

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 220 OF 2019

DORCAS ALBERT MINJA.....PLAINTIFF

VERSUS

ALLY KILUMBADEFENDANT

RULING

MRUMA,J

Upon being served with the Plaint the Defendant filed a written statement of defence contesting the plaintiff's claims. Together with the written statement of defence the Defendant raised two points of preliminary objection contending that:

1. The Plaint does not disclose any cause of action against the Defendant contrary to Order VII Rule.1 (e) and Rule . 5 of the Civil Procedure Code [Cap 33 R.E. 2019] and;
2. The Plaintiff has no locus standi to institute the proceedings against the Defendant.

The preliminary objections were argued by way of written submissions.

Submitting in support of the 1st preliminary objection Mr. Godfrey Namoto, advocate for the Defendant submitted that the Plant in this matter does not disclose any cause of action against the defendant and should be therefore rejected. The learned counsel contends that upon perusal of the plaint and particularly the annexures therein one will realize that the transactions which gave rise to the plaintiff's claim were between Dorcus Boutique & General supplies Limited and Serengeti Turizm DIS Ticaret Limited STI.

Responding to the counsel's for the Defendant's submissions regarding this point, Mr Mwanyenza Mapembe, advocate for the Plaintiff submitted that the two companies – Dorcas Boutique & General Limited and Serengeti Turizm Dis Ticaret Limited were included for purposes of sending and receiving the money from one point to another but no point in time these companies were engaged in the parties business transaction.

I have carefully gone through the pleadings, the preliminary objections raised and the counsel's submissions for and against the preliminary objection and in my view the two points raised may be consolidated and dealt with together. In totality the Defendants objection

to the present proceedings is that the estate of the late Dorcas Albert Minja has no cause of action and/ or locus stand to sue Ally Kilumba, the Defendant because the facts pleaded and the annexures annexed to the plaint show clearly that the transactions which gave rise to the complained cause of action were between two companies namely Dorcas Boutique & General Limited and Serengeti Tourism STL Ticaret Limited.

I agree with this proposition. It is pleaded under paragraph 3 of the plaint that;

".....the plaintiff's claim against the Defendant is for payment of USD 164, 700 the amount which was initially given to the Defendant for purchasing several commodities such as men's suit dresses, men's and women's underwear, trousers and skirts (just to mention the few)....."

Under paragraph 6, it is pleaded that :

" The Defendant instructed the Plaintiff to send the said money through Bank a/c owned by Serengeti Tourism DIS Ticaret Limited STI and the plaintiff compliedAttached hereto and marked as annexure LLA- 2 collectively are copies of the payment slip and TIS transfer"

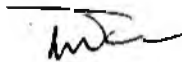
Annexure LLA- 2 comprises of Funds Transfer Application form dated 13th May 2013 which show that USD 164,700.00 were transferred to Serengeti Turizam Dis Ticaret Limited as a beneficiary customer. The money was a loan Disbursement to Dorcas Boutiques. General supplies Limited.

A letter dated 13th May 2013 from Grofin (support beyond finance) to Stanbic Bank requesting the bank to effect TIS transfer in favour of Dorcas Boutiques and General Supplies as disbursement to facility approved. The beneficiary was mentioned as Dorcas Boutiques and General Supplies. The amount involved was USD 164,700.00. This amount is the same amount which is involved in the transaction which the plaintiff claims to be between the estate of the late Dorcas Albert Minja(deceased) and the Defendant Ally Kilumba.

It is trite law that a company is recognised as a legal entity distinct from its owners and members. A company being a legal entity is independent legal existence separate from its shareholders, directors officers and creators. Any business or transactions which is done in the names and papers of the company are businesses and transactions of that company and cannot be affected by changes such as death of its directors or creators. It follows therefore that all communications and transactions

done in the names of Dorcas Boutique and General supplies Limited are distinct and independent from communications and transactions done by Dorcas Albert Minja and the transactions so done cannot form part of the estate of the late Dorcas.

Thus, I sustain both preliminary objections raised by the Defendant to the effect that the estate of the late Dorcas Albert Minja has no cause of action against the Defendant Ally Kilumba, Accordingly the suit is dismissed with costs to the Defendant



A.R.MRUMA

JUDGE

29/7/2022

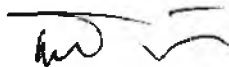
29/7/2022

Coram: Hon. A. R. Mruma,J

For the Plaintiff: Ms. Caroline Mumba for MR. Mapembe for Plaintiff who
is present.

For the Defendant: Ms Caroline Mumba advocate holding brief of
advocate Godfrey Namoto advocate for Defendant.

Court: Ruling delivered.


A.R.MRUMA

JUDGE

29/7/2022