

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

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

**AT DAR-ES-SALAAM**

**CIVIL CASE NO. 200 OF 2021**

**JUNACO (T) LIMITED ..... PLAINTIFF**

**VERSUS**

**NASSORO NKUPAMA ..... DEFENDANT**

**RULING**

Date: 21/03 & 02/05/2023

**NKWABI, J.:**

The reliefs that are pursued by the plaintiff in this Court are as follows:

1. Declaration that, that the defendant is neither a shareholder nor a director in Junaco (T) Limited ("JUNACO").
2. A declaration that the defendant ceased to be a subscriber and or member of JUNACO since 23<sup>rd</sup> September 2008.
3. A declaration that the forfeiture of the defendant's then 500 shares he subscribed for in JUNACO was and still in valid, lawful and binding.
4. An order of injunction permanently restraining the defendant, his agents, assignees, personal legal representative(s) and or administrator(s) of his estate from interfering with or meddling in the affairs of JUNACO including but not limited to write and circulate false

and malicious letters to the plaintiff's bankers, regulatory and tax authorities as well as government institutions.

5. Payment of general damages to be assessed by the Court.
6. Payment of punitive damages to be assessed by the Court.
7. Payment of interest on the assessed damages at the Court rate from date of judgment till full and final payments.
8. Costs of the suit
9. Any other reliefs this honourable Court will deem fit and just to grant.

The counsel for the defendant raised three points of preliminary objection which are:

1. That, the suit filed on 6<sup>th</sup> December 2021 contravene the principle laid down in the decision of **M/S Tanzania-China Friendshi Textile Co. Ltd v. Our Lady of the Usambara Sisters** [2006] TLR 70 that the Court has no pecuniary jurisdiction to hear and determine the matter, or grant reliefs prayed; considering that the plaintiff has filed this case basing on general damages erroneously quantified and not substantive claim.
2. That, the plaint which was presented on 6<sup>th</sup> December, 2021, is bad in law and incurably defective for containing defective verification clause

contrary to Order VI Rule 15 (2) of the Civil Procedure Code, Cap. 33 R.E. 2019.

3. That the plaintiff's amended reply to the defendant's amended written statement of defence, which was presented for filing on 5<sup>th</sup> September, 2022, is bad in law and incurably defective for containing defective verification clause contrary to Order VI Rule 15 of the Civil Procedure Code, Cap. 33 R.E. 2019.

Against the counter-claim, a preliminary objection also was raised that:

1. The counter-claim is time barred.
2. The Court has no pecuniary jurisdiction over the counter-claim.

The preliminary objections against the main case and the counter-claim were disposed of by way of written submissions. Mr. Malik J Seif, learned counsel, submitted for the defendants. The plaintiff had her submissions drawn and filed by Mr. Michael T. Ngalo, also learned advocate.

The counsel for the plaintiff claims that the defendant's counter claim is time barred since the cause of action arose on 22<sup>nd</sup> August 2008 when the impugned resolution was made and passed whereas six years have passed

ever since. It ought to be filed not later than 23<sup>rd</sup> August 2014 and not 12<sup>th</sup> August, 2022.

Mr. Seif for the plaintiff in the counter-claim contended that period of limitation started to run on 11<sup>th</sup> September, 2017 and not 22<sup>nd</sup> August 2008 that the plaintiff became aware of his removal from directorship and forfeiture of his shares on 11<sup>th</sup> September 2017 but he did not submit on how the company would be run without his knowledge for all those years how could a company have no annual meetings, board meetings etc. If they were conducted, he would have known what was going on. Else, he was in acquiesce to the situation. Further, he acknowledges on paragraph 20 of the counter-claim that he was not paid dividend ever since 22<sup>nd</sup> August 2008. He cannot therefore claim to be not time barred.

The claim of fraud is merely concoction unless he was part of the fraud. So even if the time is reckoned from Item 11 of Part 1 to the Schedule of Cap. 89 R.E. 2019 because the limitation is 6 years limitation. The Counter-claim is clearly time barred. The counter-claim is dismissed.

The counsel for the defendant in the main suit claims that this Court has no pecuniary jurisdiction to entertain the matter.

The counsel for the plaintiff states that the plaintiff's substantive claims are neither special nor general damages but are declaratory ones which fall within the original jurisdiction of the High Court. He placed reliance on proviso to section 13 of the CPC which goes:

Provided that, the provisions of this section shall not be construed to oust the general jurisdiction of the High Court.

I am not persuaded. After all, the suit ought to have been filled in an application in the form of a petition as it is about the affairs of the company how are ran as per **James Ibrahim Manule & Another v. Oswald Masatu Mwizarura**, Civil Revision No. 11 of 2016 HC (unreported) I. Maige, J. (as he then was) where he had these to say:

*"This is a pure issue of management and affairs of a company. As held in JONH O. NYARONGA VS. CAPTAIN FERDINANDO PONT & 2 Others, Commercial Case No. 62 of 2009 (unreported) it would therefore fall within the domain of company law which has its special forms of dealing with*

*dispute under the Companies Act. In this regard, the appropriate provision is section 233 of the Companies Act which requires such an application to be brought by way of petition."*

But the suit in the form of a plaint as presented by the plaintiff must adhere to position in **Tanzania-China Friendship Textile Co. Ltd v. Our Lady of Usambara Sisters** [2006] TLR 70 CAT. In this case, the plaintiff's plaint (suit) does not involve specific damages, as such this Court has no pecuniary jurisdiction to entertain it.

Further, there is another anomaly which I would like to advise the plaintiff on. I have noted that there is not board resolution or share holders' resolution for this suit to be instituted. That contravenes the authority of **Ursino Palm Estate Ltd v. Kyela Valley Foods Ltd**, Civil Application no 28 of 2014 which quoted with approval **Bugerere Coffee Growers Ltd v. Sebaduka & Another** [1970] 1 EA 147. Also, the case of **Pita Kempap limited v. Mohamed Abdulhussein**, Civil Application. No. 128/2004 C/F 69 of 2005 CAT (unreported). As such, I advise the plaintiff in the main case, if she finds there is a need to file an application in the form of petition to

seek for the reliefs she is seeking, she should attach a board resolution or share holder's resolution for instituting a suit.

In the circumstances, the preliminary objection is sustained on the first limb of the preliminary objection. Consequently, the main civil case is ruled to be incompetent and is struck out. Each party shall bear their own costs because I have also struck out the counter-claim of the defendant.

It is so ordered.

**DATED** at **DAR-ES-SALAAM** this 2<sup>nd</sup> day of May, 2023.

