

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 39 OF 2006

JACKSON MAHALI PLAINTIFF

VERSUS

THE NATIONAL INSURANCE CORPORATION
OF TANZANIA LTD.....1ST DEFENDANT
CONSOLIDATED HOLDING CORPORATION...2ND DEFENDANT

R U L I N G

Hon. Mruma, J.

Together with its written statement of defence the second defendant Consolidated Holdings Corporation (CHC) has raised a notice of preliminary objection that:

" That plaint is bad in law for offending the provisions of order VI Rule 14 of the Civil Procedure Code, 1966."

The plaint complained of is drawn and filed by Ndanzi & Co Advocates of Sido Small Business House, Bibi Titi Mohamed Road, Dar es Salaam. At the last page of the said plaint, it is indicated that: "**it is drawn and filed by Ndanzi & Co. Advocates,**" and below the address of Ndanzi & Co. Advocates it is signed by advocate J.Ndanzi. The 2nd Defendant's counsel contends

that the signature below the address is only an endorsement which is a requirement under section 44 of the Advocates Act [cap 341 RE 2002]. I do agree with the 2nd Defendant's counsel that the plaint is defective.

Rule 14 order VI of the Civil Procedure Act [cap 33 RE 2002] provides that:

*"Every pleading **shall** be signed by the party **and** his advocate (if any); Provided that where a party to the pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or sue or defend on his behalf."* [Emphasize mine].

The term used is shall which implies that it is mandatory and the conjunction used is "**and**" which means that both the party and his advocate must sign.

The term pleadings is defined under rule 1 of order VI which provides that:

"pleadings means a plaint or a written statement of defence (including a written statement of defence filed by a third party) and other subsequent pleadings as may be presented in accordance with rule 13 of order VIII"

From the foregoing provisions of the law it is obvious that the signature envisaged under rule 14 of Order VI of the CPC, is not a signature below the address of the advocate

but a signature below the pleadings in question to signify that the pleadings is his.

Under the provisions of rule 14 of Order VI, signing of the pleadings is mandatory. The question here is: What are the consequences of an omission to sign plaint?

Commenting on the provisions of Rule 14 of Order VI of Indian civil Procedure Code which is para materia of our Rule 14 of order VI of the Civil Procedure Code [cap 33 RE 2002], Mulla on the code of Civil Procedure - Sixteenth Edition Volume 2 at pg 1804 had this to say:

"The signing of plaints is merely a matter of procedure. If a plaint is not signed by the plaintiff or by a person duly authorised by him in that behalf, and the defect is discovered at anytime before judgment, the court may allow the plaintiff to amend the plaint by signing the same. If the defect is not discovered until the case comes for hearing before an appellate court, the appellate court may order the amendment to be made in that court"

I fully subscribe to the position explained above by the learned author, and add that while it is mandatory that the pleadings (including the plaint) must be signed as provided for under rule 14 of order VI of the CPC, it is not mandatory

for the court to strike out the unsigned pleadings. Omission to sign a plaint may be cured at any stage by amendment.

That would have been the end of my ruling, but in the course of writing this ruling I discovered an interesting point which is worth discussing herein.

While the 2nd Defendant's counsel is vigorously attacking the Plaintiff's Plaint for being bad, invalid and defective for violating mandatory provisions of order VI Rule 14 of the Civil Procedure Code, the written statement of defence filed by himself suffers the same defects. Like the plaint, the written statement of defence filed by the learned counsel is signed by the Defendant (ie Principal Officer of the 2nd Defendant able to depose to the facts of this case). The counsel did not sign in the pleadings but instead he, signed on the top of the address of his law firm – Mark & Associates Attorney.

As clearly stated above the provisions of rule 14 talks of **"every pleading"** and "pleading as defined under Rule 15 includes written statement of defence!

Therefore if I was to agree with the 2nd defendant's counsel view on what would be the consequence of unsigned pleadings, the written statement of defence would have

gone and consequently the notice of preliminary objection would have no legs to stand on.

However, as observed above, the omission to sign the pleadings is not such a defect as could affect the merits of the case or the jurisdiction of the court. It can be set right at anytime before the judgment.

In the circumstances therefore the preliminary objection is partly sustained. It is sustained to the extent that the pleadings are found to be defective. On the hand it is partly rejected. It is rejected that the defect is incurable. I accordingly order that the pleadings – that is to say the plaint and the written statement of defence be amended in such a way that advocates of both sides sign their respective pleadings within 7 days from the date of this ruling. Each party should bear own costs.

Order accordingly.

A.R.Mruma
Judge

Date 8.5.2009

Coram: Hon. A.R.Mruma, Judge.

For the Plaintiff – Mr. Mark for Mr. Ndanzi.

For the 1st Defendant – Mr. Mark for Mr. Mbamba.

For the 2nd Defendant – Mr. Mark for.

CC: R.Mtey.

COURT: Ruling delivered.



A.R. Mruma

Judge

8/5/2009

1082 words