

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

CIVIL CASE No.17 OF 2023

SELEMANI SANAI KASUKU t/a KISIMWA

GENERAL SUPPLIES.....PLAINTIFF

VERSUS

ATTORNEY GENERAL.....1ST DEFENDANT

MUHIMBILI NATIONAL HOSPITAL

MLOGANZILA.....2ND DEFENDANT

RULING

17/05/2023 & 31/05/2023

POMO, J

The plaintiff, **SELEMANI SANAI KASUKU t/a KISIMWA GENERAL SUPPLIES**, on 1st February, 2023 did file the present suit against the Defendants claiming for payment of principal amount of Tshs 77,500,000/-; Tshs 20,000,000/- general damage; interest at the court's rate of 12% on the decretal amount from the date of judgment to the date of payment in full; interest at the rate of 20% from the date of delivery of goods to the date of final payment; costs of the suit and lastly any other orders or reliefs as this court may deem fit and just to grant

109.

From the facts obtaining in the plaint, the above claimed amount and damages arose out of the value of goods allegedly supplied by the plaintiff to the 2nd defendant base on the Local Purchase Order issued to him on 18/07/2018

The suit has strenuously encountered an objection on point of law (the P/O) the notice of which being embodied into the defendants' joint written statement of defence filed on 29th March,2023. The P/O read as follows: -

- 1. The suit is unmaintainable and bad in law for suing a non-existent legal person*

On 17th April, 2023 Mr. Richard Ernest, learned advocate appeared holding brief of Elphace Rweshabora, advocate for the plaintiff while Erigh Rumisha and Rose Kashamba, learned state attorneys appeared for the Defendants. I ordered hearing of the raised P/O be disposed by way of written submission, the order which is only complied with by the defendants. Under the circumstances I regard the plaintiff as having nothing in reply.

Arguing the P/O, Ms. Joyce senkondo Yonazi, learned State Attorney, submitted that the 2nd defendant, MUHIMBILI NATIONAL HOSPITAL-MLOGANZILA, is a non-existing entity. It has not been registered anywhere

and under any law. That, it was only a campus of Muhimbili University of Health and Allied Sciences (MUHAS) whose all movements, arrangements, transactions and logistics concerning the 2nd Defendant were done under the umbrella of MUHAS of which itself is a legal entity established under the laws of Tanzania.

It was her further submission that, from 3rd October, 2018 the 2nd Defendant changed from being under supervision of MUHAS to that of Muhimbili National Hospital and from then it was re-branded to **Muhimbili National Hospital-Mloganzila**. It is her further contention that despite these administrative changes, the Muhimbili University of Health and Allied Sciences (MUHAS) has remained to be the Executing Agency of the 2nd Defendant's project to date.

Basing on the above, Ms. Joyce argued that since the 2nd defendant is not a legal entity capable of suing and or being sued then it is a non-existing entity or legal person because there is no autonomous legal entity known as Muhimbili National Hospital-Mloganzila with a statutory characteristic of a legal person including that of suing and being sued in its own name. To bolster the argument, she has cited to this court Order 1 Rule 10 of the Civil Procedure Code, [Cap. 33 R.E.2019] (the **CPC**) and the case of Respicius

Mwuage vs The Municipal Director, Ilala Municipal Council & 2 Others, Land Case No.27 of 2021 High Court (Land Division) at Dar es Salaam (unreported) advancing the argument that the situation of suing a non-existing entity is not curable under Order I rule 10 of the CPC and such stance was taken by this court in the Respicius Mwuage case (supra) by striking out the suit. In the end, she made a prayer the suit be struck out with costs.

As stated earlier, the plaintiff did not file reply submission therefore I will determine the raised P/O based on the defendants' submission only.

Having heard the submission in support of the raised objection against the plaintiff's suit and the plaint itself, the issue for determination is whether or not the defendants' objection is merited.

