

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA SUB - REGISTRY

AT IRINGA

CIVIL CASE NO. 28266 OF 2023

IBRAHIMU YOLAM NZIKU

(TRADING AS TANGA KALAMBANI NEXT) PLAINTIFF

VERSUS

MATAMBA MUSHROOMS FARM LTD..... DEFENDANT

RULING

Date of last Order: 09/05/2024
Date of Ruling: 30/05/2024

LALTAIKA, J.

No sooner had the Defendant herein **MATAMBA MUSHROOMS FARM LTD** received the necessary documents for this suit than her counsel put a preliminary point of objection. This ruling resolves the same pursuant to the position of our law that whenever a preliminary objection is raised, (commonly referred to by its acronym PO) the same must be dealt with before proceeding with the main suit depending on the aftermath of the

objection raised. I choose not to reproduce the six points as they have been meticulously addressed, in chronological order, by counsel.

When the suit was called for hearing on the **12th of March 2024**, the Plaintiff appeared through Mr. Shaba Mtung'e, learned Advocate. The Defendant on the other hand, enjoyed the legal services of Messrs. Papian Rwehumbiza, Raymond Byombalirwa and Ivan Ntawimenya, learned Advocates. Parties opted to dispose of the PO by way of written submissions. To that end, the following schedule was ordered: Filing of the Defendant's written submission on the PO: **18/04/2024**, Filing of the Plaintiff's reply: **2/5/2024**, Filing of the Defendant's rejoinder if any: 9/5/2024, Mention for necessary orders to fix the date of the Ruling: 9/5/2024.

I hereby register my commendations to the learned Advocates for spotlessly complying with the above ordered schedule. The next part of this ruling is a summary of submissions by both parties.

Taking up the podium, Mr. Rwehumbiza, requested the Honourable Court to consider the principles established by the Court of Appeal through case law jurisprudence regarding the inclusion of annexures and pleadings when raising preliminary objections. He noted that this principle was affirmed

by the Court of Appeal of Tanzania in the matter of **Moto Matiko Mabanga versus Ophir Energy PLC & 6 Others**, Civil Appeal No. 119 of 2021, Court of Appeal of Tanzania, Dodoma, (Unreported), as referenced on page 14 of the typed judgment.

Additionally, he referenced the case of **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd** [1969] 1 EA 700, where it was stated that a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which, if argued as a preliminary point, may dispose of the suit. He further referenced the case of **Ali Shabani and 48 others V Tanzania National Roads Agency and The Attorney General**, Civil Appeal No. 261 of 2020, emphasizing that a point of preliminary objection cannot be raised if any fact has to be ascertained in the course of deciding it, and that it only consists of a point of law which has been pleaded or arises by clear implication out of the pleadings.

Furthermore, Mr. Rwehumbiza referred to the case of **James FunkeGwagilo vs. Attorney General** [2004] T.L.R 161, reiterating that

parties are bound by their own pleadings and that no party should be allowed to depart from their pleadings.

He proceeded to discuss the six points of preliminary objection in chronological order. Regarding the first ground, he argued that this Court lacked jurisdiction to entertain the matter. He cited relevant provisions of the **Magistrates Courts Act Cap 11 and The Civil Procedure Code** [Cap. 33 R.E. 2022], along with case law such as **Ms. Tanzania & China Friendship versus Our Lady of the Usambara Sisters**, [2006] T.L.R 70 and **Swilla Secondary School versus Japhet Petro**, Civil Appeal No. 362 of 2019 (Unreported), to support his argument.

For the third ground, Mr. Rwehumbiza argued that the plaintiff's plaint lacked endorsement contrary to Section 44 of The Advocates Act [Cap. 341 R.E. 2019]. He referenced case law, specifically the case of **Ruth LangeniMfanga Vs. Ilemela Municipal Council**, Labour Revision No. 66 Of 2019 HC at Mwanza, to support his contention.

