

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

**AT DODOMA**

**LAND CASE NO. 9 OF 2020**

**SOPHIA FESTO JOHN** (Administratrix of the  
estates of FESTO JOHN MSELIA, deceased) ..... **PLAINTIFF**

**VERSUS**

**1. CRDB BANK LIMITED**

**2. COMRADE AUCTION MART & COURT BROKER**

**DEFENDANTS**

**RULING**

*23/5/2022 & 31/5/2022*

**MASAJU, J**

The Plaintiff, Sophia Festo John, an Administrator of the Estates of the late Festo Mselia has sued the Defendants, CRDB Bank Ltd and Comrade Auction Mart & Court Brokers, over the dispute in a loan advanced by the 1<sup>st</sup> Defendant to the deceased Festo Mselia. The Defendants have filed their joint Written Statement of Defence along with a Notice of preliminary objection, thus;

*"That, the Plaint does not disclose any cause of action against the Defendants."*

The preliminary point of law was heard on the 23<sup>rd</sup> day of May, 2022 where the Plaintiff was represented by the learned counsel, Mr. Felician Daniel, while the Defendants were represented by Mr. Rainery Songea and Ms. Tecla Kimati, learned counsels.

The Defendants submitted in support of the preliminary point of law that the Plaintiff does not disclose cause of action against the Defendants contrary to Order VII Rule 1 (e) of the Civil Procedure Code [Cap. 33 RE 2019]. That, according to paragraph 10 of the plaintiff the amount stated therein was insured but the annexures to the Plaintiff does not prove that the said loan was insured. That, the Insurance Company has neither been disclosed nor sued alongside the Defendants.

That, even if the suit is heard to its conclusion the Court won't be in a position to issue an order against a party which is foreign to the suit. The Defendants prayed the Court to enforce Order VII Rule 11 of the Civil Procedure Code [Cap 33 RE 2019] by striking out the plaintiff with costs for want of cause of action against the Defendants.

On her part, the Plaintiff conceded to the Defendants' preliminary point of law and prayed the Court to allow her to amend the Plaintiff instead of striking it out from the Court in the interest of justice. The Plaintiff added that she is a widow thus cannot afford to pay costs.

That is what was shared by the parties in support of the preliminary point of law in the Court.

Indeed, the Court is inclined to agree with the parties that, since the Plaintiff has alleged in the Plaintiff that part of the debt claimed by the 1<sup>st</sup> Defendant is insured thus the need for the Plaintiff to disclose the Insurance Company alleged, if any, and include her as a party to this suit, for the Court

can not make any orders, if so proved by the Plaintiff against a party which is foreign to the suit.

The Court also advises the learned counsels engaged by the parties to the suits to guide and advise their clients well as well as being keen and diligent when drafting the clients' pleadings before taking them to the courts of law since in most cases the clients are laymen.

That said, the meritorious preliminary point of law is hereby sustained accordingly. The court can not make any order for amendment of the plant since the Defendants raised a preliminary point of law which was heard on merit and conceded by the Plaintiff. Thus, the suit is struck out of the Court accordingly for want of cause of action. The parties shall bear their own costs.



GEORGE M. MASAJU

**JUDGE**

31/5/2022