

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 113 OF 2022**

**AHMED AUSI SAIDI ..... PLAINTIFF**

***VERSUS***

**DAR ES SALAAM WATER & SEWARAGE**

**AUTHORITY (DAWASA)..... 1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

14<sup>th</sup> November, 2022 & 20<sup>th</sup> January, 2023

**KISANYA, J.:**

On the **13<sup>th</sup> day of July, 2022**, the plaintiff, **Ahmed Ausi Saidi**, sued the defendants, **Dar es Salaam Water & Sewerage Authority (DAWASA)** and **The Attorney General**. Pursuant to the plaint, the plaintiff is praying, among others, for the following reliefs, declaration that the five tanks belong to him; an order against the 1<sup>st</sup> defendant for immediate return or restoration of the five water tanks; declaration to condemn the 1<sup>st</sup> defendant's act of incarcerating and confining the plaintiff, refund of TZS 7,104,834.90 which was paid under coercion and threats from the 1<sup>st</sup> defendant; general damages; payment of damages for inconvenience through loss of use and ownership; and costs of the suit.

Upon being served with the plaint, the defendant filed a joint Written Statement of Defence disputing the plaintiff's claim. In addition, the defendant filed a notice of preliminary objection on points of law stating that:

- 1. This Honourable Court has no jurisdiction to hear and determine this matter.*
- 2. This suit is instituted against the 1<sup>st</sup> Defendant who is non-existing party in law.*

Basing on the said points of preliminary objection, the defendant prayed to the Court, to dismiss the suit with costs.

With order of the Court, the preliminary objection was disposed of by way of written submissions. It is on record that both parties filed their respective written submission in accordance with the Court's schedule.

Having examined the pleadings and considered the rival submissions, I will go straight to determine whether the points of preliminary objection are meritorious or otherwise. In so doing I will take into account the arguments fronted by the learned counsel for both parties.

I prefer to start with the second limb of objection that the suit is instituted against the 1<sup>st</sup> defendant who is a non-existing party. Mr. Stanley Kalokola, learned State Attorney for the defendants submitted that the 1<sup>st</sup> defendant, **Dar es Salaam and Sewerage Authority (DAWASA)** is a

defunct body. His submission was based on the ground that, **Dar es Salaam Water and Sewerage Authority** was established under the Dar es Salaam Water and Sewerage Authority Act, 2001, Act No. 20 of 2001 (**the DAWASA Act**) which was repealed by section 80(1) of the Water Supply and Sanitation Act, No. 5 of 2019 (**the WSSA**). He submitted further that, in the exercise of his power under section 9(1)(a) of **the WSSA**, through the **Water Supply and Sanitation (The Water Supply and Sanitation Authority) (Establishment and Disestablishment of Authority) Notice, 2019, GN No. 660 of 2019** published on **6<sup>th</sup> September, 2019** (henceforth "the Notice"), the minister responsible for water established a new body namely, **Dar es Salaam Water Supply and Sanitation Authority**.

In view thereof, the learned State Attorney argued that the plaintiff had filed a suit against a defunct and/or repealed body. It was his further argument that rights and liabilities cannot accrue against a non-existing body. To expound his argument, Mr. Kalokola cited the cases of **Mvano Mandawa vs DAWASCO**, Revision No. 564 of 2018, HCT Labour Division (unreported), **Fort Hall Bakery Supply Company vs Fredrick Wangoe** (1959) E.A. 474, **Banque International De Commerce De Petrograd vs Goukassow** [1992] 2 K.B. 682 and **Change Tanzania Limited vs Registrar, Business Registration and Licencing Agency,**

Miscellaneous Commercial Case No. 27 of 2019, HCT Commercial Division at DSM (unreported).

In response, Ms. Rosalia T.D. Makalle, learned advocate for the plaintiff submitted that this is the most proper moment to apply the maxim “he comes to equity must come with clean hand”. The learned counsel conceded that **Dar es Salaam Water Supply and Sewerage Authority** was de-established in 2019. However, she argued that the 1<sup>st</sup> defendant had been using two different names interchangeably under acronym of **DAWASA** in her official documents and stamp. Ms. Makalle further submitted that the 1<sup>st</sup> defendant did not refuse, deny or decline to exchange or receive official communication with the Plaintiff by most of time using the documents, signature and stamp of the defunct **Dar es Salaam Water Supply and Sewerage Authority**. She therefore contended that, the continued use of the said documentation and official tools confirms that the 1<sup>st</sup> defendant is recognized in the status or existence referred to by the plaintiff. The learned counsel was of the firm view that the 1<sup>st</sup> defendant cannot deny her existence and cannot avoid liability which is squarely upon her.

In addition, Ms Makalle submitted that, the parties should invoke the principle of overriding objective under section 3A (1) of the Civil Procedure

Code, Cap. 33, R.E. 2019 (the CPC) by cancelling the name of **Dar es Salaam Water Supply and Sewerage Authority** and replacing it with **Dar es Salaam Water Supply and Sanitation Authority** in order to save time and other resources to allow the suit to proceed with the hearing of the matter inter-parties.

In view of the above submission, it is common ground that the second limb of objection is based on the contention that the 1<sup>st</sup> defendant is a defunct person. It is settled law that a suit cannot be filed by or against a non-existing person or entity. As far as an entity established by the law is concerned, it ceases to exist upon being destabilised by operation of law. In the result, a suit brought against a defunct entity or non-existing person is incompetent. The plaintiff is therefore expected to ensure that the suit is brought against an existing entity. This stance was stated in the case of **Mvano Mwanda** (supra) referred to me by Mr. Kalokola, in which this Court (Ngwembe, J.) held as follows:

*"Legally it means, from the date of publication of GN No.414 that, is on 10/08/2018 to date, DAWASCO ceased to exist. Thus, by the time when the applicant instituted this application in this Court on 21<sup>st</sup> September, 2018 against DAWASCO, de jure and de facto, DAWASCO was already defunct by operation of law..."*

Basing on that holding, the Court went on to strike out the application for revision for being incompetent.

