

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT ARUSHA

COMMERCIAL CASE NO 3 OF 2019

CRDB BANK PLC.....PLAINTIFF

Vs

LAZARO SAMWEL NYALANDU.....DEFENDANT

RULING

B.K. PHILLIP, J

This ruling is in respect of the points of preliminary objection to wit;

- i. That, the suit is bad in law as it contravenes Order VII, Rule 1 (c) of the Civil Procedure Code, Chapter 33 R.E. 2019.
- ii. That the suit is bad in law as it contravenes Order VII, Rule 1 (c) of the Civil Procedure Code, Chapter 33 R.E. 2019 as amended by G.N No. 381 of 2019.
- iii. That, the suit is bad in law as it contravenes section 18 (a), (b) and (c) of the Civil Procedure Code, Chapter 33, R.E. 2019

The plaint reveals that this case emanates from a loan facility agreement signed between the parties herein, whereby the plaintiff granted to the defendant a loan to a tune of TZS 400,000,000/= The defendant offered his property located at Plot No. 9 & 10 Block "B", with CT No. 58063, LO No. 635518, Gomba Area, in Arumeru District, Arusha Region as security

for the loan. It is alleged in the plaint that the plaintiff defaulted the repayment of the loan. In this case the plaintiff prays for judgment and decree against the defendant as follows;

- i. An order for payment of the sum of Tshs. 304,795,267/= to the plaintiff by the defendant.
- ii. An order for payment of interest on the principal sum in prayers (i) above at the contractual rate of 14.5% from 16th August, 2019 to the date of Judgement.
- iii. Payment of interest on the decretal sum at the rate of 12% from the date of Judgment to the date of full payment of the decretal amount.
- iv. Costs of the suit.
- v. Any other relief(s) which this Honourable Court may deem fit and just to grant in favour of the Plaintiff.

At the hearing of these points of Preliminary objection, the learned Advocates Francis Pius and Gwakisa Sambo appeared for the plaintiff and the defendant respectively. Submitting in support of the points of preliminary objection, Mr Sambo, started his submission by informing this court that he was going to adopt his skeleton arguments filed in this court pursuant to the provisions of rule 64 of the High court (Commercial Division) Procedure Rules, 2012. In his skeleton arguments, Mr Sambo submitted that, the plaint is bad in law for failure to state the value of the subject matter in this suit for the purpose of establishing the jurisdiction the court and assessment of the court fees, thus contravenes the provisions of Order VII, Rule 1 (i) of the Civil Procedure Code, Cap 33, R.E.2019, (Henceforth "the CPC"). He further submitted that the provisions

of Order VII rule 1 (i) of the CPC is couched in mandatory terms as the word used is "shall", thus, the omission to include a statement of the value of the subject matter is fatal. It was the contention of Mr Sambo that the figures on the amount claimed by the plaintiff that is stated in one of paragraphs in the middle of the plaint does not cater for the requirements stipulated in Order VII Rule 1(i) of the CPC .He contended that what is required is a strict compliance of what is provided in Order VII rule 1 of the CPC which shows the format and sequence required in stating the facts the case in a plaint, that is, the particulars in the plaint have to start with the name, description and place of the plaintiff, [Rule 1 (a)], then followed by the name, description and residence of the plaintiff, [rule 1 (b)] and the statement of the value of the subject matter is supposed to be at the end [Rule 1 (i)]. To cement his argument he referred this court to the case of **Juma Salaha Makongo Vs Exim Bank (T) Limited, Commercial Case No. 17/2013**, (unreported), **Arusha Art Limited Vs Alliance Insurance Corporation Limited, Commercial Case No.12 of 2011**, (unreported) and **Danhi Beatus Makanga Vs Mathew Shamba Mollel, Land Case No. 1 of 2016** (unreported), in which it was held that compliance to the requirements prescribed under the provisions of Order VII Rule 1 of the CPC is mandatory and the omission to comply with the requirement is fatal. It renders the plaint incurably defective.

As regards the second point of preliminary objection Mr Sambo submitted that the plaint is fatally defective for failure to give the description of the defendant's address which is well known to the plaintiff, contrary to the provisions of Order VII rule 1(c) of the CPC.

