

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

**DAR ES SALAAM SUB-REGISTRY**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 1670 OF 2024**

**BETWEEN**

**LIFETIME WELLS INTERNATIONAL TANZANIA.....PLAINTIFF**

**VERSUS**

**HELP FOR UNDERSERVED**

**COMMUNITIES (HUC) INC ..... DEFENDANT**

**RULING**

**31th May & 14th June, 2024.**

**KIREKIANO, J.:**

The plaintiff instituted a civil case against the defendant claiming among other reliefs, an order for restoration of the plaintiff's properties from the defendant, in alternative to the above payment of 750,000,000/= (say seven hundred million shillings) being full value of the plaintiff's properties retained by the defendant. He also claimed for damages, interest and costs.

Upon being served with the plaint, the defendant through Mr. Ali Jamali learned advocate filed a Written Statement of defence and raised three points of preliminary objection on point of law that: -

1. *The suit is bad in law as it has violated Order VII Rule 1(e) of the Civil Procedure Code Cap 33 R.E 2019.*

2. *The plaintiff has no cause of action against the defendant.*

3. *The suit is bad in law for suing the wrong person.*

The preliminary objection was heard by written submission. Mr. Lutufyo Mvumbangu represented the applicant, while Mr. Ali Jamali represented the respondent.

In support of the first point, Mr. Jamali argued that as per Order VII Rule 1(e) of the Civil Procedure Code, the plaint must contain, among other things, facts containing the cause of action and the date it arose. He submitted that no paragraph in the plaint indicates when the cause of action arose. Based on that, this court can not assess whether it has jurisdiction to determine the matter.

He argued that it is not the duty of the Court to choose one of the dates mentioned by the plaintiff in the plaint and assume that it is the date when the cause of action arose. Failure to state this warrants the plaint to be struck out with costs.

He cited several cases, including **Halima Hatibu Hassan v Zena Y. Mgaya** and others, Land Case No. 28318 of 2023, and **Gozbert Cleophance & Another vs. Valerian Moses Bandugu, Land Appeal No. 60 of 2003 (HC)** at Bukoba Hon. Mgetta J., to the effect that if the

plaint fails to disclose when the cause of action arose, the proceedings became a nullity.

On the issue of cause of action against the defendant, Mr. Jamal submitted that our laws have not defined what amounts to a cause of action. However, the court can infer rights and duties over the subject matter, which the defendant breached, resulting in the plaintiff suffering damages. He referred to the case of **Edna John Mgeni vs National Bank of Commerce and another (2016) TLR 446**, which defined the cause of action on pg. 450. The Mulla Code of Civil Procedure, **16th ed, on page 1880**, indicates that the plaintiff must give such particulars as will enable the defendant and the Court to ascertain whether, in fact, and law, the cause of action did arise or not.

He submitted nowhere in the plaint indicating that the plaintiff executed the agreement with the defendant, which was later breached by the defendant to the extent that he has suffered damages. He urged this court to strike out the plaint with costs. To fortify, he cited the case of **J.B Shirima & Others vs Humphery Meena t/a Comfort Bus Services (1992) TLR 290 at pg. 293**,

On the third point of preliminary objection, that the suit is bad in law for suing the wrong person, he submitted that according to the plaint, the plaintiff has filed the matter against **Help for Underserved**

**Communities (HUC) Inc.**, which is not the defendant's proper name. Instead, the appropriate name is **Help for Underserved Communities**.

He submitted that apart from the plaintiff amending the plaint after being granted leave, he has brought for the 2nd time the improper name of the defendant. He said improper names might lead to striking out of pleadings. He cited the case of **Charles Christopher Humphrey Richard Kombe t/a Humphrey Building Materials vs Kinondoni Municipal Council, Civil Application No. 456/17 of 2021 (unreported)** to support his argument.

In his reply, Mr Lutufyo had his mind on principle in the preliminary objection stated in **Mukisa Biscuit Manufacturing Co. Ltd vs Westy End Distributors Ltd. (1969) EA 696**; he replied to the points raised by consolidating the 1st and 2nd ground grounds preliminary objection.

According to him, the Court needs to look at the whole plaint plus the annexures to see if a plaint discloses a cause of action. To support his stance, Mr. Lutufyo referred this Court to the case of **Serafin Antunes Affonso vs Portan Enterprises & Others, Commercial Case No. 17 of 2000**, which cited the case of **Angelina Chowo vs Blandina Mgimba, Civil Appeal No. 8 of 2020, HC Songea Registry (unreported)**.

He agreed with the defendant that no statutory definition in our legal jurisprudence defines cause of action. He referred to the **Black's Legal Dictionary, 8th edition pg. 235** that cause of action means

*"a group of operative facts giving rise to one or more basis for suing, a factual situation that entitles one person to obtain a remedy in a court of law".*

He cited the case of on the meaning of cause of action.

