

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT – LAND DIVISION
(MUSOMA SUB REGISTRY AT MUSOMA)

LAND CASE No. 20 OF 2022

JOHN NYAITARA STEVEN PLAINTIFF

Versus

NORTH MARA GOLD MINE LIMITED DEFENDANT

RULING

27.03.2024 & 28.03.2024

Mtulya, J.:

In 1966, the English civil procedure statute was brought in Mainland Tanzania via India to regulate procedures relating to civil proceedings (see: **Civil Procedure Code**, Act No. 49 of 1966—which had replaced the **Indian Code of Civil Procedure**, 1908). The statute underwent several modifications in terms of title and contents to suit the present circumstances in Mainland Tanzania.

It is now termed as the **Civil Procedure Code** [Cap. 33 R. E. 2022] (the Code). In the Code, a dispute is initiated by registering a plaint before the court in accordance to the laws regulating pleadings (see: Orders IV Rule (1) & (2) and VII Rule (1) & (2) of the Code). Regarding the contents to be displayed in the plaint, Order VII Rule 1 the Code provides that a plaint shall contain the following particulars:

- (a) the name of the court in which the suit is brought;*
- (b) the name, description and place of residence of the plaintiff including email address, fax number, telephone*

number and post code if available; (c) the name, description and place of residence of the defendant including email address, fax number, telephone number and post code if available, so far as they can be ascertained; (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect; (e) the facts constituting the cause of action and when it arose; (f) the facts showing that the court has jurisdiction; (g) the relief which the plaintiff claims; (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and (i) a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

Before the Tanganyika Independence in 1961, introduction of sciences and technologies in our courts and a bunch of modifications in the Code to follow sciences, three (3) justices of East African Court of Appeal in 1959, had an opportunity to invite and interpret Order VII Rule 1 (f) in the precedent of **Assanand & Sons (Uganda) Limited v. East African Records Limited** [1959] EA 360. In the precedent, the court thought that:

*...the learned trial judge fell into error. Paragraph (f) of Order VII Rule 1 (1) of the Code **places upon a plaintiff the obligation of pleading the facts showing that the court has jurisdiction.** That is a matter of great importance, for if the court has jurisdiction, any judgment which it gives is a nullity. **A mere assertion by the plaintiff that the court has jurisdiction is not***

enough. The rule requires the facts showing that the court has jurisdiction to be stated. The objects of this requirement would seem to be, first that the court should be able to exercise some critical function and to draw a reasonable inference that if the facts alleged are established, it would appear to have jurisdiction and second, that the defendant should know what facts were alleged to have an opportunity of contravening them, if desired. The plaintiff's plea is required not only that the facts constituting the cause of action. But where it arose and facts showing jurisdiction to be set out. No facts showing that the court had jurisdiction were set out. The plea was quite obviously deficient in an essential respect.

(Emphasis supplied).

The complained facts in the case were: *payment of the account was to be made at Nairobi aforesaid within the jurisdiction of this honourable court.* Finally, the court had allowed the appeal and set aside the decree emanated from the indicated clause.

The thinking of the court was not disputed or modified by our courts to date, despite several amendments in the Code and a bundle of precedents are in support of the move (see: **Salim O. Kabora v. TANESCO & Two Others**, Civil Appeal No. 55 of 2014; **Michael Mwanuka & 428 Others v. Tanzania Zambia Railways Authority**, Civil Appeal No. 84 of 2018; **Jamal Said & Three Others v. Karmal Aziz Msuya**, Land Case No. 42 of 2017; **Techno Image Limited v.**

CMC Automobile Limited & Another, Commercial Case No. 57 of 2017; **Evance Buhire & Four Others v. National Insurance Corporation**, Land Case No. 327 of 2009; **China Pesticides (T) Limited v. Safari Radio Limited**, Commercial Case No. 179 of 2014; **Christopher Derek Kadio v. Heaven Origenes Mtui & Eight Other**, Land Case No. 81 of 2017; **Sued Hamis Chem Chem & Another v. First National Bank (T) Ltd**, Land Case No. 94 of 2017; and **Arusha Art Limited v. Alliance Insurance Corporation Ltd**, Commercial Case No. 12 of 2011).

