

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

CIVIL CASE NO.9 OF 2022

ALPHA RISK MANAGEMENT LTD.....PLAINTIFF

VERSUS

STELLA MARIS UNIVERSITY COLLEGE.....1ST DEFENDANT

ST. AUGUSTINE UNIVERSITY OF

TANZANIA (SAUT).....2ND DEFENDANT

RULING

8.3.2023 & 30.5.2023

LALTAIKA, J.:

The Plaintiff herein, **ALPHA RISK MANAGEMENT LTD**, a limited liability company engaged in security services in Mtwara and incorporated under the laws of the United Republic of Tanzania is claiming severally and jointly against the Defendants TZS. 196,664,122/= being a total sum of unpaid up cost for security services rendered by the Plaintiff to the first Defendant covering a period from 28th March,2015 to 31st January,2022.

The claims are founded on security service contracts allegedly entered between the Plaintiff and the first Defendant. On 09/09/2022 the Plaintiff lodged his Plaint and served to the Defendants. Upon receipt of the same by the Defendants, the first Defendant filed his Written Statement of Defence which is featured with the Notice of Preliminary Objection on a

point of law. The first defendant raised a preliminary objection thus *"That the plaintiff has no cause of action against the 2nd defendant"*.

When this matter came up for the hearing of the preliminary objection the parties agreed that the same be disposed of by way of written submissions. The first Defendant's written submission was drawn and filed by Mr. **Rainery Songea**, learned Advocate from Phoenix Advocates. The plaintiff appeared through Mr. Gideon Mwakalinga her Principal Officer.

Supporting the objection, Mr. Songea faulted the plaintiff's plaint for failure to disclose a cause of action against the second Defendant. The learned counsel insisted that the whole plaint does not connect the second Defendant with the matter. He argued further that the major allegations are based on unpaid up cost for security services rendered by the Plaintiff to the while the second Defendant was not party to the said contract.

It was Mr. Songea's submission that the preliminary objection must base purely on a point of law as demonstrated in the landmark case of **Mukisa Biscuit Manufacturing Company Ltd vs West End Distributors Ltd** (1969) EA 696. The learned counsel contended that in the case at hand the law governing the requirement of disclosing the cause of action is provided under **Order VII Rule 1(e) of the Civil Procedure Code [Cap.33 R.E. 2019]** which is coached with mandatory requirement of disclosing the cause of action. The learned counsel maintained that after going through the entire Plaint he realized that the same does not comply with the named Order for failure to disclose a cause of action against the second Defendant.

To bolster his argument, Mr. Songea cited the case of **Stanbic Finance Tanzania Ltd vs Giuseppe Trupia and Chiara Malavasi** [2002] TLR 221 in which it was held that in determining if the plaint discloses a cause of action against the Defendant, it must be considered within its four corners including its annexures. The learned advocate averred that the Court went further to define the term cause of action as facts which gives a person a right to judicial redress, or relief against another as found on the plaint and its annexure. Furthermore, the learned counsel cited the case of **John M. Byombalirwa v. Agency Maritime Internationale (Tanzania) LTD TCA 13** [1983] TLR in which the court defines a cause of action.

Mr. Songea stressed that in the legal parlance a cause of action is the heart of the complaint which is the pleading that initiate lawsuit". He cited the case of **Coke vs. Gill** (1873)8 CP 107 (116), **Holcombe vs. Garland & Denwiddie**, 162 S.C. 379,160 S.E.881 and **Sullivan vs. Ali Mohamed** (1959) E.A. 239.

It was Mr. Songea's contention that paragraph 4 of the Plaint of the Plaintiff does not disclose a cause of action against the second Defendant. He concluded that the contract was signed between the Plaintiff and first defendant while the second defendant was not part to the contract. However, he insisted that the third paragraph of the Plaint named the second defendant as the Principal University College of the first defendant. Digging deeper into authorities, Mr. Songea also cited the case of **Jem International Co Ltd & Another vs. National Microfinance Bank**, Land Case No.13 of 2019, High Court of Tanzania at Mtwara

The learned counsel maintained that the alleged cause of action emanates from the contract between the plaintiff and the first defendant hence the plaintiff must establish that she enjoyed a right, the right was violated and that the defendant is liable. He referred to the case of **Auto Garage & Others vs Motokov** (No.3) (1971) EA. 514 and **Hasmani vs National Bank of India Ltd** (1937) 4 E.A.C.A. 55. To this end, the learned counsel prayed the matter to be struck out with costs.

