

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 131 OF 2021

BETWEEN

MANSOOR INDUSTRIES LIMITEDPLAINTIFF

VERSUS

TSN OIL (TANZANIA) LIMITED1st DEFENDANT

FAROUGH AHMED BAGHOZAH.....2nd DEFENDANT

RUWIDAH FAROUGH BAGHOZAH.....3rd DEFENDANT

Date of last Order: 26th May, 2022

Date of Ruling: 30th May, 2022

RULING

MKEHA, J:

Through Ms. Bora Nicholas learned advocate for the defendants, a point of preliminary objection has been raised to the effect that the plaint does not disclose cause of action against 2nd and 3rd defendants.

According to the learned advocate, the Memorandum of Understanding annexed to the plaint indicates that, the same was entered into between the plaintiff on one hand and the 1st defendant on the other hand. According to the learned advocate nowhere in the plaint, facts are stated indicating liability of the 2nd and 3rd defendants.

Mr. Kilufi learned advocate for the plaintiff submitted in reply that paragraph 5 of the plaint makes reference to all the defendants. He also submitted that, reference to the 2nd and 3rd defendants is also made in paragraphs 14, 15, 17, 18, 19, 22, 24 and the prayers in the plaint. It was the learned advocate's insistence that the plaint does disclose the cause of action.

It is trite law that the question whether a plaint discloses a cause of action must be determined upon perusal of the plaint together with anything attached to it so as to form part of it and upon assumption that any express or implied allegation of fact in it is true. See: 1. **JORAY SHARIF & SONS Vs CHOTAI FANCY STORES (1960) E.A 375**, 2. **EAST AFRICAN OVERSEAS TRADING CO. Vs TANSUKH S ACHARYA (1963) E.A 469**

Upon careful perusal of the plaint, I agree with the learned advocate for the defendants that no specific paragraph of the plaint indicates vividly how

liability arises on part of the 2nd and 3rd defendants. Further, the Memorandum of Understanding that appears to be the basis of the plaintiff's claims had been entered into between the plaintiff and the 1st defendant only. To that extent, I see substance in the defendants' submissions through their learned counsel. Reference to the 2nd and 3rd defendants in the plaint is generally made without actually stating how the plaintiff's claims against the two defendants arose. It is therefore my holding that, the plaint does not disclose a cause of action against the 2nd and 3rd defendants.

Following the holding hereinabove and pursuant to Order VII Rule 11 (a) of the CPC and the proviso thereto, the plaintiff is directed to amend the plaint thereby removing the defendants against whom a cause of action has not been disclosed or else retaining them by adding facts disclosing cause of action against the two defendants.

Fourteen days' time is given for that purpose. Costs to be in the main cause.

It is so ordered.

Dated at DAR ES SALAAM this 30th day of May, 2022.




C.P MKEHA

JUDGE

30/05/2022

Court: Ruling is delivered in the presence of the parties' advocates.




C.P MKEHA

JUDGE

30/05/2022