

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

CIVIL CASE NO. 02 OF 2023

VERONICA FUBILE T/A DAVINE BEE PRODUCT.....PLAINTIFF

VERSUS

SINGIDA BEEKEEPING YOUTH ENTREPRENEURS AND CONSULTANTS

COOPERATIVE SOCIETY (SIBEYECCOS).....1ST DEFENDANT

KIJJI CHA NYUKI COMPANY LTD.....2ND DEFENDANT

RULING

30th August & 30th October, 2023

HASSAN, J.

In this case the Plaintiff prays the court to make orders against the Defendant, thus:-

- (i) *Declaration that the 1st and 2nd defendants have breached agreements dated 3rd December, 2021 and 1st January, 2022.*

- (ii) *Pay the plaintiff compensation for breach of contract at the tune of Tshs 327,638784/= as per paragraph 13 and 14 of the plaint.*
- (iii) *Payment of general and punitive damages to be assessed by this honorable court.*
- (iv) *Pay costs of the suit.*
- (v) *Any other relief that this honorable court may deem fit and just to grant.*

Before hearing commenced, the defendants raised a preliminary objection on points of law to be determined by the court at the earliest as hereunder:-

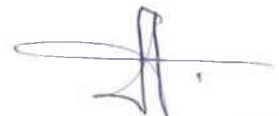
- "1. That the suit is pre mature against the 1st Defendants for not having been referred to the Registrar of societies.*
- 2. That the plaintiff has no cause of action against the 2nd defendant"*

When the preliminary objection came for hearing, the plaintiff was represented by Mr. Moses Mahuma, learned counsel whereas the Defendants had the service of Ms. Godfrey Martin, Learned Counsel. Parties herein prayed to proceed by way of written submissions. The

Parties complied to the order of preference in filing their written submissions.

Submitting in support of the Preliminary Objection on the 1st point of law, the defendants argued that as well pleaded by the plaintiff in the 2nd paragraph of her plaint, the 1st defendant is a legal entity registered under the Cooperative Societies Act, No. 6 of 2013, it is therefore regulated by the said act and the its regulations. Under Regulation 83(1) of the Cooperative Societies Regulations, GN No. 272 of 2015 the parties to the disputes arising out of the relationship or business of the cooperative societies are required to settle their disputes amicably by negotiation and arbitration before the same are referred to the court by way of judicial review after exhausting all the remedies available under Regulation 83(2) and (9) of the Regulations.

The Defendants cited the case of **Manager Majengo Saccos v Medard Prosper Nyakulima**, PC Civil Appeal No. 7 of 2020, HC at Dodoma and **Uduru Makoa Agricultural and Marketing Cooperative Society Limited (Uduru Makoa AMCOS) v Makoa Farm Limited & 2 Others**, Miscellaneous civil Application No. 1 of 2022 (Both Unreported) to stress his point.



As regards to the 2nd ground of objection, the defendants submitted that, looking at the plaint and its annexures, it is clear that the plaintiff has failed to disclose the cause of action against the 2nd defendant due to reasons that;

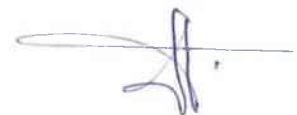
Firstly, there are two different personalities in one suit acting as one plaintiff. That, in the plaint, the plaintiff has been described as both a natural person and legal person. The defendants submitted further that joinder of plaintiffs who have the same cause of action is allowed under Order 1 of the Civil Procedure Code but joining two personalities as one in one suit is unprocedural and untenable.

Then, the plaintiff filed a lawsuit using the business names of "Devine Bee Product Tanzania" instead of her individual name: Veronica Fubile, which was used in the contract with the 2nd Defendant (Annexure P2). That, the contract with the 2nd Defendant was explicitly entered into by "Veronica Fubile" and "Kijiji Cha Nyuki Company Limited." Thus, since the plaintiff entered the agreement with the 2nd defendant while using the names of Veronica Fubile and not "Devine Bee Product Tanzania". She lacks a valid cause of action against the 2nd defendant. The defendants cited Section 4 of the Business Names (Registration) Act to elaborate on the requirement of registration of business names used in business which

are not true individual names or initials and added that, since the contract was signed between a natural person Veronica Fubile and a juristic person, Kijiji Cha Nyuki Company Limited, the juristic person trading as Devine Bee Product Tanzania limited cannot sue on behalf of Veronica Fubile.