In response, Mr. Gideon Mwakalinga submitted that the first defendant had raised a preliminary objection on behalf of the second defendant without leave of the court as required under Order I Rule 8 of the Civil Procedure Code [Cap. 33 R.E. 2019]. To substantiate his argument, Mr. Mwakalinga cited the case of **Ally Mgomba and 4 Other vs Tanzania Building Workers Ltd**, Misc. Application No.223 B of 2014, High Court Labour Division, at Dar es Salaam (unreported) which was referred in the case of **Said Sobo and others vs Al-Naeem Enterprises Ltd**, Misc. Application No.208 of 2019 High Court Labour Division at Dar es Salaam (unreported) where it was held that "the requirement for leave to a party who act on behalf of others is paramount in every case."

The Principal Officer emphasized that the Court of Appeal of Tanzania in the case of **Hamisi Kaka and 78 others vs Tanzania Railways Corporation and Kunduchi Leisure and Farming Co. Ltd**, Civil Application No.68 of 2008, CAT at Dar es Salaam (unreported) that a party whose leave is not sought and obtain may refuse to be bound by a decree passed by the court against him.

Mr. Mwakalinga emphasized that the second defendant was served with summons on **3/10/2022 and 06/2/2023 as required under Order V and XXVIII of the Civil Procedure Code (supra)**. He insisted that the second defendant decided neither to enter appearance nor to file the Written Statement of Defence contrary to Order VIII Rule 1 of the Civil Procedure Code. To this end, Mr. Mwakalinga stressed that the second defendant had waived her right to defend the case save for leave of the court. In addition, he contended that the first defendant has stepped into the shoes of the first which is bad practice in law and prayed this court does not accept it.

It was Mr. Mwakalinga's submission that the Plaintiff consists of facts showing cause of action against the second defendant as provided under paragraph 2, 3 and 48. However, the Principal Officer of the Plaintiff contended further that the word constituent as it appears in paragraph 2 of the plaintiff, and the same has been used day to day by the first defendant when performing her activities as evidenced by annexure STEA1B, STE A6, STE A8, STE A10 and STE A12. He emphasized that according to Black's Law Dictionary, 8th Edition (2004) 330 the word constituent means a person who gives another the authority to act as representative or a principal who appoint an Agent. Mr. Mwakalinga submitted that the word "constituent" gives the meaning of relationship between the first and second defendants, the relationship of principal and agent.

Mr. Mwakalinga averred that according to section 178 of **The Law of Contract Act [Cap. 345 R.E. 2019]** a contract entered by an agent, may be enforced in the same manner to the principal as well. In the light of that

submission, the Principal Officer contended that paras 2, 3, and 4 were to the effect that the second defendant is a party to the contract entered between the first Defendant and the Plaintiff by virtue of principal and agent relationship.

Mr. Mwakalinga argued further that the preliminary objection raised by the first defendant does not fit in the principle enunciated in landmark case of **Mukisa Biscuit Manufacturing Company Ltd vs West End Distributors Ltd** (1969) EA 696 Furthermore, the Principal Officer submitted that in **Stanbic Finance Tanzania Ltd vs Giuseppe Trupia and Chiara Malvasi** (2002) TLR it was insisted that in determining if a plaintiff discloses the cause of action against the defendant, it must be considered within its four corners including the annexures.

Submitting further, Mr. Mwakalinga submitted that the law provides that the plaintiff should contain facts which disclose the cause of action. However, he contended that the law does not provide any standard format on how those facts should be stated rather what is needed is just facts consisting of cause of action. To this end, the Principal Officer contended that the plaintiff had disclosed the cause of action against the second defendant through paragraph 2, 3 and 48 and the content of annexures of the plaintiff.

