

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 52 OF 2010

PACKAGING AND STATIONERS MANUFACTURERS LTD.....APPLICANT

VERSUS

DR. STEVE K. MWORIA.....1ST DEFENDANT

SIMBA PAPERS CONVERTERS LTD.....2ND DEFENDANT

RULING:

Mruma, J.

The plaintiff a limited liability Company incorporated under the laws of Tanzania has sought to move this court by way of a suit claiming against the defendants jointly and severally for permanent injunction restraining the second Defendant from trespassing into the Plaintiff's factory and general damages for trespass into the said factory. Against that claim and by way of written statement of defenses, the defendants have jointly mounted preliminary objections on points of law that the suit is bad for want of board resolution to institute a case, for lack of cause of action and for contravening the mandatory requirements of order VII Rule 1(i) of the Civil Procedure Code Cap.33 R.E 2002.

Counsel for the 1st defendant in second paragraph of his submission has stated that in the course of arguing this objection he came across a ruling of this court in the case of **M/S Dar Ocean Products Ltd versus Principal Secretary Fisheries Division and Attorney General, High**

Court of Tanzania at Dar es salaam, Civil Case no. 379 of

1996(Unreported) in relation of commencement of a suit without prior sanction by a Board of Directors' resolution and in view that ruling he decided to abandon the first preliminary objection as raised. He prayed to adopt the 2nd defendant's submission in support of the objections but without prejudicing its own submissions in support of its second point of objection which is to the effect that the plaint is bad for lack of cause of action. With leave of court these objections were argued by way of written submission, and I commend the parties for their industriousness.

The court is called to determine two questions; the first is whether the plaint discloses a cause of action and the second is whether Order VII rule 1(i) of the civil Procedure Code Cap.33 R.E. 2002 has been contravened. In doing so I will revert to the parties submissions and the law and practice obtaining in our jurisdiction and other jurisdictions if need be.

I feel compelled to start with the second leg of the objection for it contains what can be conveniently and rightly termed as an objection within objection. It relates to contravention of the law which in the learned counsel's view disempowers this court to determine the suit. I have therefore no option but to first find out whether this Court has powers to hear this suit. It is about the requirements of rule 1(i) of Order VII of the Civil Procedure Code and the pertinent question here is **whether the requirements of rule 1(i) of Order VII of the Civil Procedure Code Cap.33 R.E. 2002 have been contravened by the plaintiff in filing its plaint.**

The said provision of the law is couched as follows

1. *The plaint shall contain the following particulars: -*

a) *N/A*

b) *N/A*

c) *N/A*

d) *N/A*

e) *N/A*

f) *N/A*

g) *N/A*

(h) *N/A*

(i) A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

Learned counsel for the 2nd defendant has submitted that the plaint has not complied with the above mandatory provision and therefore this Court was not assisted to determine whether it has jurisdiction to entertain this matter. He submits further that since the value of the subject matter has not been stated for the purpose of jurisdiction and court fees, then the Court has no jurisdiction to entertain this suit. He beckons this Court to dismiss the suit for want of jurisdiction alluding that there a chain of authorities of the Court of Appeal to that effect. Unfortunately, he did not cite to me any authority of the said Court of Appeal to the effect that non statement of the value of a subject matter of a claim in the jurisdiction clause ousts the jurisdiction of the court to try the suit. Instead, the learned counsel confidently and humbly prayed for the dismissal of this suit with costs "since... the plaintiff has failed to comply with the mandatory requirement of the provision of Order VII Rule 1(i) of the Civil Procedure Code as a consequence of which this Court has no jurisdiction to entertain the matter". I do not see how a statement from the bar can assist the defendant to knock down this suit at this stage.