In the precedent of **China Pesticides (T) Limited v. Safari Radio Limited** (supra) this court sought that courts of law cannot wander about in the plaint or amended plaint in search of facts showing that it has pecuniary jurisdiction or geographical jurisdiction, whereas in the precedent of **Arusha Art Limited v. Alliance Insurance Corporation Ltd** (supra), an advice on the subject was issued to courts and parties, and this court went further to require the format in the enactment to be followed, that:

The format of the plaint as set out under the provision of Rule 1 paragraph (a) to (i) of Order VII of the Civil Procedure Code are vital and go to the root of the matter and must be complied with for clarity purposes of avoiding unnecessary confusions to both the court and parties...the language used by the provision of Rule 1 Order VII of the Code, which is shall, suggests that

the compliance is mandatory and the plaintiff must present a plaint in a prescribed manner...the omission to comply with the requirement is fatal and renders the plaint incurably defective.

(Emphasis supplied).

Regarding pecuniary issues enacted in paragraph (i) of Order VII Rule 1 of the Code, this court, in the precedent of **Jamal Said & Three Others v. Karmal Aziz Msuya** (supra), stated that failure by a plaintiff to indicate in the plaint a statement of value of the subject matter of the suit has an effect of both the jurisdiction and court fees. The precedent in **Christopher Derek Kadio v. Heaven Origenes Mtui & Eight Other** (supra), this court went further to ask for species of currency in a plaint in order to resolve the issue of pecuniary jurisdiction. In the precedent, this court thought that:

...it is very apparent and clear that the plaintiff's plaint at paragraph 12 only indicted the value of the subject matter is seventy million, without specifying the type of currency whether United States Dollars or Tanzanian Shillings or otherwise...in the event I hereby declare that Land case No. 81 of 2017 is incompetent and is hereby struck out from the record.

(Emphasis supplied).

Similarly, the ancestry in India shares the same thinking on the subject of pleadings and plaint, in so far as the question of jurisdiction is concerned. A respected writer in India, Sarkar in his writings stated

that whether the court has jurisdiction to entertain a suit is always to be decided on the allegation in the plaint (see: Sarkar, S., **Sarkar's Law of Civil Procedure**, 11th Ed., Wadhwa, 2008, pg. 1125). On the other hand, Mogha thinks that a plea in the plaint that the court has jurisdiction to entertain the suit is technically defective (see: Moghas, C., **Mogha's Law of Pleadings in India with Precedents**, 18th Ed. Eastern Law House, 2019, pg. 271).

Regarding the prevailing circumstances in Tanzania and legal philosophy in India and the question whether the Code can be overhauled, researchers in Tanzania have replied that the Code is still appreciated, including the enactment in Order VII Rule 1. In that regard, Prof. Ibrahim Hamis Juma and Dr. Angelo Mapunda are quoted to have produced their opinions (Read: Law Reform Commission of Tanzania, **Report of the Comprehensive Review of Civil Justice System in Tanzania** (2013) and **Delinking the Law of Evidence of Tanzania from its Indian Ancestry**, Boston University International Law Journal, Vol. 33 (2015) p.101].

According to Prof. Juma, essentially the prevailing legal philosophy is that the law thrives in India and may well be appreciated in Tanzania, whereas the Law Reform of Tanzania in quoting Dr. Angelo Mapunda, had the following to state:

*Thus, the Tanzanian Code of Civil Procedure is a statute in **pari materia** with the Civil Procedure Code of India.*

Since its enactment in 1966, the Code has been vastly enriched the decisions of courts in Tanzania, academic commentaries as well as precedents from other common law jurisdictions. Any proposal to discard or completely overhaul the Code must inevitably be based on overwhelming empirical and statistical evidence that the Code has become a serious impediment to the administration of justice. Neither Dr. Angelo Mapunda, the consultant nor the Law Reform Commission found any empirical justification to discard or overhaul the Code at this juncture

In appreciation of the Code, yesterday morning, an officer of this court, **Mr. Gerald Nyangi**, learned counsel for **North Mara Gold Mine Limited** (the defendant) appeared in this case arguing that there are two (2) settled positions that can be learned from the enactment of Order VII Rule 1 (1) & (2) of the Code: first, a plaintiff must plead facts showing that the court has jurisdiction to entertain a suit; and second, value of the subject matter must be specifically stated in species of currency.

