

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 216 OF 2022

SUPREME SERVICES LIMITED PLAINTIFF

VERSUS

ELECTROGAS & LABS LIMITED 1ST DEFENDANT

HAYDOM LUTHERAN HOSPITAL 2ND DEFENDANT

JOHN BENEDICT MAMKU 3RD DEFENDANT

EVANS MUGYABUSO 4TH DEFENDANT

RULING

20th March & 19th June, 2023.

BWEGOGGE, J.

The plaintiff herein instituted a suit in this court claiming for both specific and general damages, among others, against the defendants for breach of contract. In tandem with filing defences, the 2nd and 3rd defendants raised preliminary objections on points of law as follows:

- 1. The plaintiff has no locus standi to sue the 2nd and 3rd defendants.*
- 2. The plaint doesn't disclose the cause of action.*
- 3. The plaint is fatally defective for failure to disclose the amount claimed for asserting pecuniary jurisdiction of this court.*

During the hearing of the preliminary objections, Mr John B. Tendwa, learned advocate, represented the plaintiff, and Messrs Daniel Samwel and Frank Kilian, learned advocates, represented the 2nd and 3rd defendants.

Mr. Daniel Samuel, in a bid to substantiate the 1st limb of the objection, argued that paragraph 23 of the plaint reveals that the said haulage container is the property of Safmarine Shipping Line, not the plaintiff herein. And, the 2nd defendant has no contractual obligation with the plaintiff to justify the charge of breach made herein. Thus, the one with the *locus standi* to sue for the alleged loss of suit property is not the plaintiff, as rightly averred in paragraph 27 of the plaint. The counsel cited the case of **Lujuna Shubi Balonzi Senior vs Registered Trustees of Chama cha Mapinduzi** (1996) TLR 208 and **Peter Mparanzi vs. Christine Mbaruke**, Civil Appeal No. 152 of 2019, CA (unreported) to buttress his point. The counsel prayed the suit commenced against the 2nd defendant be dismissed with costs.

In substantiating the 2nd objection, the counsel submitted that upon scrutiny, they have found that the plaintiff has failed to disclose the cause of action against the 2nd defendant. The counsel reiterated that, based on the facts averred in the plaint, there is neither contract entered between the plaintiff and the 2nd defendant herein nor evidence attached to the pleading filed herein to infer contractual obligation between the same. Therefore, the counsel opined, the alleged breach of contract between the parties herein cannot be ascertained.

In tandem with the above, the counsel charged that the plaintiff was obliged to indicate in her pleading the cause of action against the 2nd defendant in compliance with the provision of Order VII, rule 1(e) of the CPC which imposes an obligation to the plaintiff to disclose the cause of action in the plaint. The counsel cited the case of **John Mwombeki Byombalilwa vs Agency Maritime International Ltd** [1983] TLR1 to validate his argument. On the above premises, the counsel prayed that the case instituted against the 2nd defendant be dismissed with costs.

Likewise, Mr. Frank Kilian, counsel for the 3rd defendant, in arguing the 1st preliminary objection submitted that the plaintiff admitted under paragraph 10 of the plaint that the 3rd defendant was acting under the power of attorney of the plaintiff. That the plaintiff made it clear, in the respective power of attorney, that she shall ratify and, or be bound by acts done by his attorney and that what shall be done by her attorney would be constructed to be acts done by the plaintiff herself. The counsel asserted that there is no averment in the plaint which discloses the fact that it was the duty of the 3rd defendant to return the suit haulage container to the shipping line.

In the same vein, the counsel contended that the plaintiff identified himself as a clearing and forwarding agent and admitted that the suit property belongs to Safmarine Shipping Line. That, to his knowledge, the duties of the clearing and forwarding agent are mainly processing documents and clearing goods on behalf of the importer. The counsel concluded that since the missing container is not the property of the

plaintiff and there is no instrument which empowers the plaintiff to claim damages on behalf of the shipping line involved, the plaintiff has no standing to sue. The counsel cited the case of **Lujuna Shubi Balonzi Senior vs Registered Trustees of Chama cha Mapinduzi** (supra) to bring his point home.

Regarding the 2nd limb of the objection, the counsel charged that the plaintiff violates the provision of Order VII, rule 1(f) of CPC for not containing facts disclosing the amount which is claimed by the plaintiff and establishing whether this court has jurisdiction or not. That the omission is fatal as this court can't assess whether it has jurisdiction to preside over the suit herein or not. On the accounts above, the counsel prayed this court to strike out the plaintiff with costs.

Submitting in reply in respect of the 1st and 2nd objections, Mr. John Tendwa, the counsel for the Plaintiff, contended that the presence of the cause of action in this suit can only be gauged by this court. That the pleading filed herein, along with annexures thereto, establish the cause

of action. He cited the case of **Jeraj Shariff & Co. vs Chotai Fancy Stores** [1960]1 EA 375 to bolster his point. The counsel opined that they have the cause of action against each defendant herein for their participation in the wrongful transactions of the suit property.