Regarding the fourth ground, he contended that the plaintiff's plaint contravened **Order VI Rule 14 of The Civil Procedure Code** [Cap. 33 R.E. 2019], citing relevant legal provisions.

On the fifth ground, Mr. Rwehumbiza argued that the plaint was bad in law and incurably defective as it lacked a verification clause contrary to Order VI Rule 15 of The Civil Procedure Code (Supra). He referenced case law, specifically the case of **Zte Corporation vs Benson Informatics Ltd Ta Smart** (Commercial Case 188 of 2017) 2018 TZHCComD 65 (2 May 2018), to support his argument.

Finally, regarding the sixth ground, he argued that the plaint was lodged before a non-existing registry contrary to Rule 2 of The High Court Registries (Amendment) Rules, 2024. He explained the changes brought about by the recent amendment to the High Court Registries Rules and referenced relevant legal provisions. Mr. Rwehumbiza prayed that the Honourable Court sustain the raised preliminary objections and dismiss the entire suit with costs.

Mr. Mtung'e responded providing a comprehensive rebuttal to each point raised. He argued that the objections were baseless and served only to waste the court's time.

Addressing the first objection regarding jurisdiction, Mr. Mtung'e asserted that the court did indeed possess pecuniary jurisdiction over the

case, citing Section 40(3)(a) and (b) of the Magistrate Court Act R.E 2019. He referenced paragraph 14 of the plaint to demonstrate that the nature of the case fell within the jurisdictional limits of the District Court. Supporting his argument, Mr. Mtung'e cited the case of **FINCA TANZANIA LIMITED vs MAZENGE INVESTMENT COMPANY LIMITED** to emphasize the importance of understanding the pecuniary jurisdiction of trial courts in relation to commercial cases.

Moving on to the objections regarding lack of endorsement, contravention of Order VI Rule 14, and absence of a verification clause, Mr. Mtung'e presented evidence from the e-filing system to refute these claims. He explained that the documents were duly signed by the advocate and the plaintiff, with verification included in the plaint as required by law. Referring to the case of **Ruth Langeni Mfanga Vs. Ilemela Municipal Council**, (Misc. Labour Application 22 of 2019) [2020] TZHC 142 (21 February 2020) Mr. Mtung'e emphasized the evolving nature of legal processes facilitated by modern technology, particularly the e-filing system.

Regarding the objection concerning lodging before a non-existing registry, Mr. Mtung'e clarified that the plaint was filed before the enactment

of the relevant amendment, rendering the objection moot. He referred to the e-filing system as irrefutable evidence of compliance with procedural requirements.

In conclusion, Mr. Mtung'e urged the court to dismiss the defendant's preliminary objections, asserting that they lacked legal basis and were founded on misinterpretations of procedural requirements. He expressed confidence in the case's legal standing, supported by sound argumentation and relevant case law.

Mr. Rwehumbiza, **in his rejoinder submission**, expressed dissatisfaction with the documents served, highlighting their failure to meet court criteria due to the absence of endorsement, signature from the Court Registry, and court stamp. Despite this, he proceeded to address the objections raised by the plaintiff.

Regarding the jurisdictional issue raised as Ground No. 1, Mr. Rwehumbiza argued that the plaintiff's assertion of the case being a commercial transaction was flawed. He contended that not all contracts between parties amount to commercial significance and, even if it were, it should have been lodged in the High Court Commercial Division. Mr.

Rwehumbiza referenced Rule 5 (1) and (2) of **The High Court (Commercial Division Procedure) Rules, 2012**, and its amendment in 2019, to support his argument. He cited the case of **China Pesticide (T) Limited versus Safari Radio Limited** (Commercial Case No. 170 of 2014) [2015] TZHCComD 2173 (18 June 2015) to emphasize the importance of correctly specifying commercial cases in court documents.

