

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR-ES-SALAAM DISTRICT REGISTRY)**

**AT DAR-ES-SALAAM**

**CIVIL CASE NO. 90 OF 2021**

**OLYMPIC PETROLEUM (T) LTD ..... PLAINTIFF**

**VERSUS**

**STANBIC BANK (T) LIMITED ..... DEFENDANT**

**RULING**

Date 28/02 & 29/03/2023

**NKWABI, J.:**

The suit that was filed by the plaintiff against the defendant confronted a preliminary objection as follows:

1. That the suit is bad in law for seeking orders against strangers to the suit.
2. The plaint is defective for contravening mandatory provisions of Order VII Rule 1(f) and (i) of the Civil Procedure Code Cap. 33 R.E. 2019.

Based on the above points of preliminary objection, the defendant is praying this Court to dismiss or strike out with costs the suit.

I directed that the preliminary objection be argued by way of written submissions. Mr. Gerald Shita Nangi, learned counsel for the defendant argued the preliminary objection for the defendant. The reply submission on

the preliminary objection was prepared by Mr. Jovin M. Ndungi, learned counsel for the plaintiff.

In his submissions, in support of the preliminary objection on the point that the suit is bad in law for seeking orders against strangers to the suit Mr. Nangi argued that the plaintiff has failed to show cause of action against the defendant and the defendant is neither a necessary party nor has interest to the subject matter and such orders sought cannot be granted against the defendant.

Mr. Ndungi, in reply submission, lamented that he has been taken by surprise as the first ground was abandoned and adopted a different one which is that the suit does not disclose a cause of action against the defendant. I am of the view that that complaint is lacking in merit because the preliminary objection raised has the same effect.

On the first point of objection, however, Mr. Ndungi argued that paragraphs 3, 6, 8, 15, 16 and 17 of the plaint disclosed causes of action against the defendant and looking at the entire plaint. It is clear that the contract of purchase fuel was between the plaintiff and Alchemist Energy Trading DMCC.

With profound respect to Mr. Ndungi, I decline to agree with him. The plaintiff claims that the delivery of the goods was never done as per the agreement while the one to deliver the goods was Alchemist Energy Trading DMCC who is not sued. She cannot be condemned unheard. I rule that Alchemist Energy Trading DMCC is a necessary party and there cannot be valid decree without her involvement in the suit. The decision that comes into assistance of the defendant is the case of **Abdullatif Mohamed Hamis v. Mehboob Yusuf Osman & Fatna Mohamed**, Civil Revision No. 6 of 2017 CAT (unreported) where it was stated:

*"Indeed, non-joiner of the legal representative in the suit under our consideration is a serious procedural inexactitude, which may seemingly breed injustice. ..."*

I also accept the view of the counsel of the defendant that the defendant had nothing to do with the breach of their contract rather than to execute the obligation of the letter of credit. That discussion disposes the matter in favour of the defendant whereby I am constrained to sustain the preliminary objection and strike out the suit with costs.

As to the second point of objection that the plaint did not disclose facts as to the jurisdiction of the Court, I think that point was raised out of context as the facts as to the jurisdiction of this Court are pleaded. The second ground of preliminary objection is overruled.

It is so ordered.

**DATED at DAR-ES-SALAAM** this 29<sup>th</sup> day of March 2022



  
J.F. NKWABI  
**JUDGE**