

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CIVIL CASE NO. 7 OF 2023

LULU ATHUMANI RAMOLE (*As Administratrix
of the estate of late Athumani Abdul Ramole*) **PLAINTIFF**

VERSUS

OSY GRAND HOTEL LIMITED**1ST DEFENDANT**

ABDUL ATHUMANI RAMOLE**2ND DEFENDANT**

ISMAIL ATHUMANI RAMOLE**3RD DEFENDANT**

RULING

16th Aug.& 19th Sept. 2023.

A.P.KILIMI, J.:

The plaintiff hereinabove has moved this court by way of plaint praying for judgment and decree against the defendants on various relief sought. When the Plaint was communicated to the defendants, they did file their Written Statement of Defence together with preliminary objection on point of law as follows; -

1. The suit is incompetent before this court as it does not contain cause of action against the defendants herein.
2. The suit is incompetent before this court for failure to state specific damage which is used to identify pecuniary jurisdiction of the court.

When the above objections came for hearing before me, the plaintiff was represented by Mr. Partick Paul and Mr. Caessar Shayo learned advocates while the defendants enjoyed the services of Mr. Peter Njau learned advocate.

Arguing in support of first point of preliminary objection Mr. Njau submitted that the law requires that after identification of parties, the plaintiff has to state brief material facts of the case which contains cause of action, but in this case the plaintiff does not have any paragraph stating what the plaintiff claim from the defendants in summary. He further submitted that the plaintiff after identifying parties under paragraph 5 started narrating a story without giving a brief summary of what he claims until the end. Being so, the said plaintiff does not therefore disclose a cause of action which is contrary to the law hence the learned counsel prayed for the case to be dismissed forthwith.

With respect to the second point of preliminary objection, Mr. Njau submitted that the case is incompetent because the plaintiff did not state the pecuniary damage which is used to identify pecuniary jurisdiction of the court. He argued that in civil case the jurisdiction of the court is determined

by looking at the specific damage and that the law requires for a case to be instituted in a competent court lowest possible. He said that in the present case the plaintiff has several claims listed on different paragraphs. He submitted that since the plaintiff does not state any specific damage claimed it has been made contrary to the law which require specific damage to be pleaded. The counsel further said this is contrary to the principle which require suit to be instituted at the competent court of the lowest grade. To buttress his observation the counsel referred the case of **Deonatus Nkumbo and Another vs. The District Executive Bariadi District Council** Civil Case No. 14 of 2009.

Responding to the first point of objection Mr. Paul learned advocate contended that the plaintiff presented is written in simple English Language and that under paragraph 37 specific damage is expressly stated. Submitting further the learned counsel said that jurisdiction is not only based on what is claimed as specific damage rather may also be determined based on subject matter and nature of prayers. In this case he argued that the subject matter is a landed property worth than two billion and also that there is prayer under paragraph 37 (iii) of the plaintiff for the appointment of a

qualified accountant for first defendant and that this prayer can only be entertained by this court.

Furthering his submission Mr. Paul stated that paragraph 37 of the plaint has clearly stated against whom the claims are made, also paragraphs 26 to 33 explains how those illegal conduct by the defendants has caused loss to the plaintiff. Therefore, reading the whole of the plaint with its annexure, there is a clear cause of action against the defendants to wit is the claim for repayment of Loan, Rent arrears of the suit properties and exhibition of the accounts of first defendant to the plaintiff. He also contended that those issues which disclose cause of action have also been resisted in the written statement of defence.

Lastly, Mr. Paul concluded in respect to second preliminary objection and contended that is point of facts not point of law hence it requires the court to look into evidence. He argued that according to Mukisa Biscuit Case, this is not a preliminary objection as it is a point to be ascertained by facts. He thus prayed for the court to overrule the objection with costs and the matter to proceed on merit.

In brief rejoinder Mr. Njau briefly submitted that his concern is that plaintiff was required to state brief cause of action before narrating whole story but that was not done. He further argued that even the learned counsel had to go through the whole plaint in order to ascertain the cause of action. For that reason, Mr. Njau insisted that the plaint has defects, and prayed be dismissed.