In his opinion, the position has already been confirmed by our superior court, the Court of Appeal in the precedent of **Salim O. Kabora v. TANESCO & Two Others**, Civil Appeal No. 55 of 2014. In substantiating his submission, Mr. Nangi had cited the precedents of this court in **China Pesticides (T) Limited v. Safari Radio Limited**, Commercial Case No. 179 of 2014 and **Christopher Derek Kadio v.**

Heaven Origenes Mtui & Eight Other, Land Case No. 81 of 2017, arguing that suits which are resolved by special courts, like land, commercial, labour and tax must specifically state in their plaint the value and subject matter.

According to Mr. Nangi any dispute filed in this court must first reply four important questions on: who, when, what and where. In his opinion, the question on *what* invites two replies in terms of court's jurisdiction, *viz.* first, pecuniary jurisdiction and second, subject matter jurisdiction. According to him, the present suit has breached Order VII Rule 1(f) and (i) of the Code for want of *what* species of dispute and value in currency. In order to move this court to appreciate his point, he prayed this court to read the eleventh paragraph in the plaintiff's plaint registered in the instant case. In his opinion, the paragraph is vague and shows the dispute is related to mining activities and the plaintiff is praying for compensation, which its specific forum is called the **Mining Commission** as provided under sections 22 (e) and 119 (1) (e) of the **Mining Act [Cap. 123 R.E. 2019]** (the Mining Act).

Replying the complaints, **Dr. Chacha Murungu** and **Mr. Daud Mahemba** learned counsels for the plaintiff, have submitted that the plaint, when read as a whole with its associated prayers, does not breach Order VII Rule 1 (f) and (i) of the Code and the registered materials in the plaint show that the dispute is land contest.

According to the dual counsels, Order VII Rule 1 of the Code requires: first, estimated value of the disputed land; second, the provision has exception of *so far as the case admits*, and finally, the plaintiff prays for declaratory orders in the suit.

According to the learned minds, the dispute falls under the **Land Act [Cap. 113 R.E. 2019]** and **Village Land Act [Cap. R.E. 114]** hence this court has jurisdiction to entertain. In their opinion, the argument that the suit is related to mining activities and Mining Commission has already been resolved and precedents are in place regulating the issue. In substantiating their submissions, the dual cited precedents of this court in **Penina Mhere Wangwe & 31 Others v. North Mara Gold Mine Limited**, Land Case No. 19 of 2022 and **Zebadia Wanchara Chacha & 21 Others v. North Mara Gold Mine Limited**, Land Case No. 27 of 2022. Regarding a bunch of indicated precedents regulating pleadings, the dual counsels contended that the indicated precedents are in favor of the plaintiff's case as the plaintiff has indicated the value of complaint at the eleventh paragraph to be 400,000,000/= and the matter is related to land contest.

In a brief, rejoinder, Mr. Nangi submitted that the plaintiff has vividly stated in the eleventh paragraph of the plaint that the defendant is involving in mining activities, which include mining prospects regulated under the Mining Act. According to him, the precedents in **Penina Mhere Wangwe & 31 Others v. North Mara**

Gold Mine Limited (supra) and **Zebadia Wanchara Chacha & 21 Others v. North Mara Gold Mine Limited** (supra) are distinguished for want of a protest on pleadings. Mr. Nangi submitted further that the words *so far as the case admit* cannot derogate the whole enactment in Order VII Rule 1 of the Code. Finally, Mr. Nangi submitted that this court is not supposed to wander about in the whole plaint in searching its jurisdiction, as the matter has already been resolved in the precedents in **China Pesticides (T) Limited v. Safari Radio Limited** (supra) and **Christopher Derek Kadio v. Heaven Origenes Mtui & Eight Other** (supra).

I have had an opportunity to read the two (2) indicated rulings in **China Pesticides (T) Limited v. Safari Radio Limited** (supra) and **Christopher Derek Kadio v. Heaven Origenes Mtui & Eight Other** (supra). In the precedent of **China Pesticides (T) Limited v. Safari Radio Limited** (supra), this court had found a jurisdictional clause drafted in the plaint to contain the following words to be defective:

That, the amount claimed from the defendant is well above Tanzanian Shillings Seventy Million, and that the cause of action arose in Dar Es Salaam thus the court is vested with geographical and pecuniary jurisdiction to adjudicate the same.

