

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM SUB-REGISTRY**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 4817 OF 2024**

**ABDULHADY TAHER..... PLAINTIFF**

**VERSUS**

**ORGANIA LIMITED..... DEFENDANT**

**RULING**

*Date of last order: 10/06/2024*

*Date of Ruling: 10/06/2024*

This is a ruling in respect of a preliminary objection raised by the defendant's counsel to the effect that;

***'That the plaint is defective and bad in law for the failure to disclose the source of information in the verification clause'.***

When the matter was called on for a hearing, Ms. Hellena Ignas appeared for the plaintiff whilst the defendant had the services of Mr. Benedict Magoto Mayani and Mr. David Kasanga, learned advocates.

Expounding in support of the preliminary objection, Mr. Benedict Magoto Mayani had it that the plaintiff, under the verification clause, verified to the effect that the information contained in paragraphs 8 and 9 of the plaint is true to the best of his knowledge whereas, in actual fact, it is not. The



learned counsel lamented that the said paragraphs refer to a demand notice and reply letter to the demand notice which were prepared by the plaintiff's legal counsel as such, the same could not be in the plaintiff's own knowledge. To fathom his argument, Mr. Mayani referred this Court to the case of **Lisa E. Peter vs Al-Hushoom Investment**, Civil Application No. 147 of 2016, CAT at Dar es Salaam in particular on page 8 and clarified that the Court of Appeal underscored the reasons for verification being to test the genuineness and authenticity of the allegations and make the deponent responsible for allegations.

Furthermore, Mr. Mayani cited Order VI Rule 15(2) of the Civil Procedure Code saying that it requires a verifying person to specify the information that is in his personal knowledge and that received from another source. The learned counsel was thus opined that the averments under paragraphs 8 and 9 are not based on the plaintiff's personal knowledge rather it was obtained from the plaintiff's counsel. For that reason, the defendant's counsel adamantly submitted that the verification clause is defective hence the whole plaint is defective. Based on his submission, Mr. Mayani beseeched this Court to strike out the plaint with costs.

In rebuttal, Ms. Hellena Ignas, learned counsel for the plaintiff resisted the preliminary objection saying that it was devoid of merits. She elaborated that the objection does not meet the threshold established in the celebrated case of **Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd (No 2)** [1970] 1 EA 469. She added that the fact that the demand notice was prepared by the plaintiff's counsel does not mean that the plaintiff had no personal knowledge of it.



In the alternative, the plaintiff's counsel argued that if this court finds that the source of information is lacking, she implored the Court to invoke section 3A of the Civil Procedure Code and apply the principle of overriding objective because the omission is minor and curable by way of amendment. To support her assertion, she cited the cases of **Raimond Nicholaus Changalla and Others vs Nambongo Village Council and others**, Land Case No. 9 of 2022, HC Sumbawanga and **Nyusta Peter Kabezi t/a Nyudiah Enterprises vs Herodius Sulus Mborowe**, Civil Case No. 153 of 2019, HC Dar es Salaam where the court invoked the overriding objective principle. Ms Hellena concluded that the objection is without merits and prayed the court to overrule it.

In rejoinder, Mr. Mayani emphasized that the preliminary objection is pegged on Order VI Rule 15(2) which requires verification. He also cited the case of **Nova Esperanca Services vs PTL Roadways Limited**, Commercial Case No. 23 of 2023, and argued that the High Court ruled that in determining the preliminary objection, the court is entitled to look at the pleadings as the objection cannot be determined on the abstract. He maintained that the preliminary objection is tenable.

I have keenly considered the rival submissions. I have also scanned the averments under paragraphs 8 and 9 as well as the verification clause of the plaint. For purposes of clarity, I let them speak for themselves.

***8. That on 18<sup>th</sup> October 2022 the Plaintiff sent a demand notice with the intention to commence a suit and claim for immediate payment of the outstanding debt. The Plaintiff provided the Defendant with the time line to make payment as agreed within 30***



***days. "A Copy of the demand notice is attached herewith and marked Annexure AKT'3 and leave of this Honourable Court is craved for the same to form part of this Plaint."***

***9. That the Defendant responded to the Demand letter disputing securing a cash advance from the Plaintiff. Went on claiming any amount deposited by the Plaintiff as a shareholder shall be remitted upon availability of funds. However, the Defendant disputed the rest of the contents of the aforesaid demand letter. A Copy of the reply to the demand notice is attached herewith and marked Annexure AKT-4 and leave of this Honourable Court is craved for the same to form part of this Plaint'***

#### **VERIFICATION**

***'I, ABDULHADY K. TAHER, the Plaintiff herein verify that what is stated in paragraphs 1,2,3,4,5,6,7,8,9 and 10 are true to the best of my own knowledge and what has been stated at paragraph 11 is based on the facts and advice from my Advocate Reginald Martin which I verily believe to be true'.***

The thrust of objection by the defendant's counsel is that the said information could not be in the plaintiff's personal knowledge. The reason for the argument is that the demand notice was prepared by the plaintiff's counsel hence the plaintiff could not know of it.

With due respect to Mr. Mayani, the argument is misconceived. It is common cause that advocates or legal counsel act in accordance with the instructions of their clients. It therefore goes without saying that the plaintiff instructed his counsel to prepare the said demand notice. As rightly submitted by Ms. Hellena Ignas, the fact that the demand note was prepared by the plaintiff's



legal counsel does not preclude the plaintiff from having personal knowledge of that information. Otherwise, the defendant's counsel has to adduce evidence to establish that the information was not within the knowledge of the plaintiff. Unfortunately, establishing whether the information was, indeed, in the personal knowledge of the plaintiff is a factual issue that cannot be entertained at this stage.

In conclusion, I do not see any defect in the verification clause and for that reason, the plaint is not defective as the defendant's counsel wants this court to believe.

In a nutshell, the preliminary objection is misconceived and without merits. I forthwith overrule it with costs.

It is so ordered.



**A.A. Mbagwa**

**JUDGE**

**10/06/2024**

**Court:** Ruling has been delivered in the presence of Ms. Hellena Ignas, learned counsel for the plaintiff, and Benedict Magoto Mayani, learned counsel for the defendant on this 10<sup>th</sup> day of June 2024.



**A.A. Mbagwa**

**JUDGE**

**10/06/2024**