IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO.123 OF 2023

BETWEEN

MANYANYA OIL LIMITED.....PLAINTIFF

VERSUS

MEGAPETROL LIMITED.....1ST DEFENDANT

WORLD OIL (TANZANIA) LIMITED.....2ND DEFENDANT

RULING

Date of Last Order: 15/02/2024

Date of Ruling: 03/05/2024

GONZI, J.

As it can be discerned from paragraph 5 of the Plaint, the plaintiff instituted this suit praying for Judgment and Decree against the Defendants:

> **"Jointly and severally for the total sum of payment of Tanzania Shillings Seven Hundred and Seven Million and Seventy Thousand only (TZS 707,070,000/=) for fundamental breach of the fuel supply agreement, (herein after referred to as the agreement). The Plaintiff also claims for interest at the commercial rate for the claimed amount and general damages to**

the tune of Tanzanian Shillings Five Hundred and Sixty Million Only (TZS 560,000,000) or as may be assessed by this Honourable Court and costs of this suit."

In paragraph 6 of the Plaint, the Plaintiff averred that:

"On 17th July 2023 the Plaintiff and the 1st Defendant entered into a contract of sale of fuel (Diesel and Petrol) an agreement which was executed by payment of the monies for the requested fuel into the 1st Defendants Account No.50100000552662 with State Bank Mauritius, the fuel which was stored in the 2nd Defendants Depot. Copy of the Proforma Invoice No. P5270625 &Invoice No. P 5270624 dated 17th July 2023, Payment Slip for Invoice No. P 5270625 and Invoice No. P 5270624 dated 17th July, 2023 is hereby attached and marked as Annexture MOL-2,3,4 &5 respectively and leave of this Honourable Court is craved for it to form part of this Plaint."

When served with the Plaint, the 1st and 2nd Defendants responded by refuting the claims for breach of contract and the First Defendant raised a Counter Claim against the Plaintiff. Further, both Defendants premised their respective Written Statements of Defence with Preliminary Objections. The first Defendant raised 2 preliminary Objections that:

1. That the honourable Court is not vested with jurisdiction to hear the parties, try and determine the suit in terms of the agreement of delivery of the production dispute between the parties, as they ousted the jurisdiction of the honourable court, they

chose the law and forum other than the jurisdiction of the honourable court as evidenced by their Invoice of delivery of the products dated 17th July 2023.

2.The suit is bad in law for misjoinder of the 1st defendant and misjoinder of cause of action.

The 1st Defendant's Counsel therefore prayed that the suit be dismissed with costs.

On the other hand, the 2nd Defendant raised a preliminary Objection that:

On the basis of the Pro Forma Invoice dated 17th July 2023 annexed by the Plaintiff to the Plaint, this Honourable Court lacks jurisdiction to entertain the suit on the ground that the parties subjected themselves to English law and jurisdiction of the High Court in London, UK.

The hearing of the preliminary objections proceeded by way of written submissions. The first Defendant enjoyed the services of Eng. Joseph O. Ngiloi, Learned Advocate, while the second Defendant enjoyed the services of Mr. Respicious Didace, learned Advocate. The Plaintiff enjoyed the services of Mr. Andrew Miraa, learned Advocate. In respect of the preliminary objection on lack of jurisdiction, the learned counsel for the 1st Defendant submitted in support of the preliminary objection that the Plaintiff and the 1st Defendant entered into a business agreement through the Proforma Invoice No. P5277062 issued by the 1st Defendant to the Plaintiff. He submitted that the Proforma Invoice, as the contractual document, stipulated all the details of the product, mode of delivery, consideration and the applicable laws whereby it clearly stipulated: **"English Law, under Jurisdiction of the High Court in London, UK."**

The learned counsel for the first Defendant submitted that under section 7(1) of the Civil Procedure Code, courts in Tanzania shall have jurisdiction to try suits of civil nature except where their cognizance is expressly or impliedly barred as in the case at hand. The learned counsel for the first defendant argued that in the case of **Jamila Sawaya Versus M/S Royal Marine Shipping of Dubai & 4 Others,** Commercial Case No.30 of 2006, High Court Commercial Division, it was held that:

> **"in the instant case the Bill of lading confers exclusive jurisdiction to the High Court of Justice of England. There is no other provision to the contrary. The ousting of jurisdiction of our courts is not, in my view, in conflict with the provision of section 7(1) of the Civil Procedure Code 1966."**