At the outset, it should be noted that the High Court of Tanzania by virtue of section 2 (1) of the Judicature and Application of Laws Act [Cap 358 RE 2002] is vested with full and unlimited jurisdiction over all civil and criminal matters. Under the provisions of Article 108(2) of the constitution of the United Republic, such jurisdiction is subject to the jurisdiction of the Court of Appeal. Thus, in the light of Article 108(2) of the constitution and the provision of section 2(1) of the Judicature and Application of Laws Act, the High Court has original jurisdiction over all matters that are outside the jurisdiction of the courts subordinate to it. The Commercial division of the High court handles all commercial disputes which the High court has jurisdiction to handle. It was established through amendment of the High Court Registries Rules of 1984, the main objective being to ensure efficient management and expeditious disposal of commercial dispute as to encourage business development under a free market economy and also growth of foreign investment. This court, like the rest of the High court does not derive its jurisdiction from a statement in the plaint as counsel would wish this court to believe

Conventionally, and for sure no one can dispute this, it has been submitted that the jurisdiction clause shows whether the cause of action arose in the territorial jurisdiction of the Court and whether the said court is seized with pecuniary jurisdiction over the matter. This nevertheless cannot form the basis to impeach the suit and preclude the Court from entertaining the dispute where the plaint which though displays a cause of action does not state the value of the subject matter in the jurisdiction clause.

In this case, the plaint indicates that the bone of contention is the sale of the **Bielomatic-P590 Machine** at a price which was far below the agreed price of USD 315,000.00. This means that the value of the subject matter (i.e. Bielomatic- P590 Machine) of the claim is USD 315,000.00. This amount is far above the minimum thresh hold of this

court's jurisdiction which is Shillings 30,000,000.00. This suffices to raise the court's attention to look into matter and determine it accordingly.

On the basis of the foregoing, I do not agree with the counsel for the second defendant that the Court lacks jurisdiction to entertain this suit since the value of subject matter is not stated for the purpose of ascertaining jurisdiction and court fees. This being my stand, I will now proceed to determine ground number two of the preliminary objection.

Whether the plaint discloses a cause of action

The 1st defendant submitting in that respect argued that according to paragraph 3 the mind of the plaintiff can be read to project to a claim of trespass against the defendants jointly and severally and yet it seeks for permanent injunction against only one of the defendants. The counsel attacks the claim as being not only confusing but also vague. He submits also that the claim is vague and confusing for its being for trespass it is not against the 1st defendant and therefore it does not disclose a cause of action against the 1st defendant. He has backed up his arguments by the 8th edition of Ganner's Black's Law Dictionary in defining what constitute a cause of action and also the case of **Musangang'andwa versus Chief Japhet Wanzagi and 8 others, Civil Case no.9 of 2005 High Court of Tanzania at Mwanza.**

Equally, counsel for the second defendant has put it that the claim under paragraph 3 is for permanent injunction and general damages against the Defendant and therefore submits that the same does not constitute a cause of action therefore no cause of action has been shown.

From these submissions, counsels for the defendants seem to have based their second preliminary objection and submissions on paragraph three of the plaintiff's plaint. In **Wanzagi case** (supra) which is cited by the learned counsel the emphasis was that the Court should look at the plaint only when determining the cause of action. In **Mukisa Biscuits Manufacturing Co Ltd Vs West ends Distributors Ltd (1966) EA 696** case, (which I once advised counsel to look into) emphasis was on the nature of the preliminary point that it should be based on pure point of law which need not calling evidence to be proved and in **Black's law dictionary** referred by both counsels, it is defined thus ***a group of facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person"***. Thus, admittedly for a plaint to have disclosed a cause of action there must be facts which if proved may entitle the person suing to obtain remedy in court.

The question here is; does the plaint in the present suit show any group of facts which may give rise to one or more basis of suing, or is there any factual situation that entitles the plaintiff to obtain a remedy in this court from the defendants, or does the plaint disclose any sets of facts which need to be proved before one is entitled to a remedy?. I am certain that these questions are all affirmatively answered.

