

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF MWANZA
AT MWANZA

CIVIL CASE NO. 32 OF 2023

AMMANY CONSTRUCTION

COMPANY LIMITED PLAINTIFF

VERSUS

MAKUDO ENGINEERING COMPANY LIMITED 1st DEFENDANT

TEGEMEO EVANCE TARIMO 2nd DEFENDANT

NOELA TEGEMEO TARIMO 3rd DEFENDANT

RULING

8TH & 15TH March, 2024.

CHUMA, J.

This ruling is in respect of a preliminary objection, raised by the defendants through a joint Written Statement of Defence which was filed in this Court on 10th November, 2023, by Mr. Amri Linus Flugence, learned Counsel for all Defendants, praying for striking out of the suit to the effect that the suit suffers from a couple of defects. The alleged defects are to the effect that:

- 1. The plaint is bad in law for contravening the mandatory provision of section 84A (3) of the Interpretation of Laws Act, Cap 1, which requires the pleading filed in English version to have a corresponding translation of the Swahili language.*
- 2. That, this court has no jurisdiction to entertain the instant suit for having been preferred by a plaint in contravention of rule 4(1) of the Media Service (Defamation Proceedings) Rules, 2019.*

When the matter came for hearing on 22nd February, 2024, the plaintiff was represented by Mr. Yuda Kavugushi, learned counsel who was holding brief for advocate Malecha with the instruction to proceed with the hearing, while Mr. Amri Flugence, learned advocate appeared for the defendants.

Kicking off the discussion with respect of the second ground of objection, Mr. Flugence contended that the matter before this court is about defamation but it was filed through plaint which is wrong as all tort cases fall under the Media Service (Defamation Proceedings) Rules, G.N No. 108 of 2019 (the Rules), under Rule 2 which states the application of the rules in all cases regarding defamation at Part V of the main Act. to be lodged by way of petition.

He further submitted that relying on Rule 4 (1) of the rules, all legal proceedings under Part V of the main Act, shall be instituted by way of petition set out on the schedule, and at the same time section 32 (1) of the Media Service Act, of 2016 (the Act) provides for the meaning of defamation,

"Any matter which, if published, is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his

profession or trade by an injury to his reputation is a defamatory matter”

And since the word used in both rules 2 and 4(1) of the rules is shall which means mandatory to comply with, the plaintiff to file his claims by way of plaint is wrong as it contravened the requirement of the law, the learned counsel contended that the only remedy to this defect is to struck out the matter.

Submitting in respect of the first limb of preliminary objection, he stated that according to The Interpretation of Laws Act, Cap 1 R.E 2019 (Cap 1) which requires the pleadings filed in the English language to have a corresponding with Kiswahili language as provided under sections 84 A, 53 (2) of the Cap 1 and Rule 4 (1) of the Rules, the plaintiff only filed a plaint (document) with English version. The counsel buttressed his contention with the decision in **Ibrahim Pius Kagansha & Another Vs. Bera Karumba & Another**, Land appeal No. 8 of 2022. HC. Kigoma (unreported). He prayed that the suit be dismissed or struck out because this was the second time.

Mr. Kavugushi who fended for the plaintiff in his swift reply submission stated with the first limb of the objection, he was vehement that, the preliminary objection does not meet the requirement to be a

Preliminary Objection, as it has an element of adducing some evidence that indeed the plaintiff filed plaint with both versions of English and Swahili language, he stated that for the matter to be registered before the court, the Registrar should ensure that it is under the laws both in content and form if this matter was filed with one version only then it could have been rejected by the registrar, the defendant's counsel could have asked for Kiswahili version and we would have provided him with the same. But tort cases originating from the common law whereby most of the time the language used is English, however, an alternative if he was not served with the Kiswahili version then it is not their default and the reason should not defeat the suit, as per G.N No. 66 of 2022 which provide for two languages that, the matter can be prepared with English and Swahili version and vice versa. Also, contended that Ibrahim's case (supra) is distinguishable as Mlacha, J as he then was now the Justice of Appeal on page 9 stated that, there is nowhere stated the pleading must be filed in Swahili language. The plaintiff contended that this ground lacks merit and prayed for the same to be overruled with cost.