I have dispassionately considered the arguments above of both learned counsels, commencing with the first point of preliminary objection. The law which provided cause of action be stated in a plaint is very clear, for purpose of clarity the same is provided under Order VII Rule 1(e) of the Civil Procedure Code (CAP. 33 R.E. 2019) which states that;

" The plaint shall contain the following particulars-

(e) The facts constituting the cause of action and when it arose;"

Nevertheless, the term cause of action has not been defined under the Civil Procedure Code but it was defined by the Court of Appeal of Tanzania in the case of **John M. Byombalirwa vs. Agency Maritime Internationale (Tanzania) Ltd** (1983) TLR 1. Wherein the court stated

that the term 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. Also, in the case of **Musanga Ngandwa vs Chief Japhet Wanzagi & 8 Others** [2006] TLR 351, the court had an opportunity to deal with what constitute a cause of action. It held that;

"A cause of action means every fact which would be necessary for the plaintiff to prove in order to support his title to a decree; in other words, a cause of action is the sum total of those allegations upon which the right to relief claimed is founded."

According to paragraphs of a plaint which the plaintiff has kept a subtitle as summary of cause of action, it is vivid that the plaintiff is the administratrix of the estate of the late ATHUMANI ABDUL RAMOLE who was the majority shareholder and sole owner of the first Defendant while the second and third Defendant are holders of unpaid shares. Thereafter at para 13 the plaintiff is alleging that the second Defendant and third defendant as the directors of the first Defendant have illegally failed to carry on the statutory and other legal duties and requirements for the first Defendant.

The plaintiff further alleges at para. 27 that the above illegal conducts and omissions did by them have caused psychological and mental torture to the Plaintiff, nonetheless the plaintiff alleged at para. 29 that the said illegal conducts and omissions have caused economic loss to the Plaintiff and other beneficiaries.

In lieu of the law stated above and the ratio in the case of **John M. Byombalirwa** (supra) in relation to the facts pleaded by the plaintiff under paragraphs stated above, it is my view that the same constitute cause of action.

In that regard, I am persuaded to disagree with the contention of Mr. Njau that plaintiff has narrated a long story without giving a brief summary of the claim. Despite what he alleges to be a long story were caption as summary of the cause of action, in my view, be it as it may, the establishing of cause action depend on the circumstances of the case. I think this is the one of that nature.

Therefore, the requirement of the law based on the cited authorities above is that the plaint should contain facts constituting the cause of action

and when it arose. It does not say that there should be a summary of facts constituting a cause of action in one paragraph or two as the learned counsel tries to enunciate.

In the premises, I am convinced as rightly submitted by Mr. Paul that the cause of action has been clearly stated. In the circumstance I find the first point of preliminary objection devoid of merit and it is hereby dismissed forthwith.

Regarding the second point of preliminary objection, the law is clear that it is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court. (See the case of **Tanzania Breweries Limited vs Anthony Nyingi**, Civil Appeal No. 110 of 2014). Therefore, under the auspice of ascertaining the Jurisdiction of the court, stating specific damage is legally amenable and not doing so amount none compliance of legal point. But in this matter, I think this should not detain me much as rightly Mr. Paul submitted the wording of the plaint clearly states the specific damage claimed. In such respect the same was stated, at para. 26 of the plaint and further reiterated at para.35 of the plaint, for purpose of clarity let me reproduce the wording of para 35 as follows;

"35. The cause of action is also over breach of loan agreement over landed property situated within Kilimanjaro region with estimated value of about a total sum of Tanzania shillings Two Billions only (TZS2,000,000,000/=) ; repayment of a debt being of total sum of Tanzania shillings Six Hundred and Fifteen Millions only (TZS615,000,000/=) and specific damages worth about Tanzania shillings Two hundred millions. (TZS.200,000,000/=)."

[Emphasis added]

The same was reiterated on prayers at paragraph 37 (vi) that the defendants jointly and severally be ordered to pay the plaintiff specific damages amounting total sum of Tanzania shillings Two hundred million. (TZS.200,000,000/=). Having said above, I also find this second point of preliminary objection lacking merit and it is also dismissed forthwith.

On the whole, on account of what I have endeavored to discuss hereinabove, I find all objections above devoid of merit consequently I hereby dismissed them with costs.

It is so ordered.

DATED at **MOSHI** this 19th day of September, 2023.



X 

JUDGE
Signed by: A. P. KILIMI

A. P. KILIMI
JUDGE

Court: Ruling delivered today on 19th day of September 2023 in the presence of advocate Patrick Paul for Plaintiff and learned advocate Peter Njau for defendant also second and third respondent present.

Sgd: A. P. KILIMI
JUDGE
19/09/2023