaintiffs that the preliminary point of objection raised by the Defendants does not qualify to be a point of preliminary objection because it needs facts and evidence to be ascertained in the course of deciding it. This Court is of the firm view that, there is always a need to draw a distinction between a plea that a pleading does not disclose a cause of action, which is

the plea made by the 2nd to 4th Defendants in this case, and a plea that the plaintiff has no cause of action to sue. In the latter case the court has to make a determination after considering the entire material and evidence on the record before coming to a conclusion that there is no cause of action to sue whereas in the former case the plaintiff on the face of it is seen to disclose no cause of action. In the former case, the plaintiff can be rejected while in the latter case the suit has to be dismissed. The argument made by the learned counsel for the Plaintiffs falls in the scenario described in the latter case above.

A prayer to reject a plaintiff on the ground that it does not disclose the cause of action, is essentially a point of law which is argued on the assumption that the Defendant has admitted, for the sake of argument, that the allegations of the plaintiff in the plaintiff are true in manner and form. That explains why **Order VII Rule 11 of the Civil Procedure Code, Cap 33 (R.E.2019)** considers failure of the plaintiff to disclose cause of action as one of the grounds on which a plaintiff can be rejected. I therefore find that the point of preliminary objection raised by the 2nd to 4th Defendants qualifies as a point of preliminary objection and I sustain it accordingly.

Considering that the plaint does not disclose the cause of action against the 2nd, 3rd and 4th Defendants, this court is of the view that the Plaint cannot be torn out in two parts, the one which is rejected for failure to disclose the cause of action against the 2nd to 4th Defendants and the one which is entertained against the first Defendant. Therefore, it is obligatory upon the court to reject the plaint as a whole under Order VII Rule 11(a) of the Civil Procedure Code, Cap. 11(R.E. 2019) and I order accordingly. The Second, Third and Fourth Defendants to have their costs.

It is so ordered.



K.N. Robert
K.N. ROBERT
JUDGE
5/3/2021