

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

AT SUMBAWANGA

CIVIL CASE NO. 3 OF 2020

MASUMBUKO FADHILI KHAFIDHI MAKOLOKOLO PLAINTIFF

VERSUS

ELIAS MWANISAWA DEFENDANT

Date: 10/01 & 03/02/2022

RULING

Nkwabi, J.:

Through his written statement of defence, the defendant raised a preliminary point of objection. The same has three limbs of legal points of objection as I will list them herein below:

- 1. The case is not maintainable for being filed contrary to law and procedure governing filling of defamation cases.*
- 2. The plaint does not disclose a cause of action.*
- 3. The suit is incompetent for lack of jurisdiction.*

Based on the above legal points of objection the defendant prays the case to be dismissed with costs. I ordered the preliminary objection be argued by way of written submissions. Only the defendant filed the submission in chief



in support of his preliminary objection. It was filed by his learned counsel, Ms. Sekela Amulike. The plaintiff never filed any submission.

Expounding on the first legal point of objection, Ms. Amulike argued that as this is a defamation case, the plaintiff ought to have filed his case in accordance with the Media Services Act, 2016 as well as the Media Services (Defamation Proceedings) Rules, 2019. It was supposed to be instituted by way of petition as per Rule 4(1) of the Media Services (Defamation Proceedings) Rules, 2019, as the cause of action rose in 2020 and the rules were published in February, 2019. She therefore prayed the civil case No. 3/2020 to be dismissed with costs.

She added the overriding objective principle introduced in the Written Laws Miscellaneous Amendments Act No. 3 of 2018 cannot save the case as the omissions go to the root of the matter since it is contrary to the procedural laws. To back up her stance, she cited the case of **Njake Enterprises Limited v. Blue Rock Limited & Another, Civil Appeal No. 69/2017** CAT (unreported) where it was stated:

"The proposed amendments are not designed to blindly disregard the rules of procedure that are couched in mandatory terms ..."

She also referred me to **Martin D. Kumaliya & 117 others v. Iron and Steel Ltd," Civil Application No. 70/18 of 2018**, CAT (unreported):

"... while this principle is vehicle for attainment of substantive justice, it will not help a party circumvent the mandatory rules of the court ..."

The plaintiff did not reply to the submissions of the learned counsel for the defendant as I have intimated above. He had earlier too failed to file a rejoinder to his plaint which would have given him an opportunity to reply to the raised preliminary objection.

No wonder that plaintiff did not attempt to argue against the preliminary objection, regard being had on his completely using a different procedure than that is provided under the law. It is clear as per the submission of the learned counsel for the defendant that the plaintiff ought to have used form DP and filed a petition instead of filing a plaint in this case of defamation.

Admittedly and in the circumstances of this case, the overriding objective principle would not come into assistance of the plaintiff. The suit is therefore incompetent before this court.


Since the suit is incompetent before this court, I do not see the need to deal with the rest of the legal points of objection in respect of the jurisdiction of this court and whether the plaint discloses a cause of action against the defendant.

In fine, the preliminary objection is sustained as indicated above. The Civil case No. 3 of 2020 is hereby struck out with costs.

It is so ordered.

DATED at **SUMBAWANGA** this 3rd day of February, 2022.




J. F. Nkwabi
JUDGE