

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
CIVIL CASE NO.5 OF 2020**

**VICTORIA SILVESTER MALLEY..... PLAINTIFF**

**VERSUS**

**THE EXECUTIVE SECRETARY NATIONAL EXAMINATION  
COUNCIL OF TANZANIA.....1<sup>st</sup> DEFENDANT**

**THE NATIONAL EXAMINATION COUNCIL OF TANZANIA  
(NECTA) .....2<sup>nd</sup> DEFENDANT**

***Date of Last Order: 16/07/2021***

***Date of Ruling: 22/04/2022***

**RULING**

**MGONYA, J.**

On the course of hearing this suit before the Court, where the plaintiff is seeking declaratory orders on rectification of her Advanced Certificate of Secondary Education Examination (ACSEE) against the Defendants' negligently omission which alleged to communicate the false information of forgery to the public.

Before hearing the same, the Defendants raised two points of Preliminary Objections hereunder:

- a) ***The Plaintiff is bad in law and untenable for contravening Order VII Rule 1(f) of the Civil Procedure Code, Cap. 33 [R. E. 2019]*** and
- b) ***The plaintiff is bad in law and untenable for containing defective verification clause.***

At the hearing of objections, the Plaintiff was represented by Mr. Deusdedit Malebo learned Advocate and Ms. Lilian Machage State Attorney was for Defendants.

The counsel for Defendants submitted that, the Plaintiff in his plaint has not indicated any paragraph showing that the court has jurisdiction to determine the matter before it. Therefore, the Plaintiff has contravened the law under **Order VII Rule 1(f) of the Civil Procedure Code, Cap. 33. [R. E. 2019]** which provides that:

***"The Plaintiff shall contain the following particulars the facts showing that the court has jurisdiction".***

The expressed words in the provision of law is insisting that the function so conferred must be performed. This is provided under **Section 53(2) of the Interpretation of the Laws Act, Cap. 1 [R. E. 2019]**.

Further, the counsel stated that, the legal effect of failure to indicate the paragraph as to the jurisdiction of the court

render the plaint to be defective and thus it ought to be struck out with costs.

The counsel submitting on the second part of the Preliminary Objection, he said that the plaint is bad in law and untenable for containing defective verification clause, as the verification clause is defective for lack of date and signature of the person verifying the paragraphs. The Counsel insisted that is defective according to **Order VI Rule 15 (3) of the Civil Procedure Code, Cap. 33 [R. E. 2019]**, which provides that:

***"The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."***

It was further submitted that, the provisions give mandate for verification to contain the place and date where it was signed. It was revealed that, the legal consequences for the failure to state on the verification clause the signature and the date on which and the place at which was signed is incurable defective.

The Defendant's Counsel further submitted that, the above highlighted mischief by the Defendants is not cured by Oxygen rule or overriding principle as the same touches the mandatory legal procedure which should be adhere to.

On the contrary, the Counsel for applicant responded to the objections that the cause was a Tortuous liability on negligence in which plaintiff claims that the defendant has communicated

the false information of forgery to the public. Further that, the plaintiff is not seeking monetary relief in this case, facts as to the amount of money or pecuniary jurisdiction could not be stated.

Further, the facts showing that this court has territorial jurisdiction have been shown and have been stated under paragraph 20 of the Plaint where the Plaintiff has categorically stated that the Defendants' place of abode is in Dar es salaam. The fact that the Defendants resides in Dar es salaam bring them to the jurisdiction of this court and it was a fact in the realm of **Order VII Rule 1(f) of Civil Procedure Code, CAP. 33 [R. E. 2019]**.

On other hand, the fact the Plaintiff is seeking declaratory orders, in line with the nature of this case, then it suffices to be a fact that brings it and shows that this court has jurisdiction over the matter hence the plaint was not defective.

With regards to the second preliminary objection, the Plaintiff drew the court's attention on page 7 of the plaint that, the verification clause was signed but was not dated. Further, submitted that, the failure could be attributed to human typing errors. The place for the Plaintiff to insert her signature was there and she has signed, save for the place for inserting the date, which, on the face of it, was not intentionally omitted.

In the alternative, the Plaintiff's Counsel prayed to this court to be allowed to make amendments on the plaint so this honourable court could have invoked the authority vested to it as according to **Order VI Rule 17 of the civil Procedure Code, Cap. 33 [R. E. 2019]**.

This court after perusing the pleadings and specifically the paragraph 20 of the Plaint in order to satisfy itself on whether the same contains in the paragraph on the courts' jurisdiction. The paragraph 20 of the plaint states:

***"That the defendants' place of abode is in Dar es salaam"***

Regarding the nature of claims before the Court which concern about the negligence of the Defendants. With the assistance of the Oxygen principle, where the Court required to exercise its power and shall be able to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes which is according to **section 3A of the Civil Procedure Code, Cap. 33 [R. E. 2019]**. Also, under **section 2 of the Judicature and Application of laws Act, Cap. 358 [R. E. 2019]** which provides that, the High Court has unlimited power over all civil matters.

It is the Court's view that the quoted paragraph 20 of the Plaint phrased that **"the Respondents' place of abode is in**

**Dar es Salaam".** is suffices to account for the unlimited territorial Jurisdiction of the Court.

Moved to the **second point of objection**, by regarding the above position, I find that this objection is resolved by the Oxygen principle where the defect found in the verification clause is curable under **section 3A of the Civil Procedure Code, Cap. 33 [R. E. 2019]**.

In the event therefore from all that has been said above, **the preliminary objection by Counsel for the Defendant is overruled and the Application before this Honourable Court is hereby placed for hearing on merit.**

No order as to costs.

It is so ordered.



  
**L. E. MGONYA**

**JUDGE**

**22/04/2022**

**COURT:** Ruling delivered in the presence of Mr. Deusdedit Malebo Advocate for Plaintiff, while the Respondents absent and Mr. Richard RMA on 22<sup>nd</sup> April, 2022.



  
**L. E. MGONYA**

**JUDGE**

**25/04/2022**