Concerning the second limb of the objection, the learned counsel had the view that most of the tort cases are codified in the Act and the Rules (statutes) but some are still governed by the common laws principle,

and their procedures are not governed by the mentioned laws to the effect to resort to our normal laws including the Civil Procedure Code (CPC).

That, rule 4 guides all tort cases committed through the Act, and the said Act provides for the media publication to mean "*means any communication of content through media*" and media service as "*means services provided through media*", based on the quoted meaning the tort at hand was not committed through media so there was no need to file a petition, so rule 4 of the rules do not apply here. He contended further that, rule 4(2) of the Rules, explained for other laws like CPC and MCA, to be used based on pecuniary, also, section 35 of the Act, defines defamation committed through media, and the tort in this matter does not fall under it. He was of the view that since the defendant's counsel misinterpreted the matter, stated that this limb was also flawed and prayed for it to be overruled with cost and for the court to proceed with the hearing of the suit.

Submitting in rejoinder, the defendant's counsel reiterated what he submitted in chief. In addition, he held the view that objection is a pure point of law, and if it is true, they filed both versions then the court will be passionate to see though they failed to prove the date of lodging and admission, and it was the duty of the plaintiff to serve the defendants and

not otherwise, so he cannot escape from his responsibilities. That common law did not provide to depart from our laws and case laws.

In respect of the second limb, according to the law, all defamation proceedings will be governed by two laws, the Media and Newspaper Acts, if some defamations do not fall under those laws then, there would have been an explanation on the law to be used in alternative but there is none, and about using CPC and MCA, section 41 specifically provides for pecuniary jurisdiction which is different from the case at hand. Also, the plaintiff's counsel did not object to the notion that all defamation cases should be filed by way of petition, the matter filed by way of plaint contravenes the requirement of the law. He prayed for the suit to be struck out with cost.

In determining the competency of this suit, against the preliminary objection that has been raised, this court has made scrutiny of the submissions advanced by both parties. Having done so the issue which calls for resolution is whether the suit was properly filed.

Concerning filing two versions. This question arises from the fact that the legal position as it currently stands is that litigants have to be mindful when taking legal action in filing documents in instituting court proceedings. The litigants are not presented with a 'blank cheque' on how

to file the documents. They must ensure that they lodge their documents to the requirement of the law, to avoid any inconvenience. It is for this reason that statutes have been promulgated and set out the procedure to be followed which ensures that the actions of the parties in proceedings are checked and conform to the said prescriptions. This legislation prescribes, under **sections 84 A and 53 (2) of Cap 1 and Rule 4 (1) of the Rules**, which explain that when the matter is filed in the English language then there must be a correspondence with the Kiswahili version of the same was stated in the case of **Ibrahim Kagansha's** case (supra) also in the case of this court, **Ginai Bangiri Vs. Kisibiri Warioba & Another**, land appeal No. 63 of 2022. H.C Musoma (Unreported), such suits should be instituted in the English language with the correspondence of the Kiswahili version. It follows that a suit brought out of the prescription risks incurring the wrath of the law, as categorically underscored by this Court (Kalegeya, J., as he then was), in the case of **John Cornel v. A. Grevo (T) Limited**, HC-Civil Case No. 79 of 2006 (unreported). The following observation was made:

"However unfortunate it may be for the Plaintiff, the Law on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web."

The plaintiff's advocate submitted before this court with full confidence and authority that they filed the plaint in English language but at the same time managed to file its correspondent in Kiswahili language and the same is available online though no proof ever given to support his allegation. Before this court there was only one document of the plaint which was in English version its correspondent of the Kiswahili language was missing and when the court took an extra role to visit its eCMS, proof thereof nothing was seen on record.

If this courts will allow such practice to prevail on the pretext of "the oxygen principle" the rules of procedure will no longer be meaningful.

That said, I hold that the preliminary objection regarding the plaint being bad in law for failure to file a correspondent of the Kiswahili version is meritorious and it is therefore sustained. This objection alone suffices to dispose of the suit, and the instant matter is hereby struck out with costs for being incompetent.

It is so ordered.

DATED **at MWANZA** this 15th day of March 2024.




W. M. CHUMA
JUDGE

Ruling delivered in court in the absence of the parties this 15th day
of March 2024.



W.M. CHUMA
JUDGE