The learned counsel for the 1st defendant submitted further that where there are two or more courts vested with jurisdiction to try the suit, parties are at liberty to choose in their agreement a particular forum to try their suit and that choice would not be contrary to public policy or the laws of Tanzania. He cited the case of **Scova Engineering Spa and another Versus Mtibwa Sugar Estates Limited and 3 Others**, Civil Appeal No.133 of 2007 decided by the Court of Appeal of Tanzania where at page 16 the Court of Appeal held that:

> **"applying the above legal position to the facts of the case, it is ineluctable that by clause 1.9.2 of the agreement the appellants, on one hand and the second, third and fourth respondents on the other, chose in clear, explicit and specific terms that the Courts of Rome, in exclusion of other courts, would be their forum for litigating any dispute between them in**

connection with the said agreement. That the agreement bound the parties and it was not open for the appellants to resort to refuse to take cognizance of the suit and rightly bound the parties to their bargain."

The first defendant's learned counsel submitted further that at page 19 of the **SCOVA ENGINEERING CASE** the Court of Appeal held further that:

"The upshot of the matter is that the appeal is without merit as we uphold the High Court's refusal to assume jurisdiction over the matter. Accordingly, the appeal stands dismissed. However, in view of the circumstances of this matter, we leave the parties to bear their own costs. "

Mr. Ngiloi, the learned counsel for the 1st defendant, concluded his submissions and prayed that the preliminary objection be upheld and the plaintiff's case be dismissed with costs. The 1st defendant's learned counsel silently dropped the second preliminary objection by not prosecuting it.

Mr. Didace, the learned counsel for the second Defendant, also made his submissions in respect of the preliminary objection on lack of jurisdiction. He argued that in terms of paragraph 6 of the Plaint, the legal basis of the relationship between the Plaintiff and the 1st Defendant is the Proforma Invoice dated 17th July 2023 which is annexed to the Plaint. He argued that the said Pro Forma Invoice contained a phrase that parties to the contract had subjected themselves to the jurisdiction of the High Court of London, the UK; and therefore this Court lacks jurisdiction to entertain the matter. The learned counsel for the 2nd Defendant relied on the case of **Sunshine Furniture Co. Ltd Versus Maersk China Shipping Line Co. Ltd and Another**, Civil Appeal No.98 of 2016 decided by the Court of Appeal of

Tanzania at Dar es Salaam, confirming the decision of this Court, it held that:

> **"In the present case, it was upon the parties choice of forum that the learned High Court Judge applied the provisions of Section 7(1) of the CPC to find that the High Court was barred from entertaining the suit. His finding was based on the parties choice of forum. The parties did not by agreement, oust the jurisdiction of Tanzanian courts, rather they chose one of the courts which have jurisdiction, to be the court at which their dispute should be determine. In the circumstances, we agree with Mr. Nangi that the case of TANESCO versus IPPTL (supra) cited by the appellant's counsel is distinguishable."**

The learned counsel for the 2nd Defendant cited also the decision in the case of SCOVA ENGINEERING (supra) which the learned counsel for the 1st Defendant had relied upon as well. In addition, the learned counsel for the 2nd defendant relied on the case of **Navare Chargeurs Delmas Vieljeux (the Francois Vieljeux) (1984) eKLR** where the Court of Appeal of Kenya recognized the choice of forum by parties to the agreement as valid and that the same did not oust the jurisdiction of the courts. The learned counsel for the 2nd defendant concluded his submissions in chief by praying that the suit be struck out with costs.

The learned counsel for the Plaintiff, Mr. Andrew Miraa, responded to the arguments submitted by the learned counsel for the 1st and 2nd Defendants. He argued that the court has jurisdiction to entertain the suit because the said Proforma Invoice is not a contract for supply of fuel as between the parties but rather it is one of several documents which evidence the

