

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

LAND CASE NO. 1 OF 2022

**PHILIP SAMSON CHIGULU t/a PHILIP SAMSON
CHIGULU AGENT.....PLAINTIFF**

VERSUS

NIC BANK TANZANIA LIMITED..... 1ST DEFENDANT
NCBA BANK ANZANIA LIMITED..... 2ND DEFENDANT
MAGRATE KARUME..... 3RD DEFENDANT
SHARMPAL AGGARWEL..... 4TH DEFENDANT
GIFT SHOKO..... 5TH DEFENDANT
MOHAMED IBRAHIM..... 6TH DEFENDANT
ANNAH LUPEMBA..... 7TH DEFENDANT
RICHARD EUSEBIO..... 8TH DEFENDANT
MANSOOR BARAGAMA..... 9TH DEFENDANT
HASSAN SINGANO..... 10TH DEFENDANT
PRAVEEN MEHRA..... 11TH DEFENDANT
**ADVOCATE FOR NCBA BANK
TANZANIA LIMITED..... 12TH DEFENDANT**
**SUKAH SECURITY COMPANY TANZANIA
LIMITED..... 13TH DEFENDANT**

Date of last Order: 28/10/2022

Date of Ruling: 10/03/2023

RULING

MGONYA, J.

Upon service of the plaint to the defendants, in reply through their Written Statement of Defence they raised points of preliminary objection to the effect that:

- i) The Plaint does not disclose any cause of action against all the Defendants;***
- ii) The Plaint was drawn and filed by unqualified person; and***
- iii) The suit is misconceived and unmaintainable in law for misjoinder of parties.***

Likewise in reply to the Written Statement of Defence filed by the Defendants' counsel, the Plaintiff also raised a preliminary objection to wit:-

- i)** That Advocate Augustine Kitakolezibwa not authorised by the 1st, 2nd, and 3rd Defendants' Company Board Resolution to act on behalf of the same Defendants.
- ii)** That the advocate Augustine Kitakolezibwa not appointed and authorized to act on behalf of the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 11th, 12th, and 13th Deponents'

Companies Board Regulation to act on behalf of the same Defendants for lack of any written authority regarding the legal directed by the law of **Order III rule 1, 4 and 5 of the Civil Procedure Code, Cap. 33 [R. E. 2019];**

iii) That the Defendants' Written Statement of Defence is incurable defective for denied the Plaintiff's plaint by general denial without be denied the same Plaintiff's plaint by specific denial specified paragraph to paragraph, point to point regarding the legal directions of **Order VIII Rule 3,4 and 5 of the Civil Procedure Code, Cap. 33 [R. E. 2019];**

iv) That the written statement of defence is incurable defective, in the matter of contradictions, for denied the Plaintiff's plaint by the general denial as the evasive denial and accepted the same for not denied by the specific denial specified paragraph to paragraph and point to point regarding the legal directions of **section 165 and 166 of the Evidence Act Cap. 6 [R. E. 2019] and Order VIII Rule 3, 4 and 5 of the Civil Procedure Code Cap 33 [R. E. 2019].**

v) That the Defendants' Written Statement of Defence is incurably defective for not be signed by the Defendants and Advocate and the reasons for not doing so not give by any to this Court regarding the legal directions of

Order VI Rule 14 of the Civil Procedure Code, Cap. 33 [R. E. 2019] and

- vi)** That the Written Statement of Defence is incurable defective for not be prepared and filed by any Human been who acted on behalf of legal firm FROSTEE ATTORNEYS for Defendants regarding the legal directions of **Section 44 (1) (2) of the Advocate Act, Cap. 341 [R. E. 2019]**.

Before I proceed, I see it proper to briefly state the brief background to this matter.

Briefly, the Plaintiff herein instituted a **Civil Suit, Land Case No. 04 of 2021** against the Defendants before the High Court in the Sub Registry of Musoma. Among other things he was claiming for compensation of **Tzs. 500,000,000/=** from the 1st and 2nd Defendants and an order to the Defendants to commence a fresh the transaction of giving the Plaintiff a loan of **Tzs. 565,000,000/=**. However, after paying a perusal to the filed Complaint, my learned Brother Kahyoza, J. noted that the Defendants reside in Dar es salaam and he also noted that the Complaint was drawn by a person who is not an Advocate. In terms of the **Advocates Act, Cap. 341 [R. E. 2019]**, he entertained doubts if that person was competent to draw pleadings. The parties were invited to address the court on the following issues:

- i) Why the matter should not be transferred to Dar es salaam District (sub-Registry) of the High Court?***
- ii) Whether Mr. Philipo Chigulu was a person competent to draw pleadings.***

Both parties addressed the court on the above issues. Finally, the court upon consultation with the laws and case laws came to a conclusion that, the proper court was the High Court Dar es Salaam Registry and also Mr. Philipo Samson Chigulu, the registered and licenced commissioner agent or private attorney is not a person competent to draw pleadings. Basing on those as he identified himself, findings the Court ordered the case to be transferred to Dar es Salaam Sub -Registry of the High court and Mr. Philip Samson Chigulu was ordered to amend the Plaint within 21 days to show that he drew the Plaint as a partner of the Plaintiff. It is from the said orders, the case was transferred to this court. However, it appears that the pleading was not amended as it was ordered by the High court of Musoma hence, the Defendants raised the Preliminary point of objections which were also encountered with the Plaintiffs' preliminary points of objection as indicated above.

It was the order of this court that, the hearing of the raised preliminary objection to proceed by way of filing written

submission. The Plaintiff's submission was drawn by Mr. Philip Samson Chigulu T/A Philip Samson Chigulu Agent Registered and Licenced as the Commissioner Agent or Private Attorney while the Defendants' submission was drawn by Mr. Augustine Rutakolezibwa learned Advocate. I appreciate the parties' effort to file their submissions. However, I will not reproduce their submission but I will be referring to the relevant parts in determination of the Preliminary points of objection.

As alluded above, it is almost nine points of Preliminary Objections raised by both parties; but it is the second point of objection raised by the Defendants which I find to have substance enough to dispose the case. For that reason, I will start to determine the Defendants' second Preliminary point of objection as hereunder.

It is the Defendants' counsel submission that the Plaint was drawn, endorsed and filed by unqualified person which contravenes with the requirement of the law. It is submitted that, drawing or preparing documents is privileged to persons who are registered on the Roll of Advocates.

In response the Plaintiff contended that, it is not true that the unqualified person is not allowed to prepare and file cases to this court. According to him that is to execute the

intimidations and discriminations before the court which made by the Government.

Having considered the submissions of both parties in support and against the second preliminary objections, and upon perusal of the court records, this court observed that, the issue of the capacity of the Plaintiff to draw a plaint as a Commissioner Agent or Private Attorney was intensively dealt with my fellow Judge brother Kahyoza, J. in his ruling which was delivered on 14th November, 2021. Mr. Philipo Chigulu was declared unqualified person to draw the Plaint. Therefore, this court finds no reason to repeat the discussions on the same issue as it will be a wastage of time.

All in all, basing on what was discussed by this court earlier I find the second point of preliminary objection advanced by the Defendants has merit therefore, **sustained**. Since there was an order to amend the Plaint which was not adhered by the Plaintiff, **the only remedy at this juncture is to struck out this suit with costs.**

Further, the Second Point of the Defendants' Preliminary point of objection suffice to dispose this case, I find no need to proceed with the remaining points of objection.

It is so ordered.



L. E. MGONYA

JUDGE

10/3/2023

ORIGINAL