

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

AT PAR ES SALAAM

CIVIL CASE NO. 731 OF 2024

BETWEEN

SOSPETER GALLUS OMOLLO..... PLAINTIFF

VERSUS

EQUITY BANK TANZANIA LIMITED.....1st DEFENDANT

COPS AUCTION MART & COURT BROKERS LIMITED.....2nd DEFENDANT

MUSSA MUSSA TRADING CO. LTD.....3rd DEFENDANT

MUSS A PAULO..... 4th DEFENDANT

RULING

8th & 28th May 2024

KIREKIANO J:

The plaintiff filed this case praying for, among other reliefs, judgment and decree jointly and severally against the Defendants. The plaintiff sought a declaration order that the first defendant breached the mortgage contract dated 8th April 2020 and the contract for variation of the mortgage contract dated 19 March 2021. The plaintiff also seeks a

declaration order that the first defendant obtained the plaintiff's consent by misrepresentation.

When this case came up for mention to ascertain if the parties had finalised pleadings, Mr Juma Nasoro, counsel for the plaintiff, sought leave of this court to amend the plaint. The prayer is predicated under Order VI Rule 17 of the **Civil Procedure Code Cap 33 RE 2022]**

Significantly, Mr Juma Nassoro stated that it is alleged in the plaint that the mortgage between the plaintiff and the defendants was signed by misrepresentation. Thus, the plaintiff wishes to amend the plaint to plead facts of false information regarding the previous loan. According to him, the facts must be pleaded in the complaint to allow this court to determine the real question between the parties regarding the validity of the mortgage.

Miss Ana Stella Selestine, counsel for the first and second defendants, objected to the prayer. According to her, the plaint filed already had a cause of action; the prayer is in response to an amended written statement of defence to create a new cause of action. She said if the loan agreement contains facts of forgery, that will be an issue of evidence. Conversely, if the plaintiff wishes to introduce a new cause of

action, he may withdraw his plaint and refile it after considering all the latest facts, if any.

In his brief rejoinder, Mr Nasoro submitted that the misrepresentation pleaded does not include false information, and the facts submitted on false information can not be decided unless they are pleaded in the plaint.

It is noted here that Mr Hashim Shaban 3rd, defendant Director, had nothing to submit, understandably being a lay person. The 4th defendant did not appear.

I will start with the law on the amendment of pleadings. The relevant law under which courts attending to civil matters may permit alteration or amendment of pleadings is **Order VI rule 17 of the CPC**, which provides as follows: -

"The court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as necessary for determining the real questions in controversy between the parties."

Underlining the crucial role of the court in maintaining the balance, the Court of Appeal, in the case of **Jovent Clavery Rushaka & Another vs Bibiana Chacha (Civil Appeal 236 of 2020) [2021], TZCA** had this to say : -

*"It is settled law that a pleading can be amended at any stage of the proceedings only to the extent allowed by the court on such terms as may be just, and **such amendment should be limited to what will be necessary for determining the real question** in dispute between the parties.*

I have also considered that the prayer to amend the plaint was brought before the hearing. **George M. Shambwe versus Attorney General and Another [1996] TLR 334**, the court of appeal, stated principles for granting leave to amend pleadings. The amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side.

It would mean the court's discretion does not preclude it from denying the prayer. In the analysis, I have considered;

Firstly, if the amendment introduces a new cause of action, then the same would, at this stage, embarrass the defendants. My view is supported by a decision from the High Court of Uganda, which I am persuaded to subscribe to that is **Popat v Master Managers & Traders Ltd (Civil Appeal No. 13 of 2021) [2022] UGComm50(29 July 2022)** <https://ulii.org/akn> the high court held;

Reading the original plaint alongside the proposed amendment, it is clear that there was no original claim for fraud in the main suit. The claim was for land recovery, nullification of the sale agreement, and other related reliefs. The facts leading to the cause of action, as stated in the plaint, also do not make a fraud claim. Therefore, this court cannot allow an amendment that would introduce a new cause of action different from the original plaint.

Secondly, the court's role in burying the dispute between parties is to grant a prayer for an amendment if it will be efficient to dispose of the parties' battle without exposing the defendant to the vexation of multiple suits.

In this case, I have revisited the plaintiff's plaint. It contains claims of Misrepresentation under paragraph 10, which alleges that the first and third defendants misrepresented the plaintiff that the first loan was fully repaid. In the proposed amendment, the plaintiff seeks to divulge facts about the alleged false information, which led the defendant to obtain the plaintiff's consent to enter into the contract variation of the mortgage contract.

I have carefully considered this prayer and concluded that it does not introduce a new cause of action and will not prejudice the defendants. In

the end, the prayer is granted so that the plaintiff shall plead such facts showing false information, clarifying alleged misrepresentation. The amendment should be done within seven (7) days from the date of this order. Cost shall be in the cause.

Dated at Dar es Salaam this 28th May 2024



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.