

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 117 OF 2015

JV TANGERM CONSTRUCTION CO.
LIMITED AND TECHNO COMBINE
CONSTRUCTION LIMITED (A JOINT
VENTURE).....PLAINTIFF

VERSUS

TANZANIA PORTS AUTHORITY.....DEFENDANT

RULING

Mansoor, J:

Date of RULING- 22nd APRIL 2016

The Counsel for the defendants have objected to the plaintiff's
suit, raising two grounds of objections, that:



- a) The plaintiff's suit against the defendant is bad in law and an abuse of the process of the Honourable Court as the Plaintiff has no legal personality to sue the defendant;
- b) The plaintiff's suit against the defendant is bad in law and an abuse of the process of the Honourable Court as the Plaintiff has no cause of action against the defendant;

And against the plaintiff's Reply to the Written Statement of Defence, the defendant raised an objection that the Reply is incompetent and bad in law for contravening the provisions of Order VI Rule 7 and 16 of the Civil Procedure Code, Cap 33 R:E 2002.

Arguing on the two points of objections raised against the plaint, the Counsel for the defendant relied on the case of **Meru Farmers' Cooperative Union vs Abdul Aziz Suleman (No. 1) (1966) 1 EA 436 (CAN)** and the case of **Jeraj Sharrif & Co. vs Chotai Fancy Stores (1960) E.A 374.**

The Counsel for the defendant argued that in paragraph 1 of the plaint, the plaintiff identified himself as being a Joint Venture, thus it has no legal capacity to sue or be sued, and that since the plaintiff has no legal capacity to sue the defendant, the plaintiff has clearly no cause of action against the defendant.

As for the 3rd preliminary objection, the Counsel for the defendant argued that the plaint discloses serious inconsistencies in that the name of the plaintiff in the Reply to the written statement of defence is different from the name appearing in the plaint. While in the plaint, the plaintiff is described as a Joint Venture, in the Reply to the Written Statement of Defence, in the verification clause, the plaintiff is described as the Company. The defence contends that Annexure K&M R1 (a) to paragraph 29 of the Reply, namely the Certificate of Registration and Extract from the Register, both dated 19/03/2008, discloses that the plaintiff was registered under the Business Names (Registration Ordinance) Cap 213, whereas there is no such disclosure in the Plaint.

The defence argues that the plaintiff cannot introduce this kind of document in the reply to the written statement of defence. That he ought to have annexed it to the plaint, he argues. This annexure discloses that the plaintiff is a partnership, but this fact does not appear in the Plaint.

The Counsel for the defendant prayed for the plaint and the Reply to the written statement of defence to be struck out with costs.

In his response, and in the alternative, the counsel for the plaintiff seems to concede to the objections, and prayed in his submissions that the plaintiff's suit be amended to disclose the necessary facts to ground a cause of action.

In the alternative he argued that the objections raised do not qualify to be treated as points of preliminary objections as they are not pure points of law, and they would entail going into evidence in order to determine them. He cited the case of



Mukisa Biscuits Manufacturing Co. Limited vs West end Distributors Ltd (1969) E.A 696 Law, JA at page 700.

The Counsel for the plaintiff, however, argued that, the first paragraph of the plaint discloses that the plaintiff is a joint venture entity formed for purposes of rendering construction works, and has entered into contracts with the defendants, as evidenced in the annexures to the plaint.

The Counsel for the plaintiff has argued that reading in totality the plaint and its annexures, the plaint discloses a cause of action against the defendant, and on this he relied on the decision in the case of **Serafim Antunes Affonso vs Portan Enterprises Limited and 7 others**, Commercial Case No. 17 of 2000 (unreported) and the case of **African Overseas Trading Co. vs Tansukh S Acharya** (1963) E.A 468.

On the objection raised as against the Reply to the written statement of defence, the Counsel for the Plaintiff argued that no new fact was introduced but admitted that the word JV was

omitted inadvertently, and it was a slip of the pen to which the defendant has not been prejudiced, he said, this was an error which could be corrected and/or amended by the Honourable Court using section 97 of the Civil Procedure code, Cap 33 R: E 2002.

I have considered the submissions by the Counsels representing the parties, and I am of the view that reading the plaint and its annexures, the plaintiff has disclosed the cause of action against the defendant, and that the plaintiff was properly identified as the Joint Venture, which was duly registered under the Business Names (Registration Ordinance) Cap 213, and the Certificate of Registration and an Extract from BRELA was duly issued showing that the plaintiff is a legal personality having the capacity to sue or be sued.

I agree with the submissions by the Counsel for the plaintiff that Annexure K&M R1 (a) which proves the existence of the Joint Venture duly registered with BRELA can be introduced in the Reply to the written statement of defence or in the list of



additional documents to be relied upon, as the doors are not yet closed for the plaintiff to add more documents for his case. Order VIII rule 13 of the CPC allows documents to be filed even on the first day of hearing the suit. Thus the 1st and the 2nd objection raised against the plaint are meritless, and they are hereby overruled and dismissed with costs.

I uphold the objection against the Reply to the written statement of defence, in that it was wrong to describe the plaintiff as the Company in the verification clause, thus the verification clause is defective, and the plaintiff is granted leave to amend the reply to the written statement of defence, to include the proper description of the plaintiff in the verification clause as well as in the citation. I have allowed the amendment based on the decision by my Learned Brother Makaramba J, in the case of **A/S Noremco Construction (NOREMCO) vs Dar es Salaam Water Sewerage Authority (DAWASA)**, Commercial Case no. 47 of 2009 (unreported), at page 18, in which he said:


*“On the preliminary objection raised by the Learned Counsel for the Defendant that the verification clause in the plaint is defective for not showing the place and date of verification, the learned counsel for the plaintiff has readily conceded; with due respect to the learned counsel for the defendant this is not a fatal error attracting the drastic measures proposed. It is an error which is curable by simple amendment of the pleadings. I am therefore at one with the learned counsel for the plaintiff that this error is not fatal and is easily curable as was aptly stated by Samata J, (as he then was), in **Philip Ananias Masasi vs Returning Officer (Njombe North Constituency) & 2 others, Misc. Civil Cause No. of 1995** (unreported) that “want of, or defect in, verification does not make pleadings void; it is mere irregularity which is curable by amendments.”*

Thus, based on the above, the preliminary objections raised against the plaint are dismissed with costs, and the objection raised against the Reply to the Written Statement of Defence is upheld, however, since the error is not fatal, and does not prejudice the defendant at all, the plaintiff is allowed to amend

the Reply to the Written Statement of Defence, to cure the defect.

It is so ordered.

DATED at DAR ES SALAAM this 22ND day of APRIL, 2016


MANSOOR

JUDGE

22ND APRIL 2016