existence of the business relationship between the parties in dispute. He argued that the Proforma Invoice is not the only document exchanged by and between the parties during their business relationship. He submitted that prior to the issuance of Proforma Invoice, parties had exchanged communications via E-mails, and phone calls whereby the Plaintiff had requested for supply of 375 cubic meters of Petroleum and Diesel fuel at the price of 790 USD per cubic meter and the two Proforma Invoices were issued by the 1st Defendant to the Plaintiff, to wit Proforma Invoice No.P5270625 and P5270624 whereby after receipt of the Invoices and further communication through e-mails, the Plaintiff paid into the 1st Defendant's account No.50100000552662 with State Bank Mauritius the sum of USD 277,750.00. He argued that after payment of the monies the Plaintiff managed to take some of the fuel but the 1st and 2nd Defendants withheld the remaining quantity of fuel being 76,000 liters for reasons best known to themselves. The Plaintiff therefore argued that there was no written agreement between the parties and the alleged Proforma Invoice No. P 52770625 is not a contract between the parties but rather one among the documents which prove the existence of a business relationship between the parties to the dispute. He argued that the Proforma Invoice No. P52770625 is not a contract nor equivalent to a contract. He cited the case of **AMI Tanzania Limited versus Prosper Joseph Msele**, Civil Appeal No.159 of 2020 where at page 15 the Court defined a Pro Forma Invoice as:

> **"Invoice is defined as a document or electronic statement stating the items sold and the amount payable, it is also called a bill. Invoicing is when invoices are produced and sent to customers. It is used to communicate to a buyer specific items, price and quantities they have delivered and how must be paid for by the buyer. Payment terms will usually**

accompany the billing information- see definitions uslegal terms.com. therefore, according to this definition, an invoice is a statement sent to the customer describing the quantity and price specific items for payment".

The learned Counsel for the Plaintiff submitted that in the case of **Gurukar Plastics Ltd versus Collector of Customs** (1990) 29 ECC61 at page 5 the Court held that:

"Invoices are not to be treated as a fresh offer as concluded contract has already been executed. Invoices are placed as follow up action or in pursuance of a contract".

The Plaintiff's learned counsel submitted that Proforma Invoice is not a contract, it is a preliminary document that is used during negotiations whereby if negotiations are complete, the seller issues a sales invoice to the buyer. He argued that it is not a contract under section 10 of the Law of Contract Act, Cap 345 RE 2019.

The Plaintiff's counsel submitted that the phrase in the Pro Forma Invoice reading: **LAW: ENGLISH LAW, UNDER JURISDICTION OF THE HIGH COURT IN LONDON, UK"** is not clear that the parties have chosen the UK laws or the courts of England. There are no words showing that the parties agreed to those terms. This makes the contract vague. The Plaintiff's counsel referred to the practice of parties as reflected under paragraph 21 of the WSD of the 1st Defendant that shows that the dispute arose in Dar es Salaam. Hence, he argued, London would be inappropriate forum for the parties.

The Plaintiff's counsel submitted that the rule in Scova Engineering case is not applicable in the case at hand due to absence of a contract conferring jurisdiction to other courts.

The Plaintiff's counsel submitted that under section 18 of the Civil Procedure Code, the Plaintiff has opted to file the suit in Dar es salaam because the plaintiff's fuel was stored in a facility in Dar es salaam and that the 2nd Defendant localized and sold the fuel which was meant for transit, in Dar es salaam. Hence the cause of action arose in Dar es salaam.

The Plaintiff's counsel submitted that the cases relied upon by the 1st Defendant were decided with respect of clauses in a Bill of Lading, which is a different document altogether from a Proforma Invoice which is not a contract.

The Plaintiff's learned counsel submitted that under section 7(1) of the Civil procedure Code, Cap 33, courts have jurisdiction to try all civil suits except where barred expressly or impliedly. The learned counsel argued that the court should guard its jurisdiction jealously. He cited the case of **Mtenga versus University of Dar es Salaam** (1971) HCD 247 where at page 438 the Court held that:

> **"The court is and has to be for the protection of the public, jealous with its jurisdiction and will not lightly find its jurisdiction ousted."**

The Plaintiff's counsel further submitted that the rule is that parties cannot by their contract confer jurisdiction upon the court. He cited the case of **East African Breweries Limited versus GMM Company Limited**, (2002)TLR 12 where it was held that:

> **"Parties to a contract are free to choose the law that would apply in the event of a dispute and that the parties in this case were free to agree that the law that was to govern their distribution agreement was Kenya law."**

The plaintiff's counsel argued further that in the case of **Scova engerring versus Mtibwa Sugar Estates** (Supra) at page 15 the Court of Appeal stated that:

> **" we would however underline that it is also settled that parties cannot by agreement confer jurisdiction to a court which otherwise does not have jurisdiction to deal with the matter."**

The Plaintiff's counsel concluded by submitting that in view of the decision in **Scova Engineering Case**, if the court finds the Pro Forma Invoice is a contract, and that the parties had opted for a foreign court, the remedy is to stay this case and not to dismiss it.