To cement his argument, he referred to Order I **Rules 3 and 7 of the Civil Procedure Code** (Supra). Mr. Mwakalinga maintained that in this suit there are a series of transactions which connect the second defendant as evidenced by the plaintiff and that the court would be invited to

ascertain them during trial. Mr. Mwakalinga prayed that the preliminary objection raised by the first be dismissed with costs for being unmerited.

I have dispassionately considered the written submissions by both parties plus the Plaint in contest. The issue for my determination is whether or not the disputed Plaint discloses a cause of action.

Before I embark on the determination of the framed issue herein above, I am inclined to state outrightly that the Principal Officer's claim that the first defendant raised the preliminary objection on behalf of the second defendant without seeking leave of this court is untenable. In fact, the learned counsel for the first defendant has neither stated in his notice of the preliminary objection nor his submission in support of the preliminary objection that he is acting on behalf of the second defendant.

At this juncture, I think parties should be aware that a preliminary objection may be raised by any party. I think this issue should not detain this court hence it is dismissed.

Back to the framed issue that whether or not the disputed Plaint discloses a cause of action. I am aware that the learned counsel for the first defendant has cited a litany of authorities providing a definition of a "*cause of action*". However, I choose to be guided by the decision of the Court of Appeal of Tanzania in **Antony Leonard Msanze & Another vs Juliana Elias Msanze**, Civil Appeal No.76 of 2021. In that case the Court held:-

"We laid down relevant legal principles on cause of action in JOHN M. BYOMBALIRWA v AGENCY

*MARITIME INTERNATIONALE (supra). Through this decision, we first pointed out that although the expression "cause of action" has not been defined under the Civil Procedure Code, but that expression simply means essential facts which a plaintiff in a suit has to plead and later prove by evidence if he wants to succeed in the suit. Secondly, we laid down that for purposes of deciding whether or not a plaint discloses a cause of action; courts should **NOT** go far into written statements of defence or into replies to the written statements of defence. But they should discover a cause of action by looking only at the Plaint. Thirdly, we also said that where the Plaint does not disclose a cause of action, the remedy is **NOT** for the court to dismiss the Plaint, but to reject it."*

Premised on the above, I have had a keen look at the paragraphs referred to by both parties to find out if they disclose the cause of action. These are paragraph 2, 3, 4 and 48 of the Plaint. Reading the paragraphs between the lines in conjunction with the submissions of the parties, I am fortified that there is a clear cause of action disclosed vide the paragraphs referred to by the Principal Officer.

My analysis has revealed that the first defendant is a Constituent College of Saint Augustine University of Tanzania-SAUT. This is proved by annexure STE A3(B),STE A6,STE A8,STE A10(A),STE A10(B),STE A12 and STE A13(H).The annexures named herein above are letters written by the first defendant to the plaintiff serving different purposes including cost for security service with STEMMUCO (the first defendant). Furthermore, the annexed letters as herein above seen were written by the first defendant to the plaintiff on different occasions such as 2016, 2018, 2021 and 2022 when this suit was lodged in this court.

Before I windup, I must emphasize that the concept of “**constituent colleges**” is not new in this country. Universities worldwide collaborate for a number of purposes not directly relevant here. Some universities oversee their “semiautonomous” counterparts. Holding that the first and second defendants are not enjoined by the cause of action disclosed would be hiding, unjustly, in the dark cloud of technicalities. That is not the spirit that this court seeks to promote in its quest to fulfil its constitutional mandate.

All said and done, I find and hold that the plaint is not defective since it has disclosed a cause of action against all defendants. Consequently, the parties are argued to expedite the matter so that the suit is determined on merits. I make no order as to costs.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

JUDGE

30.5.2023

COURT:

This Ruling is delivered under my hand and the seal of this Court on this 30th day of May 2023 in the presence of **Mr. Issa Chiputula, learned advocate** for the first Defendant, **Mr. Juma Selemani Numbi**, Assistant Manager of the Plaintiff and in absence of the second defendant.



E.I. LALTAIKA

A handwritten signature in blue ink, identical to the one above, appearing to read "E.I. Laltaika".

JUDGE

30.5.2023