In the case of **NBC Holdings Corporation Vs Shirika La Uchumi na Kilimo & 63 Others Commercial Case No 24 of 2001** (unreported), this Court Dr Bwana J, as he then was observed that:-

"It is trite law that in deciding whether a plaint discloses a cause of action or not, the court needs to examine the issue within the four perimeters and its annexures, if any with any assumption in the

process that allegations made therein, be they factual or not, express or implied, are true....”

The court went on to hold that:-

“A defendant may have good defence but that is not a determining factor at the state of the proceedings.....”

Plaintiff may have made in his plaint a cooked story against the defendant but that should not be dismantled at the preliminary stages of the proceedings by way of preliminary objection. Parties should wait production of evidence to prove that the contrary is the case. In the case of **Jeraj Shariff and Company Vs Chotaji Fancy Stores (1960) E. A. 374** and also in the case of **African Overseas Trading Company Vs Tansukh Charya (1963) E. A. 468** the court stated that in order to prove the existence of a cause of action, the plaintiff is simply required to prove from the plaint (and its ennextures if any) that he has facts which give right to judicial redress or relief against the defendant(s). In the Tanzania Court of Appeal’s decision in the case of **John Byombalilwa Vs AMI (1983) TLR 1** Kisanga J (as he then was) stated that:-

“The expression cause of action is not defined under the Code but it may be taken to mean, essentially facts which it is necessary of the plaintiff to prove before he can succeed in the suit”

In the present case it is alleged in paragraph four (4) of the plaint that the plaintiff is the owner of an exercise books manufacturing machine known as **Bielomatic P-590** which is installed at the plaintiff’s factory in Moshi. It is further alleged in paragraph seven (7) of the plaint that contrary to what was resolved in a meeting, the 1st defendant without any mandate from the plaintiff, on 21st June, 2010 sold the **Bielomatic**

P-590 machine to the 2nd defendant. In paragraph twelve (12) of the plaint it is stated that the 2nd defendant is now continuing to dismantle the machine for purposes of moving the same from Moshi to Dar Es Salaam.

To me, the facts that the 1st defendant is alleged to have sold the machine the property of the plaintiff to the 2nd defendant without the mandate of the plaintiff, and the allegation that the 2nd defendant is dismantling the machine from the plaintiff's factory in Moshi with the view to take it to Dar Es Salaam are the facts which if proved may give rights to judicial redress to the plaintiff. They therefore constitute a cause of action. Counsel for the plaintiff has shown this in his submissions and I duly agree with him that the cause of action is constituted in paragraphs 4, 7 and 12 of the plaint. It does not matter how good defence the defendant(s) might have. In the case of **Chand Kaur Vs Partap Singh (1888) 1616 Calcutta, 98** Lord Watson (as he then was) expressed that:

“The cause of action has no relation whatsoever to the defence which may be set up by the defendant. Nor does it depend upon the character or the relief prayed by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action.....”

In my view the above sets of facts reveal a situation which *premafacie* give rise to one or more basis of suing and also *premafacie* entitles the plaintiff to a remedy against the defendants in this Court. These parts of the plaint present a set of facts which need to be proved before the plaintiff can be granted his prayers or put in another way; it entail disproving such allegations against the defendants so as to exonerate

them from liability. That, in line of **John Byombalilwa** (supra) is a cause of action sufficient to base a claim in this suit, and as such, in line with **Mukisa Biscuit** (Supra) it cannot be a preliminary point of law properly so called. It can therefore not stand as such and must accordingly fail.

In fine therefore the objections are without merits for which they must fail and I accordingly proceed to dismiss them with costs.

Order accordingly.


A.R MRUMA

JUDGE

Date: 23/5/2011.

24/5/2011

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

For the Plaintiff: Mr. Laswai for Mr. Dafa for Plaintiff.

For the 1st Defendant } Mr. Laswai for 2nd Defendant.

For the 2nd Defendant } Mr. Laswai for Mr. Msando for 1st Defendant.

CC: J. Grison.

COURT: Ruling delivered.


A.R MRUMA

JUDGE

Date: 23/5/2011.

2,455 - words