Further, pertaining to the plaintiff's standing to sue, the counsel contended that they complied with the provision of Order V, rule 3 and Order 1, rule 7 of the CPC. The counsel cited the cases of **Kisha & Co. Tanzania Ltd, vs THA & Another** (Civil Case 75 of 2004) [2005] TZHC 87; **Mary Tuyate vs Grace Mwambenja & Another** (Civil Appeal 42 of 2019) [2020] TZHC 3620; and **Albinus Joshwa Ponge vs Magoiga Sasi** (Land Appeal 32) [2021] TZHC 9062 to buttress his point.

In respect of the last preliminary objection raised by the counsel for the 3rd defendant in that the plaint herein offended Order VII, rule 1(f) of the CPC for failure to state jurisdiction of the Court, Mr Tendwa countered that the last paragraph of the plaint establishes jurisdiction of this Court.

On the above premises, the counsel for the plaintiff prayed the objections raised herein to be overruled with costs.

The issue for determination is whether the preliminary objections on point of law raised by the 2nd and 3rd defendants are merited.

In delving into the preliminary objections on points of law raised herein, I find it pertinent to commence with the 1st preliminary objection raised by the 2nd and 3rd defendants herein, pertaining to *locus standi*. The case of **Lujuna Shubi Balonzi Senior vs Registered Trustees of Chama cha Mapinduzi** (supra) cited by both counsel to bolster their arguments, appositely explained what exactly the term "*locus standi*" entails, as thus:

"In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has the power to determine the issue but also that he is entitled to bring the matter before the court."

Likewise, I am constrained to borrow a leaf from the case of **Mary Tuyate vs. Grace Mwambenja & Another** (supra) whereas my learned brother, Hon. Justice Mambi expounded;

"Briefly, locus standi has been explained as a matter of jurisdiction issue and it is the rule of equality that a person cannot maintain a suit or action unless he stands in a sufficient close relation to it In other words, locus standi is the right or capacity to bring an action or to appear in court."

The pertinent question arising herein is whether the plaintiff has the *locus standi* to sue the defendants herein. From the outset, I am on all fours with the counsel for the 2nd and 3rd defendants in that, as gleaned in the pleading filed by the plaintiff, the plaintiff is not the owner of the suit property (haulage container). The averment under the 23rd paragraph of the plaint has this to say:

"That the defendants know that the said container is the property of the shipping line for whatever reason, neither the plaintiff nor defendants can sale the said container without the approval of the shipping line."

It is common ground that the 1st defendant imported consignments (medical oxygen plant and filling station) under the bill of lading which was ordered by the 2nd defendant. The 1st defendant had contracted with Safmarine Shipping Line to ferry the cargo from Izmit Korfezi, Istanbul to Dar es Salaam Port. Upon arrival at the Dar es Salaam Port, the plaintiff, a clearing and forwarding agent, was engaged to clear the cargo. The

plaintiff charged that the 1st defendant had allowed the 2nd defendant to take possession of the haulage container in conspiracy with the 3rd defendant who was acting under her instruction. But there is no averment as to the right to claim the suit property. The bill of lading bears the following disclaimer:

*"The carrier shall not be liable for loss or damage to the cargo and **merchant shall indemnify the carrier against any injury, loss, damage, liability, or expense whatsoever incurred by the carrier**"*

I have gone through the averment in the plaint and annexures thereof, I have not come across any averment or evidence which confers the plaintiff the right to claim the haulage containers from the consignees. It was averred under paragraph 28 of the plaint that the shipper has demanded demurrage for the delay of the suit property. The evidence provided for this fact is the annexure MN14 to the plaint. I have scrutinized the said annexure. It is an invoice for a claim of unascertained currency to the tune of 32,605/-. It was issued by an entity namely, NYOTA TANZANIA LIMITED. No particulars were given which would enable one to relate to the contractual relationship between the plaintiff and the 1st defendant and, or between the shipper and the 1st defendant. In one of the annexure, it is indicated that the shipper has an office in Dar es

Salaam. I am of the considered opinion that, based on the pleading filed herein, there is no nexus between the plaintiff and shipper to entitle her to sue on her behalf.

In sum, I am bent to agree that the plaintiff has failed to show in her pleading an infringement of any right, injury or loss suffered on account of the 2nd defendant's possession of the suit property to be entitled to institute the impugned suit herein. This being the case, I am constrained to agree with the counsel for the 2nd and 3rd defendants in that the plaintiff lacks *locus standi* to sue in the matter at hand.

In passing, I am constrained to borrow a leaf from the persuasive case of **R vs Paddington, Valuation Officer, Ex- Parte Peachey Property Corporation Ltd** [1966] 1 QB 380 at pg 400 cited in **Mary Tuyate vs Grace Mwambenja & Another**(supra) in that:

"The court would not listen, of course, to a mere busybody who was interfering in things which didn't concern him. But it will listen to anyone whose interests are affected by what has been done"

Given the foregoing, I find the 1st limb of the preliminary objection meritorious and sustain the same. The suit herein is hereby found incompetent before this court for the plaintiff's want of *locus standi* to

sue. The suit herein is hereby struck out. Since the 1st, 2nd and 3rd defendants have responded to the summons for order in this case and made formidable defence thereto, the same are entitled to be awarded costs, as I hereby do.

So ordered.

DATED at DAR ES SALAAM this 19th day of June, 2023.



A handwritten signature in blue ink, appearing to read "Bwego", is written over the typed name.

O. F. BWEGOGI

JUDGE