Secondly, there are separate and distinct contracts in the suit, which provides limited responsibilities to the 2nd defendant. Firstly, the plaintiff's contracts with the 1st and 2nd defendants are separate and distinct. Thus, any claim related to the 1st defendant's contract should not be applicable to the 2nd defendant as per Order 1, Rule 6 of the Civil Procedure Code. Secondly, in the sale agreement there are limited responsibilities to the 2nd defendant compared to those of the management agreement and its performance depends solely on the availability of bee products after being harvested by the 1st defendant.

The defendants submitted further that they are aware that lack of cause of action by mis-joinder of parties is curable under order I Rule 10 and Order II Rule 6 of the Civil Procedure Code where the court can order the name of plaintiff wrongly joined to be struck out but in the instant case the court cannot do so because of pecuniary jurisdiction as the the final apiary management report indicates that the plaintiff's actual

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earnings to be Tshs 52,993,600/- without interests and penalties. They added that the question whether a plaint discloses cause of action must be determined upon perusal of the plaint alone. They cemented their submissions by citing **Mashado Game Fishing Lodge Ltd & 2 Others v The Board of Trustees of Tanganyika National Parks (T/A TANAPA)**, [2002] TLR 319 and **East African Overseas Trading Company v Tansukh S. Acharya** (1963) EA 468.

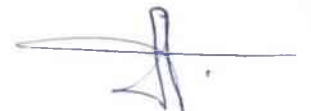
They finalised their submissions by submitting that the plaint does not disclose cause of action against the 2nd defendant since the plaintiff has never entered into any contract with the 2nd defendant.

In reply, the plaintiff contested the first preliminary objection by submitting that, the plaintiff is not a member of the 1st defendant cooperative society and neither is the plaintiff suing the 2nd defendant on behalf of any member thereof, nor is she claiming to be a member, so as to be confined under the provision of Regulation 83(1) of GN 272 of 2015. The plaintiff distinguished the position of law in **Makoa Farm Ltd & 2 Others and Manager Manager Majengo Saccos** (supra) cited by the defendants. The plaintiff went on citing **Sylvester Gerald Jackson v Kigoma Pastor's Saccos Ltd & 3 Others**, Miscellaneous Civil Application No. 07 of 2022 (unreported) to cement his submissions.

She added that the 1st point of preliminary objection is misconceived for being raised out of text and contrary to the provisions of Regulation 83 of G.N No. 272 of 2015.

The plaintiff contested the 2nd preliminary objection by submitting that there are various decisions of the court holding that "cause of action" is not a pure point of law, she cited **Sharifa Twahib Masala v Thomas Mollel and 3 Others**, Civil Appeal No. 67 of 2011 (unreported). She submitted further that, the 2nd preliminary objection touches on issues of plaintiff's names which in disguise the plaintiff's learned counsel is arguing the issue of *locus standi* of which is also not a pure point of law as decided in **Sharifa Twahib Masala** (unreported). She submitted further that, a business name registered under the Business Names (Registration) Act [Cap 213] has a personality like that of a company registered under the Companies Act [Cap 212 R. E 20220]. She cited *Salomon v Salomon & Co. Ltd* [1897] AC 22. That, the plaintiff being a natural person is just a proprietor of the registered business name trading under the name "Devine Bee Product Tanzania".

The plaintiff also cited **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd, (1969) E. A 696** to cement her submissions that cause of action is not a pure point of law.



The plaintiff finalised his submissions by praying the defendants' preliminary objections to be dismissed with costs.

The defendants rejoined with regards to the 2nd preliminary objection that they do not agree with the plaintiff that cause of action cannot be argued as pure points of law. That the test to be employed is whether the preliminary objection regarding cause of action is sufficient to dispose of the suit. They cited **Anthony Leonard Msanze & Another v Juliana Elias Msanze & 2 Others** which cited **John B. Byombalirwa v Agency Maritime Internationale (Tanzania) Ltd 1983, TLR 1.**

She concluded her submissions by arguing that the plaintiff's case against the 2nd defendant lacks a coherent cause of action and should be rejected based on the merits of the law.