In their rejoinder submissions, the learned counsel for the 1st and 2nd Defendants reiterated their submissions in chief. In particular the first defendant's counsel added that the Pro Forma Invoices Nos.P5270625 and P5270624 are the only agreements which have reduced the oral agreement of the parties into writing. Hence the same was a valid agreement under section 10 of the Law of Contract Act.

On a Pro Forma Invoice not qualifying as a contract, the 1st Defendant's counsel cited the case of **Boxboard Tanzania Limited Versus Mount Meru Flowers Limited**, Civil Case No. 8 of 2016, decided by the High Court of Tanzania at Arusha where it was held that:

> **"In my view the Pro Forma Invoice will remain as offer until accepted by the other party and upon being accepted it becomes a valid offer and the acceptance of the same creates a legal relationship between the parties".**

The 1st Defendant's counsel argued that both the Plaintiff and the 1st Defendant acted pursuant to the Pro Forma Invoice. He argued that under section 5(1) of the Sale of Goods Act, a contract may be created in writing, by conduct of the parties, verbally by word of mouth, or partly verbally and partly in writing. He argued that in the **case of Box Board Tanzania Limited** (supra) the court held that:

> **"That even in the absence of an oral or written contract, by pressing an order after receiving the proforma invoice, the defendant was impliedly accepting the terms under the proforma invoice."**

On the Proforma invoice not being clearer in its terms when it showed the parties had opted for the UK courts, Mr. Ngiloi the 1st Defendant's counsel responded that upon acceptance of the proforma invoice, the Plaintiff had accepted all the terms thereof. The learned counsel for the 1st defendant submitted that the only document binding the parties in this suit is the proforma invoice.

On oral agreement, the 1st defendant's learned advocate argued that since there is a written document, in terms of section 101 of the Evidence Act, and the case of **Techlong Packaging Machineries Ltd and another versus A One Products and Bottlers Limited** (2017), the alleged oral agreement is excluded.

The learned counsel for the 2nd Defendant made a brief rejoinder too in the following aspects. Firstly, on the proforma invoice not being a contract, he

submitted that under paragraph 6 of the plaint, the proforma invoice is mentioned and pleased by the Plaintiff as the basis for the business relationship between the parties. He argued that the Plaintiff has not shown any other documents providing a contrary procedure of dispute resolution apart from the one under the proforma invoice.

Secondly, Mr. Didace, learned advocate, submitted that by the Plaintiff's acceptance of the Proforma Invoices and making payments thereon, the plaintiff had by conduct accepted all the terms therein including the one on choice of the English courts and laws.

Thirdly, on sections 7(1) and 18 of the CPC as preserving jurisdiction of the court, Mr. Didace, learned counsel for the 2nd Defendant argued that these provisions have already been considered by the courts in the cited cases in submissions in chief. Counsel cited another case of **Mashishanga Salum Mashishanga versus CRDB Bank PLC and 2 others** (2021) which laid the rule to the effect that parties should always be bound by their bargain and their choice of forum should be enforced by the court. He further cited the case of **Reliance Insurance Company (T) Limited versus CMA CGM Societe Anoyme and another** to back up the same position of the law on forum choice.

The 2nd Defendant's counsel expressed his astonishment on the contradictory move by the Plaintiff whereby on one hand the plaintiff premises his entire claim on the Proforma Invoices and yet, on the other hand, the plaintiff distances herself from the clear terms of the same proforma invoices with respect to choice of law and choice of forum.

After reading through the arguments by the learned counsel as well as the cited authorities, I am in a position to determine the preliminary objections. The preliminary objections center on jurisdiction of this Honourable Court to entertain the case at hand while the parties appear to have expressly chosen

a different forum namely High Court in London. The issue of jurisdiction is critical. As it was held in in the **"MV Lilian S" [1989] 1 KLR case:-**

> **"Jurisdiction is everything, without it, a Court has no power to make one more step. Where the Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."**

The objections by the 1st and 2nd Defendants are based on the Proforma Invoices dated 17th July 2023 both of which were attached by the Plaintiff to the Plaint as annextures MOL-2 and 3 respectively. In the Pro Forma Invoices No. P5270625 and No. P5270624 both dated 17th July 2023, both issued by the 1st Defendant to the Plaintiff, there is inserted the phrase:" **Law: English Law, under jurisdiction of the High Court in London, UK".** It is that phrase which the 1st and 2nd Defendants have raised issues in respect of and have argued that this court lacks jurisdiction to handle the matter at hand.

