

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO
CIVIL CASE NO. 1 OF 2021

FR. RICARDO ENRICO RICCIONI

alias **RICARDO MARIA**..... PLAINTIFF

VERSUS

YONGHUA TRADING CO. LIMITED1ST DEFENDANT

LING CHAO TECHNOLOGY CO. LIMITED.....2ND DEFENDANT

HAMUD ALI SALUM.....3RD DEFFENDANT

STEVEN ZHOU.....4TH DEFENDANT

NATIONAL BANK OF COMERCE LIMITED.....5TH DEFENDANT

MA JIAN CAI.....6TH DEFENDANT

RULING

Hearing date on: 17/06/2022

Ruling on: 11/07/2022

NGWEMBE, J:

The 5th defendant through the legal services of learned advocate Wahida Adams, issued notice of preliminary objection raising two legal grounds with a prayer to dismiss the suit with costs. Other defendants neither appeared in court nor filed defense, save only the 5th defendant. The two parties, that is the plaintiff and 5th defendant were represented



by learned counsels. While Mr. Baraka Lweeka represented the Plaintiff, Ms. Wahida Adams represented the 5th defendant.

The two grounds of objections are recapped hereunder:-

- 1. The Complaint filed by the Plaintiff does not disclose the cause of action against the 5th defendant.*
- 2. This court lacks jurisdiction to entertain the matter.*

The learned advocate Wahida argued the two grounds of objections seriatim and forcefully submitted the first ground by referring this court to the case of **John Byombalilwa Vs. Agency Maritime International (T) Ltd, [1983] TLR 1**, where it was held that, whether or not a complaint discloses the cause of action, it is the complaint itself and not reply to the defense or any other pleading, that should be considered. Also cited the case of **Masha de Game Fishing Lough & 2 Others Vs. Board of Trustees of Tanganyika National Parks [2002] T.L.R 319** where the court held that, one has a cause of action against another where that person has a right and the other person has infringed that right. Submitted that, the cause of action is a sum of total allegations upon which, the right to relief is found and that the 5th defendant has no issue with the plaintiff. Since there is no cause of action against the 5th defendant her name should be removed.

Moreover, she submitted that, in totality, the plaintiff failed to raise any viable allegation against the 5th defendant. Supported her argument by referring to the case of **J.B Shirima Vs. Humphrey Milers [1999] TLR 290**, where it was held that, when a complaint does not disclose a cause of action, the court has two alternatives; first to order amendment of the complaint; and second to strike out the complaint. Thus, rested by inviting

this court to dismiss the whole suit for lack of cause of action against the 5th defendant.

In reply, the advocate for the plaintiff submitted that, the plaint discloses cause of action against all defendants including the 5th. He conceded on the principles laid down in the case of **John Byombalilwa (Supra)** on the cause of action and added other cases including **Stanbic Finance Vs. Gluseppa Trupaa & Another [2002] T.L.R 217**. He further submitted that the cause of action is disclosed at Paragraphs 3, 8(c), 10 & 12 of the plaint. That 5th defendant being a commercial bank has a tie relationship with the plaintiff as per the **Bank of Tanzania (Consumer Protection Regulations) 2019 GN No. 884 of 2019**.

Insisted that, the regulation requires all commercial banks to take care of customers affairs, regulation 3 defines consumer to mean a person that uses, has used, or is using any financial products or services provided by a financial service provider and that the plaintiff falls within that definition and he forcefully submitted that 5th defendant cannot deny that the plaintiff is not their customer because all elements of relationship and negligence are disclosed in the paragraph 10 of the plaint. Rested by praying this ground be dismissed.

On the second limb of preliminary objection on lack of jurisdiction the learned advocate for the defendant submitted that, paragraph 3 of the plaint disclosed the claimed amount as TZS. 111,449,000/=, specific damages of Tsh. 100,000,000/= and general damages as may be assessed by this court. Cited **section 40 (1) (b) of the Magistrates' Court Act Cap 11 R.E 2019** where pecuniary jurisdiction of Tsh. 200,000,000/= is vested to the District Court. and that according to

section 13 of the Civil Procedure Code Cap 33 R.E 2019 (CPC), the suit ought to be instituted in the court of lowest grade. Therefore, the specific value of the plaint is Tsh. 111,449,000/= which falls within the pecuniary jurisdiction of the district court. She cited the case of **MS Tanzania China Friendship Textile Company Ltd Vs. Our Lady of Usambara Sisters [2006] T.L.R 70**, where it was held that, it is the substantive claim and not the general claims, which determine the pecuniary jurisdiction of the court.

