

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

CIVIL CASE NO. 08 OF 2021

STAMIGOLD Co. LTD.....1ST PLAINTIFF
ATTORNEY GENERAL.....2ND PLAINTIFF

VERSUS

**MVEJO TECHNICAL SERVICES
& SUPPLIES LIMITED.....DEFENDANT**

RULING

16th May & 20th May 2022

Kilekamajenga, J.

In this case, the plaintiff (Stamigold Company Limited and Attorney General) sued the defendant (Mvejo Technical Services and Supplies Limited) for an outstanding payment from the breach of contract. In the contract, Stamigold Company Ltd entered into an agreement with the defendant for provision of blast drilling at Biharamulo Mine site. In response to the plaint, the defendant raised three points of objection thus:

- 1. The plaint is defective for want of proper verification.*
- 2. This Honourable Court has no jurisdiction to determine the suit which the defendant is situated in Dar es Salaam and the contract executed in Dar es Salaam.*
- 3. That, this suit is incompetent for failure to refer the matter to the adjudicator or arbitrator as per clause 4 of the contract.*



When the case came for hearing of the points of objection, the plaintiffs were represented by the learned State Attorney Mr. Gerald Njoka whereas the defendant was represented by the learned advocate, Miss Erieth Barnabas. During the hearing, the counsel for the defendant dropped the 1st and 3rd point of objection and submitted on the 2nd point of objection. On that point, she argued that, according to Section 18 of the Civil Procedure Code, Cap. 33 RE 2019, the suit must be instituted where the defendant resides; where the defendant works for gain; where one of the defendants resides or where the cause of action arose. In this case, the plaint shows that the defendant's address is in Dar es Salaam. Also, under Section 18 (c) of the Civil Procedure Code, where the defendant has a temporary and permanent dwelling, the suit may be instituted in either of those two places. In the instant case, the defendant has an office in Dar es Salaam and has no temporary office in Biharamulo. Therefore the cause of action arose in Dar es Salaam and not in Biharamulo.

On the other hand, Mr. Njoka stated that the cause of action arose at the site of Stamigold in Biharamulo. Clause 3.7 of the contract shows that, the contract was to be executed in Biharamulo. The defendant operated his activities in Biharamulo and it is where the cause of action arose. He invited the Court to consider Section 18 (c) of the CPC which provides for the place of suing. Also,

under Rule 7 (1) of the High Court Registry Rules which allows the plaintiff to sue where the defendant resides or where the cause of action arose.

When rejoining, the counsel insisted that the defendant had no temporary residence in Biharamulo. In disposing of this point of objection, I wish to consider section 18 of the Civil Procedure Code, Cap. 33 RE 2019 which provides that:

18. Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain;

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

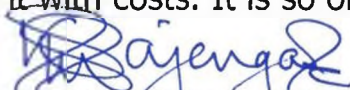
(c) the cause of action, wholly or part, arises.

Explanation I: Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect any cause of action arising at the place where he has such temporary residence.

Explanation II: A corporation shall be deemed to carry on business at its sole or principal office in Tanzania, or, in respect of any cause

of action arising at any place where it is, has also a subordinate office, at such place. (Emphasis added).

Inline with the above provision of the law, the law allows a plaintiff to sue the defendant where the cause of action arose. In this case, the contract between the first plaintiff and the defendant was signed in Dar es salaam but the contract was to be executed in Biharamulo where the plaintiff has mining site. The clauses of the contract do not leave any doubt that the defendant established a temporary office in Biharamulo for the purposes of executing the contract. The cause of action arose in Biharamulo and the plaintiff was right in instituting the case before this court. I find no merit in the point of objection raised by the defendant and hereby dismiss it with costs. It is so ordered.


Ntemi N. Kilekamajenga
JUDGE
20th May 2022

Court:

Ruling delivered this 20th May 2022 in the absence of the parties.




Ntemi N. Kilekamajenga
JUDGE
20th May 2022