As regards the third point of preliminary objection, Mr Sambo submitted that this suit is bad in law for contravening the provisions of section 18 (a), (b) and (c) of the CPC, on the ground that the defendant is not a resident of Arusha and the cause of action arose in Dodoma. Mr Sambo contended that this court has no jurisdiction to entertain this suit and that the same was supposed to be lodged in Dodoma where the loan agreement was made or Dar es Salaam. It was the contention of Mr Sambo that the plaintiff's decision to institute this case in Arusha because the mortgaged property for the loan granted to the defendant is located in Arusha is wrong and contrary to the law, since the jurisdiction of the court cannot be determined by the location of the security to the loan. The position of the law is clear that a case has to be instituted where the defendant resides or where the cause of action arose argued, Mr Sambo.

Mr Sambo alerted this court on the application of the principle of overriding objective, that the same should not be applied blindly to the extent of violating the mandatory principles of law. He insisted that the compliance with the provision of section 18 of the CPC is mandatory and it goes to the root of the proceedings and touches the jurisdiction of the Court. To bolster his arguments on the proper application of the principle of overriding objectives he cited the case of **Mariam Samburo (As the Legal Personal Representative of late Ramadhani Abas) Vs Masoud Mohamed Joshi and 2 other, Civil Appeal No. 109 of 2016, (CA)** (unreported)

In rebuttal Mr Pius submitted that Mr Sambo has failed to interpret the provision of Order VII Rule 1 of the CPC properly. It was his contention

that the first point of preliminary objection is void of merits because the value of the subject matter in this case is stated in paragraph four of the plaint, which indicates clearly that the plaintiff's claim is Tshs 304,795,267/=. Mr Pius told this court that it is the aforementioned amount which was used in assessment of the court fees and the same was paid by the plaintiff. He insisted that the assessment of the court fees is one of the major purposes behind the requirements provided under Order VII rule 1 (i) of the CPC and that the same was well accomplished in this case.

As regards the second point of preliminary objection. Mr Pius submitted that the plaintiff pleaded in the plaint that the address of the defendant was to be pointed out to the process court server and that was done as the defendant was dully served and managed to appear in court through his advocate. Mr Pius was of the view that the requirements and purposes of the provisions of Order VII, Rule 1(i) of the CPC were met.

Submitting in opposition to the third point of Preliminary Objection, Mr Pius told this court that position of the law is that a case can be filed where the defendant resides or where the cause of action arose. He went on to submit that according to annexure CRDB 1 and 2 in the plaint, the agreement in respect of the loan facility at issue was executed at TFA CRDB – Branch Arusha and that is where the money for the loan was obtained. So, the cause of action arose in Arusha, contended Mr Pius. Moreover, Mr Pius submitted that the security for the loan is a property situated on Plots No. 9 and 10, Block "B", CT No. 58063 located at Gomba

Area, Arumeru District, Arusha. He insisted that under the circumstances, this Court has Jurisdiction to determine this case.

In conclusion of his submission, Mr Pius invited this court to invoke the provisions of section 3A and 3B of the CPC which provides for the Principle of overriding objective. He invited this Court to dismiss the points of preliminary objection with costs and proceed with the hearing of the case on merits.

In rejoinder, Mr Sambo reiterated his submission in chief. He insisted the following; that the law requires the plaint to have a separate paragraph indicating that the court has jurisdiction, the law does not give the plaintiff option not to indicate the defendant's address in the plaint and that the loan agreement was executed in Dodoma not Arusha.

Having dispassionately analyzed the submissions made by the learned advocates and perused the pleadings filed in court, in particular the plaint, I hasten to say that all points of preliminary objection raised by Mr Sambo are devoid of merits as I will explain in detail soon hereunder.

Starting with the first point of preliminary objection which is based on the provision of Order VII rule 1(i) of the CPC, upon perusing the plaint, I noted that, as correctly submitted by Mr Pius the amount of the value of the subject matter in this case is stated in paragraph four of the plaint, that is Tshs 304,795,267/= and at paragraph ten of the plaint it is stated that the cause of action arose in Arusha and the amount claimed is within the jurisdiction of this court. So, with due respect to Mr Sambo, in my considered view it is not correct to argue that the plaint does not contain