This court had resolved that the clause is fatal as it was difficult to comprehend its contents in terms of jurisdiction of commercial cases. Similarly, the cited paragraph requires the court to wander

about in the plaint to search for facts showing jurisdiction of this court-commercial division. On the other hand, a plaint which had declined to disclose value of the subject matter in currency was held to be defective in the precedent of land case resolved in **Christopher Derek Kadio v. Heaven Origenes Mtui & Eight Other** (supra). The complained paragraph in the instant case shows that:

The plaintiff is a resident of Komarera Village Nyamwaga Ward in Tarime District and the defendant carries out its business of mining activities at Nyamongo within Tarime District, within the jurisdiction of this court and collectively the estimated value of the plaintiffs exceeding 400,000,000/= and the cause of action having taken place in Komarera Village in Nyamwaga Ward in Tarime District as above, hence this court has jurisdiction to hear the suit.

According to Mr. Nangi, cases which are filed in special forums, like commercial, land and labour divisions must specifically show in their jurisdiction clauses statements of facts showing that the court has jurisdiction and the value of the subject matter be clearly stated. However, in his opinion, the eleventh paragraph of the plaintiff's plaint in the instant case has declined to show that the court has jurisdiction in terms of the two (2) indicated issues.

I have quoted the paragraph in the **China Pesticides (T) Limited v. Safari Radio Limited** (supra) and the complained eleventh paragraph in this Ruling. A close look of the two (2) cited paragraphs, it is quite obvious that the two (2) share similar species of contents,

save for the kind of type of currency as in the cited precedent Tanzanian Shillings are displayed, whereas in the instant case, it is silent. In that case, the plaintiff in present case suffers two (2) faults, namely: species of currency and facts showing that the court has jurisdiction to entertain the suit.

I am aware that **Dr. Murungu** and **Mr. Mahemba**, have cited the proviso at the end of Order VII Rule 1 of the Code and precedents in **Penina Mhere Wangwe & 31 Others v. North Mara Gold Mine Limited** (supra) and **Zebadia Wanchara Chacha & 21 Others v. North Mara Gold Mine Limited** (supra). However, the two indicated precedents do not reply an issue whether facts in the plaintiff are showing this court has jurisdiction. Similarly, the enactment of proviso in Order VII Rule 1 of the Code does not cover the present suit, which cannot be ascertain its species of contest.

This is vivid from the contents of the jurisdictional clause in paragraph eleven of the plaintiff and it was supported by the contesting parties. Mr. Nangi thinks that the dispute is a mining dispute from the words: *defendant carries out its business of mining activities*, whereas Dr. Chacha thinks that the dispute is land contest from the *reading of the plaintiff as a whole*. It is unfortunate that, the present case, even if it is agreed that the whole plaintiff be read together as a whole, it may invite further questions and interpretations as to whether it is a normal civil case, tort, or land dispute. It is very risk for this court to

assume jurisdiction and proceed to resolve the dispute with uncertainty. Even if it decides to do so, the second limb of complaint on want of specific currencies cited in the eleventh paragraph would not let it to proceed safely.

Disputes of this kind have been held to be defective and were struck out from the records of this court for want of the law enacted in Order VII Rule 1 & (2) of the Code. A bunch of precedents on the subject has already been cited in this Ruling and found the support of legal writers both in India and Mainland Tanzania. This court will always cherish its previous decisions and writings of legal scholars, unless there are good reasons to depart. In the end, I strike out the plaint for want of the law in Order VII Rule 1 (f) & (i) of the Code. I do so without costs as the plaintiff is a villager within Ntarechagini Hamlet in Komarera Village in Tarime District and approached this court in good faith in search of his rights.

Before, I pen down, I am aware that during hearing of the points of law, the parties' learned minds have produced a bundle of materials attached with multiple decision in six (6) good hours to persuade this court to decide in favor of their positions. The materials have produced several questions to be replied by this court. However, I was wondering whether after having said the instant plaint is defective in the indicate points, I need to go further to resolve all

questions registered. It is obvious that will be an academic exercise.

This court has no off-schedules time to indulge in academic work.

It is so ordered.

Right of appeal explained to the parties.




F.H. Mtulya

Judge

28.03.2024

This Ruling was delivered in Chambers under the Seal of this court in the presence of the plaintiff's learned counsel, **Mr. Daud Mahemba** and in the presence of the defendant's learned counsel, **Mr. Gerald Nangi**, through teleconference attached in this court.


F.H. Mtulya

Judge

28.03.2024