From the arguments, the major issue is whether the proforma invoices constituted an agreement? In my view this issue does not have to detain the Court any longer. I fully subscribe to the holding in the **Boxboard Tanzania Limited Versus Mount Meru Flowers Limited,** Civil Case No.8 of 2016, decided by the High Court of Tanzania at Arusha where it was held that:

> **"In my view the Pro Forma Invoice will remain as offer until accepted by the other party and upon being accepted it becomes a valid offer and the acceptance of the same creates a legal relationship between the parties".**

The above decision has explained it all. The terms of the proforma invoices in this case were proposed by the 1st Defendant and were accepted by the Plaintiff by his conduct and who paid the money under its terms. By conduct of the parties subsequent to the issuance of the proforma invoice, a valid and enforceable agreement was thereby created. I do not accept the Plaintiff's argument that Proforma Invoices were among several other documents regulating the business relationship of the parties. The pertinent question is where are the other documents as alleged? If there were other more authoritative documents prescribing the contractual terms between the Plaintiff and the 1st defendant, why the same were not pleaded in the Plaint? The narrative of existence of other documents was given by the learned counsel in his reply submissions. They are not part of the pleadings. The Preliminary Objection is raised based on the ascertainable facts from the pleadings as they are, not on evidence to be produced. To quote the Court of Appeal for Eastern Africa in the case of **Mukisa Biscuits Manufacturing Company LTD v West End Distributors LTD** (1969) EA 696, at page 701, Sir Charles Newbold P., had this to say:-

> ***A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is the exercise of judicial discretion.***

The Learned counsel for the 1st and 2nd defendants raised their preliminary objections on the assumption that what the Plaintiff had pleaded under the plaint was correct. Once a preliminary objection was raised based on the ascertainable facts from the pleadings, it was not open for the Plaintiff to adduce more facts by way of un-pleaded facts and statements from the bar, with a bid to neutralize the preliminary objection. The only way the Plaintiff

could have neutralized the preliminary objection was by pointing to facts in the Plaint which would lead to a different and incompatible conclusion to the one the defendants drew from the same contents of the Plaint. The rule is Parties are bound by their pleadings. Further in evidence law, documentary evidence operates to exclude inconsistent oral evidence in the same aspect. As there is documentary evidence in the form of the Proforma Invoices which were attached to the Plaint, signifying the terms of the agreement between the Plaintiff and the 1st defendant, the oral account given by the learned counsel for the Plaintiff, even if it were to be taken to be evidence, could not stand the test offered by the incompatible candid documentary evidence on the same issue. Paragraph 6 of the plaint is loud and clear that the contractual basis between the Plaintiff and the 1st defendant is the Proforma Invoice. Therefore, I find that on the basis of pleaded and undisputed facts, there existed an agreement between the plaintiff and the 1st defendant, whose business relationship was founded on the Proforma Invoices. The 2nd Defendant has been sued as an agent of the 1st Defendant on the basis of the same agreement between the Plaintiff and the 1st Defendant.

As I have found that the Plaintiff and the 1st defendant had an agreement evidenced in the form of proforma invoices as pleaded by the Plaintiff under paragraph 6 of the plaint, wherein the parties had chosen another forum for dispute resolution apart from this court, the next question is whether by virtue of that agreement this court lacks jurisdiction over the present dispute emanating from that agreement? It is common in international trade for parties to choose the applicable law to their contract as well as the forum to handle their dispute and that forum can be an ordinary court or an arbitral tribunal. In the book by Anthony Connery, titled **Manual of International Dispute Resolution**, Commonwealth Secretariat (2006) at page 187 it is stated that:

> **Despite the increasing use of international commercial arbitration backed up by the New York Convention, litigation in the national courts is probably still the major**

international dispute resolution process in use. In the context of international contracts, the major problem in relation to litigation is the prospect for one of the parties of that litigation taking place in the courts of a foreign country, conducted in a foreign language and under a foreign system of law. However, litigation may be the dispute resolution process used for a variety of reasons.