With regard to the point that the plaintiff's complaint does not disclose the cause of action against the defendant, Mr Lutufyo argued that paragraphs 3, 7, and 8 explicitly reveal the cause of action and when it arose.

His view was that if the complaint does not show the cause of action as submitted by the defendant, the Court can rectify it by ordering an amendment to that effect. He cited the case of **Rose Roezer & 3 others vs National Insurance Corporation Limited & another, civil Appeal No. 291 of 2020 CAT** (unreported) to that effect.

On the third point that the suit has been preferred against the wrong person, Mr. Lutufyo responded that the defendant's position was misconceived. He submitted that the names appearing in the complaint are the proper names of the defendants as per the MOU annexed as Annexure A1 to the complaint; the plaintiff cannot be compelled to sue a person she

does not have a cause of action. He referred to the case of **CMA CGM (Tanzania) Limited v Insignia Limited, Misc. (Commercial Application No. 168 of 2016 (unreported))** to that effect.

In his rejoinder, Mr Jamal reiterated that nowhere in the plaint does it indicate that the plaintiff was involved in any transaction with the defendant regarding the said MOU, which proves the cause of action against the defendant. He distinguished the cited case of Rose (supra) from the case at hand. On the third point of preliminary objection, he said the defendant never registered the name used and that changing a single name can result in a change of person, as seen in the case of **Richard Kombe** (supra).

I have considered the submission by learned advocates regarding the points of preliminary objection and examined the plaint and its annexures. Regarding the 1st and 2nd points of preliminary objection, as jointly submitted by the plaintiff, I have considered two aspects: **one** disclosure of the cause of action against the defendant and **two**, the issue of when the cause of action arose.

I am alive to the reasoning in **John Byambolirwa's** case that when the plaint does not disclose the cause of action, it ought to be rejected. In the plaint at hand, I have examined paragraphs 3, 7 and 8, specifically under paragraph 3 of the plaint, the plaintiff stated in the following terms.

**3.** *That the plaintiff's claim against the defendant is for restitution of the plaintiff's equipment unlawfully retained by the defendant after expiration of the MOU executed on **25th September, 2009**, payment of specific damages at the tune of 965,000,000/= arising from the defendant's act of unlawful retaining properties of the plaintiff, payment of 300,000,000/= being mere profit arising from the defendant's act of unlawfully utilization of the plaintiff's property for a period of four years, and payment of 100,000,000/= arising from the unlawful act thereof."*

The defendant claims nowhere in the plaint indicating that the plaintiff executed the agreement with the defendant, which was later breached by the defendant to the extent that he has suffered damages. Guided by law and the jurisprudence in **Mukisa Biscuit**, Preliminary objection must be on the point of law; having examined the plaint at hand, it is my considered opinion that the preliminary objection on the issue of cause of action against the defendant requires facts to prove the same **and** thus can not be resolved at this stage.

My view is supported by the decision in **Anthony Leonard Msanze and Another v Juliana Elias Msanze and Two Others, Civil Appeal 76 of 2012**, where the Court of Appeal concluded that once the plaint manifested a cause of action, a detailed examination of the cause of action at the preliminary stage was inappropriate without further evidence.

With regards to when the cause of action arose, I have read the decision in **Gozbert Cleophace and Another** cited by the defendant; in that case, the trial judge Mgetta J remarked;

*I completely failed to see any paragraph providing when the cause of action arose. As stated in the cited cases and as the law Order VII provides failure to disclose cause of action vitiates the entire proceedings of trial tribunal.*

While I agree on the importance of disclosing the date of cause of action in a plaint, I find this case distinguishable here. This is because, as indicated above under paragraph 3, the complaint indicated when the alleged dispute between the parties arose.

On the last point on names of the defendants, this issue requires more facts to ascertain the same and is not a matter of law. In the cited case of **Soitambu Village Council vs Tanzania Breweries Limited & Another, Civil Appeal No. 105 of 2011 (CAT- unreported)**, the Court of Appeal stated that: -

*"Where the Court is to investigate facts, such an issue cannot be raised as a preliminary objection on the point of law... it will treat as a preliminary objection only those points that pure law, unstained by facts or evidence."*

As submitted by the plaintiff, the Case of **Mukisa Biscuit (Supra)** triumphs in this aspect. The plaintiff knows better; the proof of his claim will be upon examination of evidence. Ultimately, I find that the



defendant's three preliminary objections have no merit and are overruled.

The costs will be decided in the final determination of this case.



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**A.J KIREKIANO**

**JUDGE**

**14.06.2024**

**COURT:** Ruling delivered in the chamber in presence of Mr. Lutufyo learned Counsel for the appellant and Mr. Ali Jamali Advocate for the respondent.



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**A.J. KIREKIANO**

**JUDGE**

**14/06/2024**