Based on the parties' submissions, the questions to be resolved by the court are; **one**, whether or not the plaintiff has filed this suit prematurely for not referring to the Registrar of societies and **two**, whether or not the plaintiff has no cause of action against the 2nd defendant.

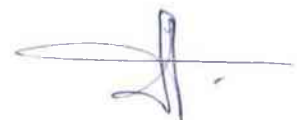
Starting with the first preliminary objection, Regulation 83 of the Cooperative Societies Regulations, G. N 272 of 2015 is very clear that the

disputes to be settled amicably are disputes arising among the members of the societies or between one cooperative society and another or persons claiming through members, thus;

"any dispute concerning the business of a cooperative society between the members of society or persons claiming through them between the members of society or persons so claiming and the board or any officer or between one cooperative society and another shall be settled amicably through negotiation or reconciliation."

The cited provision provides that the procedure for disputes settlement, requires the matter to be settled amicably. And where the dispute is not amicably settled within 30 days such dispute has to be referred to the Registrar for arbitration. And if a person is not satisfied with the decision of the registrar, he/she may refer the matter to the Minister whose decision will be final. See Regulation 83 (9) of GN 272 of 2015.

In the instant case, the plaintiff is not a member of the 1st defendant thus the position is distinguished from the decision of the court in **Manager Majengo Saccos's** case (supra) as cited by the defendants. The case of **Makoa Farm Ltd & 2 Others** (supra) has also interpreted



well the provision of the law. Thus the 1st preliminary objection is overruled for being devoid of merit.

Coming to the 2nd preliminary objection regarding cause of action. In their submissions the defendants have mixed cause of action with locus standi, in my deliberation I will only base on cause of action as regards to the preliminary objection filed in the court. The defendants are alleging that there is mis joinder of parties. That, the plaintiff has used two personalities, her names as well as her business name. In determining the same I wish to quote section 2 of the Business Names Act [Cap 213] as amended by The Business Laws (Miscellaneous Amendment) Act No. 3 of 2012 to see the definition of business name, thus;

"business name" means the name or style under which any business is carried on, whether in partnership or otherwise"

The legal interpretation of a business name is that a business name has no distinct legal personality from the owner and can be sued in the name of the owner. Indeed, their personality cannot be separated from the owner of the business unlike in companies where a company is distinct from its shareholders.

Having said so, there is no mis joinder of parties as submitted by the defendants since the name of the plaintiff appears to be **VERONICA FUBILE (T/A)** meaning **TRADING AS DAVINE BEE PRODUCT**.

The other issue raised by the defendants is that, the plaintiff has no cause of action against the 2nd defendant. Having gone through the plaintiff's plaint as well as its annexures thereto, the plaintiff is claiming to have entered into separate contracts with the defendants and the obligation of the defendants differs. The 1st defendant's role was maintenance of the bees at the 2nd defendant's farm, while the 2nd defendant's role was to buy the end products of the bees and sell at indicative sale price. Hence the two contracts between the plaintiff and the defendants were separate with different obligations. Hence the plaintiff can not sue both defendants under the same cause of action in one civil suit emanating from two distinct contracts entered separately by the plaintiffs.

The court has laid down relevant legal principles on cause of action in **John Byombalirwa v Agency Maritime Internationale**, Civil Appeal No. 15 of 1983 (unreported). Through this decision, the court pointed out that;

"although the expression "cause of action" has not been defined under the Civil Procedure Code, but that expression 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. Secondly, we laid down that for purposes of deciding whether or not a plaint discloses a cause of action; courts should NOT go far into written statements of defence or into replies to the written statements of defence. But they should discover a cause of action by looking only at the Plaint. Thirdly, we also said that where the Plaint does not disclose a cause of action, the remedy is NOT for the court to dismiss the Plaint, but to reject it."

In the instant case, the plaintiff's plaint discloses a joint cause of action. But looking at the attachments to the plaint there are two separate contracts entered by the plaintiff and the defendants where each defendant has a different liability (s) in her respective contract thus, the plaintiff ought to have filed different suits for each party, instead of filing this suit with a joint cause of action from two distinct contracts entered separately.

That said, the defendants' 2nd preliminary objection on point of law is hereby sustained. At the end, I struck out the suit for want of cause of action against the defendants with costs.

It is ordered.

DATED at **DODOMA** this 30th day of October, 2023.



S. H. Hassan
S. H. HASSAN
JUDGE