Further submitted that, Tsh. 100,000,000/= for loss of business falls into 3P's tests as propounded in the cases of **Xiubao cai & Another Vs. Mohamed Said Kiaratu, Civil appeal No. 87 of 2020** at Page 6 last paragraph and in the case **Solvochem Holland Vs. Chan Quing International Investment Co. Ltd, Commercial Case No. 63 of 2020** at page 9.

She also cited another case of **Zuberi Augustino Vs. Anset Mgabe [1992] T.L.R 137** where it was held, special damages must be specifically pleaded and that in respect to this suit the alleged Tsh. 100,000,000/= have not been specifically pleaded nor particularly pleaded instead it has just been generalized. Therefore, only Tsh. 111,449,000/= are specifically pleaded which is below the pecuniary jurisdiction of this court. Emphasized on this point by citing the case of **Francis Andrew Vs. Kamyn Industries Ltd [1986] T.L.R 31**.

In contrast, the learned advocate for the plaintiff submitted that, this objection lacks merits, and that the jurisdiction of this court is governed by **section 40 (2) (b), (3)(b) and section 2 of Magistrate Courts Act**. Further submitted that, this case includes three companies, which are 1st, 2nd and 5th defendants and that the case

is of commercial significance in which, the District Court or Resident Magistrates' Court are limited to Tsh. 70,000,000/= as per section 40 (3)(b). Admitted to the legal point that the substantive claim determines jurisdiction of the court and that the substantive claim is Tsh. 211,000,000/= which is pleaded at paragraphs 3, 8, 12 and prayers, including specific damages of Tsh. 100,000,000/= which will be specifically proved during trial and that the plaintiff is neither submission nor evidence.

In her brief rejoinder, the learned advocate for the 5th defendant submitted that, in respect to the consumer regulation, the plaintiff is a stranger to 5th defendant. The plaintiff has neither an account with the 5th defendant nor used her products. Thus, negligence never committed to a stranger and that this case is of no commercial significance and the use of Order VI Rule 5 is not applicable in this case. Rested by a prayer that the suit be dismissed against the 5th defendant.

In determining these preliminary objections, I am aware that, it is settled in our courts that a preliminary objection must be on point of law, when argued successfully, must be capable of disposing of the whole case. (See the case of **CITI BANK CIVIL APPLICATION NO. 112 of 2003 Court of Appeal Dar es Salaam Registry**).

On the first point of preliminary objection, the 5th defendant claims that the plaintiff disclosed no cause of action against the 5th defendant. As rightly argued by both parties, the question of whether or not a plaintiff discloses cause of action, it is the plaintiff itself should be considered.

Advocate for the plaintiff insisted that the cause of action is indeed disclosed at Paragraph 3, 8 (c), 10 and 12 of the Plaintiff. For easy of



reference and with danger of having a long court ruling those paragraphs are quoted: -

3. That, the plaintiff's claims against the defendants jointly and severally are restitution 111,449,000.000 (TZS one hundred eleven million four hundred forty-nine thousand only) paid to 1st, 2nd, 3^d and 6th defendants in diverse date, specific damages worth 100,000,000.00 (TZS one hundred million only) and general damages as may be assessed by this Honorable court being the result of defendants negligent actions and or omissions as well as conversion actions.

8. that, the plaintiff paid through the said agent in instalment and in diverse dates as hereunder;

(c) That, on 15th July 2020 he paid 36,549,000.000 to the sixth defendant through NBC account number 048148001117 the same being operated by fifth defendant negligently.

10. that, 5th defendant being a reputable bank in Tanzania opened and operated an account for 6th defendant without taking into consideration consumer protection. Further that 5th defendant acted negligently without reasonable skills, care and diligence. On top of that, during follow up of restitution it come to the attention of the plaintiff that the said account was closed after receiving the deposit transaction from plaintiff.

12. that, the defendant's actions and omissions stated herein frustrated plaintiff's respective plan rescue Kiswila Minerals Co. LTD intended to improve operations, the same has denied the plaintiff his right to claim reimbursement from the said Vincenzo Achille



Cicarelli whereby he has suffered financial loss of 100,000,000/= (TZS One hundred million) being expected income.

The main issue here is whether the plaintiff has cause of action against the 5th defendant. As rightly elucidated in the case of **Masha de Game Fishing Lounch & 2 Others (Supra)** that one has cause of action against another where that person has a right and the other person has infringed that right.

Briefly, the cause of action can be regarded as the fact or combination of facts that give a person the right to seek judicial redress as a result from some wrongful act or breach that has caused a person loss or damage. It is trite law that where a person has no interest at all, or no sufficient interest to support a particular legal claim or action, the person will not have *locus standi*. Generally, a cause of action gives a person right to sue.