Continuing his argument, Mr. Rwehumbiza pointed out that the plaintiff failed to mention in the plaint that it was a commercial case, thus questioning the validity of such a claim. He countered the plaintiff's reliance on Section 40 (3) (a) and (b) of **The Magistrates Courts Act**, (supra), stating that the suit lacked commercial significance. He invoked Section 13 of The Civil Procedure Code , (supra), and Section 40 (2)(b) of The Magistrates Courts Act , (supra), to support his assertion of the plaintiff's abuse of the judicial process.

Regarding the preliminary objections concerning endorsement, contravention of Order VI Rule 14, and a defective verification clause, Mr. Rwehumbiza reiterated the defendant's stance. He argued that the plaintiff's complaint lacked necessary endorsements and signatures, as stipulated by

Section 44 of **The Advocates Act** [Cap. 341 R.E. 2019] and Order VI Rule 14 and 15 of The Civil Procedure Code , (supra), He cited legal precedents such as HalfaniSudi versus AbiezaChichili and Juma Said & Yahaya Abdallah vs. Republic to underscore the importance of adhering to legal formalities.

Regarding point No. 6, Mr. Rwehumbiza contended that the plaint was lodged before a non-existing registry, violating Rule 2 of The High Court Registries (Amendment) Rules, 2024. He emphasized the significance of paying court fees before filing documents, citing relevant case law to support his argument.

In conclusion, Mr. Rwehumbiza urged the court to sustain the defendant's preliminary objections and dismiss the entire suit with costs. He justified the request for costs, citing expenses incurred by the defendant in engaging advocates and other associated expenses.

I have dispassionately considered submissions by both parties. I will skip the usual introductory remark and proceed straight to consideration of the points raised. Apparently, the Defendant contends that this Court lacks jurisdiction to entertain the matter, arguing that the nature of the contract does not constitute a commercial transaction as defined by

law. Furthermore, the Defendant asserts that even if the matter were of commercial significance, it should have been filed before the High Court Commercial Division. The Defendant cites relevant statutory provisions and case law to support this argument.

In response, the Plaintiff argues that the dispute arises from a breach of contract, which does not necessarily qualify as a commercial transaction. Additionally, the Plaintiff contends that the filing in the High Court, although not the Commercial Division, is appropriate given the nature of the claim. Both parties cite legal authorities to support their respective positions.

The Defendant raises several procedural objections regarding the Plaintiff's plaint, including the lack of endorsement, contravention of Civil Procedure Rules, and deficiencies in the verification clause. The Defendant argues that these deficiencies render the plaint defective and warrant dismissal of the suit. Legal precedents and statutory provisions are cited in support of these objections.

In response, the Plaintiff maintains that the plaint complies with procedural requirements and argues that the objections raised by the Defendant are unfounded. The Plaintiff emphasizes the use of electronic

filing systems and challenges the Defendant's assertions regarding the integrity of the Court records.

After careful consideration of the arguments presented by both parties and the relevant legal authorities cited, I can group the six points into two namely Jurisdiction and procedural objections. These are argued hereunder as follows:

Jurisdiction: The Court determines that the dispute, arising from a breach of contract, falls within its jurisdiction. While the commercial nature of the transaction is disputed, the Court notes that the claim does not necessarily need to be filed before the Commercial Division. Therefore, the Court asserts jurisdiction over the matter.

Procedural Objections: The Court acknowledges the procedural objections raised by the Defendant regarding the Plaintiff's plaint. However, upon review of the documents and considering the evolution of electronic filing systems, the Court finds that the plaint satisfies the procedural requirements. The Court emphasizes the importance of adhering to procedural rules but concludes that the objections raised by the Defendant do not warrant dismissal of the suit.

In the upshot, the Defendant's preliminary objections are overruled. The parties are directed to proceed with the substantive merits of the case. Each party shall bear their own costs incurred in relation to the preliminary objections.

It is so ordered.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
30.05.2024**

Court

This ruling is delivered under my hand and the seal of this Court this 30th day of May 2024 in the presence of Mr. Shaba Mtung'e Counsel for the Plaintiff and Mr. Raymond Byombalirwa, Counsel for the Defendant.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
30.05.2024**