

**IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)**

AT MOROGORO

LAND CASE NO. 08 OF 2022

BETWEEN

MADUKI SOZI COMPANY LIMITED.....PLAINTIFF

VERSUS

THE NATIONAL MICROFINANCE BANK PLCDEFENDANT

RULING

1st & 12th June, 2023

M. J. CHABA, J.

This ruling stems from the order of this Court issued on the 3rd day of May, 2023 when the matter was called on for the final pre- trial conference. On that particular date, the plaintiff prayed for the Court's permission to amend his plaint that was filed in this Court on 10th day of June, 2022. According to the Court record, the plaintiff through the services of Ms. Neema Ndayanse, the learned advocate who entered appearance for the plaintiff and holding brief for Mr. Mussa Kiobya, also learned advocate, prayed to amend the names of the plaintiff, i.e., Maduki Sozi Company Limited.

Mr. Jackson Liwewa, learned advocate for the defendant, did not object, hence I proceeded to grant the prayer sought and accordingly allowed the plaintiff to effect the necessary changes in the plaint.



On the 8th day of May, 2023, the plaintiff herein filed the amended plaint pursuant to the Order of this Court dated 3rd day of May, 2023. However, when the plaintiff was duly served with the amended plaint, the defendant through Mr. Jackson Liwewa, learned advocate, on 11th day of May, 2023 filed the Amended Written Statement of Defence (the WSD), coupled with a notice of preliminary objection to the effect that: The Amended Plaint is incurably defective for violating a mandatory provision of Order VI, Rule 17 of the Civil Procedure Code, [CAP. 33 R. E, 2019].

The raised preliminary objection was canvassed by way of written submissions. Both sides were under legal representation. Mr. Mussa Kiobya, learned advocate entered appearance for the plaintiff, whereas the defendant enlisted the legal services of Mr. Jackson Liwewa, also learned advocate.

Submitting in support of the preliminary point of objection, Mr. Liwewa argued that, the plaintiff filed the amended plaint which went beyond the scope of what was granted by the Court as the plaintiff introduced a new cause of action which was not reflected on the previous plaint in which according to him, the plaintiff was claiming a total of TZS. 900,200,000/= but the amended plaint shows that the plaintiff is claiming for impounding maize grain and specific damages amounting to TZS. 286,400,900/=.

Relying upon the authority in the cases of **Amini v. Patel 1968, HC Digest No. 256** and **Jovent Clavery Rushaka & Another v. Bibiana Chacha (Civil Appeal No. 236 of 2020)**, the counsel accentuated that, the

plaintiff was duty bound to comply with the Order of the Court and not moving beyond the extent permitted / allowed by the Court. He added that, the consequence thereof is to strike out all the paragraphs introduced in the new plaint which will result into the collapse of the entire suit as there will be neither the cause of action nor reliefs sought.

Based on the above reasoning, Mr. Liwewa prayed for the whole suit to be struck out for non adherence to the orders of the Court.

Responding to the defendant counsel's submission, Mr. Kiobya, learned advocate for the plaintiff vehemently disagreed to the claims that, they went against the provision of Order VI, Rule 17 of the CPC (supra). He highlighted that, the plaint has been amended in accordance the prayers sought by the plaintiff. According to him, the bags added under paragraph 3, item (iii) of the amended plaint have been quantified to exhibit the values thereof. He added that, even item (ii) of paragraph 3 has not added a new thing, only that the difference is the language used.

He argued further that, the plaint has not been amended to read as a new fact but it has been amended to the extent of clarifying the controversial issues as it was expounded in the case of **Dr. Fortunatus Mosha v. William Shija & Attorney General**, Misc. Civil Cause No. 15 of 1995 HCT at Mwanza (unreported). He therefore, submitted that looking at all paragraphs of the new plaint, the same clarifies the real questions in controversy as the cause of action and prayers are the same **save for additional things in paragraph 3, item**




(iii). He submitted further that, the preliminary objection is misconceived and insisted that, the amendment effected on the plaint did not go beyond the Court Orders. He averred that, the cases of **Patel** (supra) and **Jovent Clavery Rushaka** (supra) referred by the learned counsel for the respondent, both are distinguishable in the circumstances of this case.

Based on the above submission, Mr. Kiobya prayed the Court to be pleased to dismiss the preliminary objection on a point of law raised by the respondent for lacking merit and the costs shall follow the event.

In a brief rejoinder, the learned counsel for the defendant, stressed that, it is settled principle of law that, the Courts grants what is pleaded for. According to him, the plaintiff's prayer to amend the plaint were not general but so specific on the names and number of bags of maize and rice, hence in his view, the issue of clarification is totally a misconception.

He accentuated further that, the contention that the subject matter in the plaint is similar, is not true as in the previous plaint, the plaintiff indicated that he was claiming a total of TZS 900,200,000/= but the amended plaint shows that the plaintiff claims TZS. 286, 400,000/=. He added further that, previous plaint had no claims against the so-called impounding the maize grains. According to him, these are two subjects' matter which renders the amended plaint incompetent.



In the end, Mr. Liwewa insisted that, all cases he cited in his earlier submission in chief are relevant and prayed for the preliminary objection on a point of law be upheld with costs.

I have taken into consideration the rival arguments made by the learned advocates and the amended plaint in line with the prayers advanced by the learned advocate for the plaintiff, Neema Ndayanse who held brief for Mr. Mussa Kiobya, the learned advocate for the plaintiff. In my opinion, the appropriate issue for consideration, determination and decision thereon in this matter is, whether the preliminary objection on a point of law is meritorious.

