

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

COMMERCIAL CASE NO. 96 OF 2018

ECOBANK (TZ) LTD.....PLAINTIFF

VERSUS

A.A TRANS LIMITED.....1ST DEFENDANT

DOUBLE A CO.LTD.....2ND DEFENDANT

ASGHER BASIR VERSI.....3RD DEFENDANT

AKBER BASHIR VERSI.....4TH DEFENDANT

RULING

B.K.PHILLIP

This ruling is in respect of a preliminary objection raised by the defendant's advocate Mr. Dismas Raphael to wit;

-That, the plaint is fatally defective as it violates Rule 19(1) of the High Court (Commercial Division) Procedure Rules , 2012 (GN 250 of 2012).

At the hearing of the preliminary objection, the learned advocates Inviolata Wagoma and Bunela Magambo appeared for the plaintiff while the learned Advocate Dismas Raphael appeared for the defendant. Counsels filed their skeleton arguments as per rule 64 of the High Court (Commercial Division) Procedure Rules, 2012 (henceforth 'the Rules').

Arguing the point of preliminary objection, having adopted the contents of his skeleton arguments, Mr. Dismas submitted that the basis his preliminary objection is the legal requirements provided under Rule 19(1) of the rules. He argued that in the instant case he has noted that the plaint contains 13 pages instead of 10 pages as required in rule 19(1) of the rules. He referred this court to the following cases; **AKM Glitters Co LTD vs. Rural Livelihood Development Programme, Commercial case No 101 of 2015**, (unreported) and **Standard Chartered Bank Tanzania Ltd Vrs Sawio Commission Agent Co Ltd, Aproniuss Mutalemwa Muzo and Trace Associates, Commercial Case No 123 of 2014** (unreported) and insisted that in the above cited cases this court held that failure to comply with the requirements of Rule 19(1) of the rules is fatal hence the plaint has to be rejected. In his skeleton arguments Mr. Dismas submitted that the requirements for the plaint to contain a maximum of 10 pages is mandatory since the word used in rule 19(1) of the rules is 'shall' and this court is duty bound to ensure that the rules governing this court are strictly complied with, failure to do so will defeat the whole purposes of the rules.

In rebuttal the plaintiff's advocate Mr. Bunela Magambo, adopted their skeleton arguments and submitted further that according to Rule 19(2) of the rules, to his understanding the plaint has to be rejected at the admission stage. To cement his argument, he referred this court to the case of **Al-karim Shamshudin Habib Vrs Equity Company Limited and Viovena Company Limited ,Commercial case No 60/2016** (Unreported) in which Hon Mruma J, said that Rule 19 (1) is rather

administrative than judicial and rejection of pleadings or document is done at the registry, ascertaining the format of a pleading, the font type, font size are matters which need evidence to ascertain.

Mr. Bunela submitted further that alternatively, Rule 2(2) of the rules provides that in case of lacuna the provision of the Civil Procedure Code Cap 33 (R.E 2002) is applicable. He was of the view that apparently, section 6 of the written Laws (Miscellaneous Amendments) (No 3) Act, 2018 introduces the principle of overriding objective which requires the court, among other things to handle matters presented before it with a view to attain the just determination of the proceedings. It was the contention of Mr. Bunela that the defendant's preliminary objection should not be entertained as it is fivorous and entertaining it would jeopardize the principle of overriding objective.

Another argument raised by Mr. Bunela is that this case involves four defendants, as a result their addresses took two pages in the pleadings. Mr. Bunela contended that the defendant has not been prejudiced by the number of pages in the pleadings in anyway. Mr. Bunela invited this court to take inspiration from the findings of Hon Mruma J, in the case of **Al-Karim Shamshudin Habib** (supra) and dismiss the preliminary objection with costs.