It is the settled law that parties are bound by their pleadings. This is the stance which has been expounded by the court in this country time without number in decisions. See **Yara Tanzania Limited Vs Ikuwo General Enterprises Limited**, Civil Appeal No.309 of 2019 CAT at Dar es Salaam; **Barclays Bank (T) Ltd Vs Jacob Muro**, Civil Application No.357 of 2019 CAT; **Salim Said Mtomekela Vs Mohamed Abdallah**

Mohamed, Civil Appeal No.149 of 2019 CAT at Dar es Salaam; (All unreported); to mention but a few.

For instance, in **Salim Said Mtomekela** case (**supra**) the court of appeal stated thus: -

*"That said, since the pleadings is a basis upon which the claim is found, **it is settled law that, parties are bound by their own pleadings** and that any evidence produced by any of the party which is not supportive or is at variance with what is stated in the pleadings must be ignored".*

Now, going by the plaintiff's pleading, the plaint for that matter, under paragraph 5 he has pleaded as follows:

*"5. That, on 18th /07/2018 **the plaintiff supplied the goods in compliance of Local Purchase Order (L.P.O)** issued by MUHAS-Muloganzila.*

***Copy of the L.P.O is hereby attached and marked K2** and the Plaintiff shall crave for leave of this honourable court **to refer to it as part of this plaint**".*

Reading the said Local Purchase Order (the LPO) annexed, the title of which provides as follows: -

"

PO No.12879

MUHIMBILI UNIVERSITY OF HEALTH AND ALLIED SCIENCES
LOCAL PURCHASE ORDER"

From: Muhimbili University of Health and Allied Sciences

Date:28 august 2018

P.O. Box 65001

United Nation Road

Dar es Salaam".

From the above, it is obvious that the contract, the LPO, out which the dispute herein has arisen is that of **Muhimbili University of Health and Allied Sciences** and not **Muhimbili National Hospital – Mloganzila** the 2nd defendant herein.

Basing on such apparent facts of the case, I am made to believe, as correctly submitted in my view, by Ms. Joyce, that **Muhimbili National Hospital – Mloganzila** the 2nd defendant herein is a non-existing entity. This is because what is sued by the plaintiff goes contrary to what he entered into contract, **Muhimbili University of Health and Allied Sciences**, as evidenced by the LPO issued by the said **Muhimbili University of Health and Allied Sciences**. The 2nd defendant is thus a non-existing legal entity

The law is settled in that no suit can be maintained against a non-existing legal person. [See **Abella Bertha Vidtfeldt Vs The Registered Trustees of Congregation of the Holy Ghost Epiphany and Another**,

Land Case No.45 of 2013 High Court at Dar es Salaam; **Respicius Emilian Mwijage vs The Municipal Director, Ilala Municipal Council & 2 Others**, Land Case No.27 of 2021 High Court (Land Division) at Dar es Salaam, (Both unreported)].

In **Abella Bertha** case (supra) this court at page 4 had this to state:-

"...if the defendant is in law a non-existing entity and a wrong party to be sued as a defendant, it would be of no use in law to proceed with the hearing of the suit against it. Proceeding with the hearing of the suit against a non-existing entity is like proceeding with the hearing of the suit against a dead person."

This court went on to state at page 6 thus: -

*"The question now arise as to whether or not the plaintiff's suit which has been filed against a wrong defendant and against a defendant who in law does not exist is maintainable for the purposes of determining the issues involved in it. The answer to this question is simple. **The plaintiff's suit is not maintainable for having been instituted against the wrong defendant and against the defendant who in law does not exist. Therefore, I strike it out with costs.**"*

Such a stance in **Abella Bertha** case (**supra**) of striking out the plaintiff's suit based on suing a non-existing entity was similarly taken in **Respicius Emilian Mwijage** case (**supra**). Now, in my considered view, as long as the scenario at hand is similar, I do not find any point of departure from following the stance taken in the above authorities

In the upshot, I hereby declare the suit herein to be incompetent before the court and struck it out with costs. It is so ordered

Right of Appeal explained

Dated at Dar es Salaam this 31st day of May, 2023



MUSA K. POMO

JUDGE

31/05/2023

Ruling delivered in chamber on 31st May, 2023 in presence of Ms. Joyce Senkondo Yonazi, learned State Attorney for the defendants and in absence of the Plaintiff and his Advocate



MUSA K. POMO

JUDGE

31/05/2023