It becomes apparent, therefore, that a choice of foreign court, by the parties to an international contract or agreement, as their preferred forum for dispute resolution, is perfectly justified in the same way that it can be used in arbitration proceedings. The parties to the fuel sale agreement in this case hail from different States. The parties to this suit are all non-Tanzanians. They chose a foreign court expressly. This court is therefore required to stay the proceedings and refer the parties to their chosen forum. This position can be seen in the decision of the Court of Appeal of Tanzania in **Sunshine Furniture versus Maersk (China) Shipping Co. Ltd and Nyota Tanzania Ltd** Civil Appeal No.98 of 2016 where the Court of appeal held that:

"we endorse the above view by the learned author that the court in which the suit is instituted has the discretion to stay the suit once it learns of existence of an agreement between the parties to sue in a particular forum, whether foreign or not. For, it neither can dismiss the suit because it has not heard and determined it on the merits nor can it strike it out because, except for the choice of a different forum, it is otherwise competent to try the matter. The high court in the instant matter, we think, should have stayed trying the suit pending the institution and determination of the claim in the court of Rome. On that basis we vacate the dismissal order and substitute for it an order staying the suit in the high court, commercial division.

A similar position was taken by the Court of Appeal in Scova Engineering SPA and another Versus Mtibwa Sugar Estates Limited and 3 Others (2021).

Therefore, once it is settled that there is an agreement whose terms were expressed in writing in the proforma invoices, by virtue of which the parties chose the High Court of London as their preferrable forum for settlement of disputes emanating from their agreement, the role of the court is to uphold that agreement by keeping parties to their bargain. That however does not mean that this court lacks jurisdiction or that parties by their agreement have ousted the jurisdiction of this court. It only means that whereas this court as well as the foreign court chosen by the parties, both have jurisdiction over the dispute on different grounds, the parties' own-chosen forum should be given prominence under the doctrine of party autonomy. Party autonomy has been a common principle in contract law, thus it has been drafted into most of the international conventions in contract law as well as into domestic laws governing contracts. Party - autonomy entails, amongst others, the parties' freedom of contract to decide the contractual terms and to negotiate the terms of their contract for which they give their consents. In the case at hand, the 1st Defendant proposed to the Plaintiff the terms of the agreement through the Proforma Invoice No.P5277062 dated 17th July 2023. The proposed contract in the proforma invoice was for sale of fuel (Diesel and Petrol). The Proforma Invoice, as the contractual document, stipulated all the details of the product, mode of delivery, consideration, choice of forum and the applicable laws whereby it clearly stipulated: "English Law, under Jurisdiction of the High Court in London, UK." That was among the terms of the agreement which were accepted by the Plaintiff without any modification. The Plaintiff executed the agreement by payment of the monies for the requested fuel into the 1st Defendant's Account No.50100000552662 with State Bank Mauritius, whereby the 1st Defendant imported to Tanzania the fuel which was stored in the 2nd Defendants Depot. The present suit is actually attempting to vindicate the Plaintiff's rights under the very agreement for sale of fuel. It is strange

that the Plaintiff is attempting to distance herself from terms of the same agreement which on the other hand she had filed the suit in order to enforce in this court. In the circumstances, the Plaintiff should be kept to her bargain with the Defendants. However, this case cannot stay pending forever in this court. If a suit is filed in the UK and it is finally determined, that may render the current suit res judicata. On the other hand, if the plaintiff does not institute her claims in the chosen foreign court, this Court which is equally seized with the requisite jurisdiction and still has superintendence over the pending suit, will have to take the necessary action in the interest of justice and in accordance with dictates of court case management.

In fine, I uphold and sustain the preliminary objections raised by the 1st and 2nd Defendants. Guided by the rule in **Sunshine Furniture versus Maersk (China) Shipping Co. Ltd and Nyota Tanzania Ltd case,** I proceed to make the following Orders:

(1) An order is hereby issued staying the present suit pending the institution and determination of the claims in this suit, by the Plaintiff, under Jurisdiction of the High Court in London, UK and pursuant to the English Law.

(2) As the suit is stayed, pending determination of the claims in the parties' chosen courts in London, the UK, and the Ruling does not terminate these proceedings, the Plaintiff is given 3 months period from the date of this Ruling to report to this court and substantiate it by the relevant documentary evidence, on the status of the Plaintiff's compliance with the order of this court.

(3) The Preliminary Objections are sustained and upheld with costs. As the matter remains pending in this court, the costs shall be costs in the suit and shall be taxed.

It is so ordered.

A. H. GONZI

JUDGE

03/05/2024

Ruling is delivered in court this 3rd day of May 2024 in the presence of Mr. Andrew Miraa, learned Advocate for the Plaintiff and Mr. Respicious Didace Learned Advocate for the 2nd Defendant.

A. H. GONZI

JUDGE

03/05/2024