In his rejoinder, Mr. Dismas submitted that the plaintiff's advocate has basically admitted the preliminary Objection. He further argued that the case of **Al-karim Shamshudin Habib** (supra) that has been relied upon by the plaintiff's advocate is distinguishable from the instant case, since, in

the instant case the issue is a number of pages that has exceeded the limit prescribed in rule 19 (1) of the Rules, not the font size, font type and spacing which need evidence to be proved.

It is not in dispute that the rule 19 (1) of the rules apart from providing for specification of the format, font size and font type, it provides that pleadings shall not be in more than ten pages. It is also not in dispute that the plaint in this case has 13 pages. The plaintiff's advocate has conceded that the pleadings have more than ten pages contrary to the requirements stipulated in rule 19 (1) of the Rules.

From the foregoing, the task of this court is to examine the arguments raised by the plaintiff's advocate in defence of the contravention of rule 19 (1) of the Rules by filing pleadings which have 13 pages while the rules require the same not to exceed 10 pages.

Let me start with the case law of **Al-karim Shamshudin Habib** (Supra) that has been cited by the plaintiff's advocate in his endeavour to convince this court to dismiss the preliminary objection. What I have noted is that the preliminary objection at hand is different from the one that was raised in the case of **Al-karim Shamshudin Habib**. As correctly submitted by the defendant's advocate, in the instant case the complaint is on the number of pages in the pleadings, not font type, font size and spacing as it was in the case of **Al-karim Shamshudin Habib**. To my understanding the findings of this court in the case of **Al-karim Shamshudin Habib**, was that ascertaining the font size, font type and spacing in the pleadings are matters which need evidence, therefore cannot pass the test of a point

of law laid down in the famous case of **Mukisa Biscuits Vs West End Distributors (1969) EA 699** and that was basis of the court's decision to dismiss the preliminary objection. I am inclined to agree with Mr Dismas that the case of **Al-karim Shamshudin Habib** is distinguishable from the case at hand. The issue here as I have repeatedly mentioned it, is the number of pages in the pleadings which no evidence is needed to prove that they are thirteen (13) in number.

As regards the argument that there are numerous defendants as a result the addresses only have taken two pages in the pleadings, with due respect to the Plaintiff's advocate, I do not think that this is a valid argument to justify contravention of the rules. Rule 19(1) of the rules does not have any exception whatsoever, to entertain this argument will be creating an exception which is not in line with the Rules and uncalled for as the purposes of the rules will be defeated.

At this juncture I would like to associate myself with the view of this court in the case of **AKM Glitters Co Limited** (supra), in which, this court said that the fact that the plaint was not rejected at the time of admission, cannot be a ticket for the court to allow an ailment to go into the proceedings.

The plaintiff's advocate also, invited this court to consider the principle of overriding objective as brought up by the amendment of the Civil Procedure Code Cap 33, R.E 2002 (hence forth 'CPC') by the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018 and contended that in case of a lacuna Rule 2 (2) of the rules allows the application of the CPC.

With due respect to the Plaintiff's advocate, let me say it outright here that the contention that there is a lacuna is totally misconceived. In the circumstances of this case there is no lacuna. The preliminary Objection at hand is failure to comply with rule 19 (1) of the rules, which is very clear and not ambiguous at all. The provision of Rule 2(2) of the rules comes into play in the circumstances where the rules are silent as a result a party has to resort to the provisions of the CPC. Furthermore, the provisions of Rule 4 of the rules provides for the principle of overriding objective, as it requires this court to have due regard to the need to achieve substantive justices in each particular case, so there is no any lacuna in that aspect.

Let me point out here that, to my understanding, the principle of overriding Objective is not there for the purpose of undermining the well laid down procedure rules which are very important in the administration of justices. Blatant contravention of the procedure rules cannot be covered or cured by the principle of overriding objective.

In the upshot, I find that the preliminary objection has merits and sustain it. Consequently, this suit is hereby struck out with costs.

Dated at Dar es Salaam this 21st day of January 2019.




B. K. PHILLIP
JUDGE