Looking at the plaint as a whole, there is nowhere that even slightly indicates or suggest that the plaintiff herein has any right over the subject matter which same was infringed by the 5th defendant. The assertion that the 5th defendant being a Commercial bank has a tie relationship with the plaintiff is purely a wrong notion. It is undisputed fact that the plaintiff had no account with the 5th defendant and never used any products of the 5th defendant. Thus, making him a stranger to the business of 5th defendant.

Considering more inquisitively on whether the plaintiff falls under the category of consumers as rightly suggested by the plaintiff's advocate. Section 3 of the Bank of Tanzania (**Consumer Protection Regulations**) 2019 G.N No. 884 of 2019, provide as follows:-



3. "consumer" means a person that uses, has used or is, using, any of the financial product or service provided by a financial service provider;

The question is, whether the plaintiff falls within the definition of person that used, has used or is using any of the financial products or services of the 5th defendant. Unfortunate, the pleadings do not support the plaintiff for obvious reasons that he never had any account or borrowed money or ever used any product of the 5th defendant. Now the question is, where is the relationship between the disputants? Did they have bank and customer relationship? According to the pleadings, the answer is negative.

Perusing the case of **John M. Byombalirwa (supra)** wherein the court pertinently considered the meaning of the expression "cause of action" appearing in **Order VII Rule 1 of the Civil Procedure Code, Cap 33 [R.E.2019]** and observed that:-

"Although the expression "cause of action" has not been defined under the Civil Procedure Code, but that expression simply means essential facts which a plaintiff in a suit has to plead and later prove by evidence if he wants to succeed in the suit".

The court further observed that, for purposes of deciding whether or not a plaint discloses a cause of action; courts should not go far into written statements of defence or into replies to the written statements of defence, rather should read the contents of the plaint itself.

Order VII Rule 1 of the Civil Procedure Code Cap 33 [R.E2019], requires the plaintiff who moves the court by a suit, to

plead particulars in their Pleint to disclose a cause of action. More specifically, Rule 1 of Order VII states:

"1. The pleint shall contain the following particulars-

(a) the name of the court in which the suit is brought;

(b) the name, description and place of residence of the pleintiff;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) where the pleintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

*(e) **the facts constituting the cause of action and when it arose;***

(f) the facts showing that the court has jurisdiction;

(g) the relief which the pleintiff claims;

(h) where the pleintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(i) a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits".

[Emphasis provided]

The word "shall" imply mandatory as per the **Law of Interpretation Act, Cap 1 [R.E.2019]**. In other words, Order VII Rule 1 (e) mandatorily requires Pleint filed in court to manifest brief and concise facts that constitute the cause of action. This means that the court has the duty to adhere to that legal principle governing proper pleadings.

Considering deeply on the contents of the plaint, I find difficult to depart from the submissions of learned advocate for 5th defendant, that the plaint does not disclose any cause of action against the 5th defendant. Lord Denning in a persuasive case of **R Vs. Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd [1966] 1QB 380 at 400** had once observed that:-

"The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done."

Also, the bank by opening, operating and closing the account for the 6th defendant it did not go outside its permissible activities known to the law. **Section 24** of the **the Banking and Financial Institutions Act CAP 342 [2015]**, listed permissible activities of a licensed bank or financial institution not limited to, but include, acceptance of deposits and other activities determined by the Bank to be customary banking practices or incidental to the banking business. The section is quoted:-

24.– (1) *A licensed bank or financial institution may engage in any or all of the following activities, directly or through a separately incorporated subsidiary as determined by the Bank, subject to any limitation in the licence issued to such bank or financial institution–*

(a) *acceptance of deposits;*

(p) *other activities determined by the Bank to be customary banking practices or incidental to the banking business.*



It is from the above section that opening an account, accepting deposit and closing it was the acceptable activities known by law, hence no infringement of rights committed by the Bank to the plaintiff.

This ground alone is capable of disposing off the whole matter even without considering the second limb of objection. In this suit the plaintiff has no cause of action against the 5th defendant. In the event, the preliminary objection has merits, hence sustained. The 5th defendant is removed from this suit. Each party to bear his/her own costs.

Order accordingly.

Dated at Morogoro this 11th July, 2022



P. J. NGWEMBE

JUDGE

11/7/2022

Court: Ruling delivered at Morogoro in Chambers on this 11th day of July, 2022 in the presence of Suzan Mafwele Advocate for the Plaintiff and Neema Ndayanse for Walida Adms Advocate for the Defendants.



P. J. NGWEMBE

JUDGE

11/7/2022