any statement on the value of the subject matter simply because the same is not indicated in the last paragraph of the plaint. All cases cited by Mr Sambo to support his stance on this point are distinguishable from the case in hand since in this case the value of the subject matter is stated in the plaint, whereas in those cases the plaints lacked the statement showing that the court had jurisdiction and the values of the subject matter were not stated. For instance, in the case of **Arusha Art Limited** (supra), the plaint had neither a statement indicating the value of the subject matter nor a statement indicating that the court had jurisdiction to entertain the case, which is not the position in the case at hand. I understand that I am not bound by the decision of this court in the case of **Arusha Art Limited** (supra), but I am also alive of the principle of *stare decisis* and if I have to depart from the decision of my fellow judge, then there should be reasons for doing so. However, to my understanding the holding of court in the case of **Arusha Art Limited** (supra) was not to the effect that if the statement of value of the subject matter in a case is not stated in the last paragraph in the plaint then, it is good as being not stated at all, as Mr Sambo presented it in his submissions. After all, as I have pointed out herein above, in the case of **Arusha Art Limited** (supra), the plaint had no any statement indicating the value of the subject matter and that the court had jurisdiction. In the case of **Danhi Beatus Makanga** (supra), the plaint had no any paragraph disclosing the value of the subject matter whereas in the case of **Juma Salehe Makongo** (supra) the plaint lacked a statement showing the value of the subject matter, consequently the filing fees paid by the plaintiff were under assessed and the counsel for the

defendant prayed to top up the amount so as to reach the requisite court fees. So, it is evident that the cases cited by Mr Sambo cannot be relied upon by this court to uphold this point of preliminary of objection.

As regards the second point of preliminary objection, I am in agreement with Mr Pius that the plaintiff has complied with the provision of the law since, the defendant's address was pointed out to the court process server and the defendant was duly served with the plaint and appeared in court through his advocate. Mr Sambo has not stated how his client has been prejudiced by the way the plaintiff has disclosed the address of the defendant in this suit, who eventually was served with the plaint and filed his defence as required by the law.

In fact, despite the warning that has been made by Mr Sambo to this court on the blind application of the principle of overriding objective, I find myself constrained to state here that the arguments raised by Mr Sambo in support of the first and second points of preliminary objection, are contrary to the principle of overriding objective as provided in section 3A (1) (2) of the CPC, because striking out this case for the reason that the particulars of the address of the defendant were not satisfactory, while the defendant was duly served with the plaint and filed its defence will not facilitate the just, expeditious and affordable resolution of the disputes in this case. After all, Mr Sambo's concern on the issue of defendant's address does not go to the root of the dispute between the parties herein and the defendant has not been prejudiced in anyway by the manner in which the plaintiff indicated the defendant's address and/or pointed out the same to the court process server. Likewise, holding that there is no

any statement on the value of the subject matter in this suit simply because the same is not stated in the last paragraph of the Plaint will not facilitate the achievement of substantive justice. Again, that concern does not go to the root of the dispute between the parties herein.

Coming to the last point of preliminary objection, it is a common ground that section 18 (a), (b) and (c) of CPC provides that a suit can be filed where the defendant resides or where the cause of action arose. In this case annexures CRDB 1 and 2 to the plaint, that is, loan facility letter and a deed of variation for restructuring the loan respectively, indicate that they were all signed at CRDB Bank PLC, TFA Arusha Branch. In the case of **Musa Ngang'dwa Vs Chief Japhet Wanzangi and 8 others, Civil Case No.9 of 2005 T.L.R 351**, court held as follows;

"In determining a cause of action, only the plaint together with anything attached should be looked. The plaintiff is under no obligation to anticipate any special defence which might be available to the defendant."


Similarly, in determining where the cause of action arose, the court has to look at the contents of the plaint together with its annexure. As I have pointed out at the beginning of this ruling, this case arises from the breach of the loan facility agreement between the plaintiff and the defendant. So, from what I have stated herein above it is evident that the cause of action in this case arose in Arusha where the loan facility agreement was executed. The fact that the mortgaged property is located in Arusha has not being used as the basis for lodging this case in this court as alleged by

Mr Sambo because looking at the contents of the plaint and its annextures, it is evident that the cause of action arose in Arusha. Therefore, this case has been properly filed in this court and this court has jurisdiction to determine the same.

In the Upshot, the points of preliminary objection are hereby dismissed with costs.

Dated at Arusha this 13th day of August, 2020.




B.K. PHILLIP
JUDGE