Before embarking on the determination of the merits of the point of preliminary objection, I think, it imperative to elaborate on the law governing the issue of alteration or amendment of pleadings. The relevant law under which alteration or amendment of pleadings can be made, is Order VI, Rule 17 of the CPC which provides that: -

"The court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments **shall** be made as may be necessary for the purpose of determining the real questions in controversy between the parties." [Emphasis added].

The above provision of the law has been interpreted by the Apex Court of the Land in numerous precedents including the case of **Salum Abdallah Chande t/a Rahma Tailors v. The Loans and Advances Realization Trust**

(LART) and Two Others, Civil Appeal No. 49 of 1997 (unreported), where the Court observed that: -

"We think it is clear that once pleadings have been filed, they can only be altered or amended with the leave of the court. **The court will set the parameters within which the alteration or the amendments will be made**, hence the manner and terms which ensure justice to the parties." [Bold is mine].

Similarly in the case of **Mhamal & Co. (T) Limited v. ADIL BANCORP Limited & Others**, Civil Case No. 102 of 1999 (unreported), the Court had this to say: -

"When Courts gives limited rights of amendment, **the said amendment should always be limited to the authority given by the Court. The amendment should not be allowed to introduce new things**...this leads me to conclusion that, the amendment in the plaint had exceeded the authority given by the Court and such amendment must relate only to the motor vehicle TZJ 3698 as per the order of the Court made on 13th August 1999". [Emphasis added].

In the matter at hand, the plaintiff prayed to amend the plaint and the prayer was specific, meaning that, it was to reflect the changes of the names of the plaintiff from **MADUKI SOZI COMPANY LIMITED** to **MADUKI SOZI AND COMPANY LIMITED**. However, looking at the face of the amended plaint, I

tend do agree with the learned counsel for the defendant that, the alteration or amendment to the plaint went astray, and far beyond what was prayed for before this Court and recorded without obtaining permission or leave of this Court. For ease of reference, the following is an excerpt of the Court proceedings I recorded on 3rd day of May, 2023 and the respective Order I issued on that particular date; I quote:

“Advocate Ndayanse:

My Lord, I am holding brief for Advocate Mussa Kiobya, before proceeding with the Final PTC, pray for leave to amend the plaint, in particular the names of the plaintiff. That’s all.

Advocate Liwewa:

I have no objection my Lord.

Order:

- 1. The plaintiff to amend the plaint and file the amended plaint on/before 8/5/2023.*
- 2. The defendant to file the amended WSD on/before 12/5/2023.*
- 3. Rejoinder (if any) be filed on 16/5/2023.*
- 4. Final PTC on 16/5/2023”.*

As shown above, the prayer by the plaintiff was very specific and the Order of the Court was in respect of a specific prayer by the plaintiff’s counsel but the changes in the amended plaint have involved new paragraphs and re-arrangements without, as alluded to above, first seeking leave of the Court.




Having found out that, the plaintiff exceeded the limits permitted and went away from the correct path or direction, that is beyond the respective Order of the Court by amending the substance of the plaint without leave of the Court; the question now is, what are the appropriate legal action to be taken by the Court in respect of the fate of the matter at hand?

While looking for the appropriate legal action to pass through in determining this issue, I met with the decision of this Court made by my sister on the bench Hon. Msafiri, J., which inspired me to follow suit. In the case of **Isdory Joseph Mwepongwe & 5 Others v. Ahamed Mohamed Soud** (Administrator of the deceased estate of Omari Salum Soud) **& 6 Others**, Land Case No. 167 of 2021, High Court of Tanzania, Land Division (unreported), Hon. Msafiri, J., was confronted with alike situation upon noticing that, a party had amended the pleadings beyond the limits ordered by the Court and without obtaining leave of the Court. In the course of determining the matter, the Court had the following to state at page 9 of the typed judgment: -

"The order of the Court of 07/12/2021 was specifically on the amendment of the plaint to add the Commissioner for Land as a defendant in this suit and nothing else. Later there was an order to amend the plaint when the then 3rd plaintiff one Peter Peter Junior prayed to withdraw from the suit.....In the circumstances, I am forced to agree with the objection raised by the 2nd, 3rd, 4th and 5th defendants that, the plaintiffs have failed to comply

with the Court's order dated 07/12/2021 and went beyond that order and make amendments on the plaintiffs, by removing some and adding new ones without notifying the Court and seeking leave to do that....Going contrary to the Court's order is tantamount to Court contempt and cannot be tolerated. Basing on the above findings, I sustain the second limb of preliminary objection and I struck out this suit with costs" End of quote.

For the above reasons, and to the extent of my finding, I entirely agree with Mr. Jackson Liwewa, the learned counsel for the defendant that the plaintiff has failed to comply with the Court's Order dated 3rd day of May, 2023. Instead of amending the names of the plaintiff as prayed from Maduki Sozi Company Limited to Maduki Sozi and Company Limited, the plaintiff went astray and beyond the Orders issued, after he had removed some words and added other words to, wit; the original plaint indicated that the plaintiff was claiming a total of TZS. 900,200,000/= but the amended plaint shows that the plaintiff's claims is TZS. 286, 400,000/= plus impounding the maize grains.

In my considered view, failure to notify this Court concerning the extra amendments done by the plaintiff and without seeking or obtaining leave to do that, was against the Court's Order, and if I will add, such an act seriously is equivalent to contempt of Court. In this regard, the preliminary objection on a point of law raised by the defendant is meritorious. 

Accordingly, I find the amended plaint went astray and beyond the Order of this Court as described above, hence incurably defective. I thus proceed to struck out the entire plaint with costs. **It is so ordered.**



M. J. CHABA

JUDGE

12/06/2023

Court:

Ruling to be delivered by the Honourable Deputy Registrar.



M. J. CHABA

JUDGE

12/06/2023