In another case of **Change Tanzania Limited** (supra), a suit was instituted by a company which had been deregistered from the register by operation of law. This Court cited with approval the case of **Singida Sisal Production** where it was held that:

*"non-juristic person has no legs to stand, no hands to prosecute, no eyes to see and no mouth to speak either on her own or on behalf of any other person before any court of law."*

Although the above case referred to the suit filed by a non-existing entity, I am of the view that it applies to suit filed against non-existing entity. This gives rise to the issue whether the 1<sup>st</sup> defendant, **Dar es Salaam Water and Sewerage Authority (DAWASA)** was in existence when the plaintiff instituted the present suit on **13<sup>th</sup> July, 2022**.

In the reply to the written statement of defence and written submission, the plaintiff does not dispute that **Dar es Salaam Water and Sewerage Authority** was established under the **DAWASA Act**. His counsel further concedes that the **DAWASA Act** was repealed by section 80(1) of **the WSSA**. I also agree with the plaintiff's counsel that, notwithstanding the said repeal, section 80(3) of **the WSSA** empowered

**The Dar es Salaam Water and Sewerage Authority** to continue exercising its powers and functions until the establishment of a new water authority to take over the functions and duties performed by the 1<sup>st</sup> defendant.

Now, as rightly submitted by Mr. Kalokola and conceded by Ms. Makalle, a new body namely, **Dar es Salaam Water Supply and Sanitation Authority** was established on **6<sup>th</sup> September, 2019**. It was established through **the Notice, GN No. 660 of 2019** published on 6<sup>th</sup> September, 2019. **The Notice** went on disestablishing the **Dar es Salaam and Sewerage Authority**. That being the position, it is apparent that the 1<sup>st</sup> defendant ceased to exist from **6<sup>th</sup> September, 2019**.

Considering that this suit was instituted on **13<sup>th</sup> July, 2022**, I am of the view that the plaintiff has sued a non-existing party. He was duty bound to understand the status and existence of the 1<sup>st</sup> defendant before lodging this case. In consequence, the suit is incompetent for being brought against a defunct entity. It is my humble opinion that such defect cannot be salvaged by the fact that the 1<sup>st</sup> defendant used both names inter-changeably under the acronym of **DAWASA**.

Another issue of consideration is the plaintiff's argument that parties should invoke the principle of overriding objective. I am alive to the

provisions of section 3A (1) of the CPC which require the courts to uphold substantive justice. However, it is the settled position of law in this jurisdiction that the principle of overriding objective should not apply blindly. See for instance, the case of **Mondorosi Village and Others vs Tanzania Breweries and Others**, Civil Appeal No. of 2018 (unreported)] in which that position was underscored. I have resolved herein that the suit is incompetent for being brought against the non-existing entity. Pursuant to the settled law, an incompetent matter cannot be withdrawn, amended or withdrawn as held in the case of **Ghati Methusela vs Matiko w/o Marwa Mariba**, CAT, Civil Application No. 6 of 2006, CAT (unreported). Being guided by that position of law, I am of the considered view this Court cannot invoke the principle of overriding objective by ordering the parties to amend the pleadings as argued by the plaintiff's counsel.

For the foregoing reasons, the second point of preliminary of objection is found meritorious and thus, upheld.

Reverting to first point of preliminary objection, Mr. Kalokola argued that the Court lacks jurisdiction to entertain the matter. His argument in support of this objection is to the effect that the 1<sup>st</sup> defendant is a regulated suppliers of water and sanitation services and thus, her activities performed in accordance with the **Energy and Water Utilities**



**Regulatory Authority**, Cap. 414 R.E. 2019 (**the EWURA Act**). Making reference to section 34 of the **EWURA Act**, it is argued that the dispute ought to have been referred to **the Energy and Water Utilities Regulatory Authority**. Relying on the provision of section 13 of **the CPC** and the cases of **Ujenzi Solving Co. Ltd and Martin Kessy vs Dar es Salaam Water and Sewerage Corporation and Dar es Salaam Water and Sewerage Authority**, Civil Case No. 70 of 2015 and **Commissioner General of Tanzania Revenue Authority and the Attorney General of the United Republic of Tanzania vs Milambo**, Civil Appeal No. 62 of 2022 (unreported), the appellant is of the considered view that this Court has no mandate to determine to entertain a matter which is required to be determined by a specialized tribunal.

On the other hand, Ms. Makalle, was of the view that the Court has jurisdiction to determine the matter. For the reason to be detected later in this ruling, I find no need of reproducing her arguments against the first limb of objection.

Notably, the submissions by the learned counsel for both parties suggest that first for consideration in determining this preliminary objection is the issue, whether the 1<sup>st</sup> defendant is a regulated supplier of water and sanitation services whose activities are performed in accordance with the

EWURA Act. Having decided in this ruling that the 1<sup>st</sup> defendant is a defunct entity, I am of the humble view that its activities cannot be managed by EWURA. Therefore, I find it not appropriate to determine the first limb of objection on merit.

In the event, the plaintiff's suit is hereby struck out for being incompetent basing on the second point of objection. The plaintiff is ordered to pay costs.

DATED at DAR ES SALAAM this 20<sup>th</sup> day of January, 2023.



S.E. KISANYA  
**JUDGE**