

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 451 OF 2016

JOB P. MWAKISISILE.....PLAINTIFF

VERSUS

WORKERS DEVELOPMENT COOPERATION LTD 1ST DEFENDANT

MAJEMBE AUCTION MART LTD 2ND DEFENDANT

RULING

Date of Last Order: 28/8/2019

Date of Judgment 27/9/2019

A. Mohamed, J:

On 31/7/2019 when the suit came up for mention, the Court asked the parties to address it on the following two legal points it had noticed;

1. Whether the suit is competently before it on account of the plaintiff's failure to state the value of the subject matter contrary to rule 1 (i) of Order VII of the **Civil Procedure Code (Cap. 33 R.E. 2002)**
2. Whether the plaint has been properly signed by a purported agent.

Following the plaintiff's failure to appear on 17/6/2019, 31/7/2019 and 28/8/2019, this Court made an ex-parte order against the plaintiff.

The matter proceeded by way of written submission.

In their joint submission, Mr. Mathew Kabunga, for the defendants argued strenuously in support of the Court's first observation in regard to the plaintiff's failure to comply with rule 1(i) of Order VII of the Civil Procedure Code. However, upon reflection, I noted the plaintiff had indeed complied with the said provision as indicated in paragraph 16 of the plaint.

The second point raised by the Court is whether the advocate for the plaintiff properly signed in the plaint as an agent of the plaintiff.

For the defendants, it was argued that Rule 14 of Order V of the Civil Procedure Code cited by the plaintiff deals with service on agents in suits for immovable property. In that regard, Mr. Kabunga was of the view it does not relate to a recognized agent. The counsel noted that a power of attorney is the only document that empowers a person to act on behalf of another as provided under Rule 2 (a) of Order III of the Civil Procedure Code. In addition, he averred that a Power of attorney is one of the documents, that under section 94 of the **Evidence Act (Cap. 6 R.E. 2002)**, is presumed to have been executed and authenticated. And that the term "power of attorney" has been defined by the **Stamp Duty Act (Cap 189 RE. 2002)** as follows:

“Power of attorney includes any instrument empowering a specific person to act for and in the name of the person executing it”

Mr. Kabunga explained the above definition fits that given by Sarker in his commentary of section 85 of the **Indian Evidence Act** that is in *pari materia* with our section 94 of the **Tanzania Evidence Act (Cap 6 RE 2002)**. The counsel went on to state at page 1234 of Sarkar's Commentary, a power of attorney is defined to be **“a document executed by a person in favour of another empowering the latter to do any lawful act or acts for and on behalf of the donor...”**

In this regard, Mr. Kabunga explained that a power of attorney empowers another person to represent him or act in his stead for certain purposes. He referred this Court to **Kiwanuka & Co. v. Walugembe [1969] E.A. 660, Bugerere Coffee Growers v. Ssebbaduka [1970] E.A. 147, Kafuma v. Kimbowa Builders & Contractors, [1974] EA. 913 and Hans Nagorsen v. BP Tanzania Ltd, [1987] TLR. 175 (HC)**. In the **Hans Nagorsen** case (*supra*), the plaintiff was duly authorized to settle a claim, but the plaintiff instituted a suit against the defendant. Kyando, J. held *inter alia*, that; *“authorization to settle a claim is not the same as authorization to appear, apply or do any act in or to any*

Court within the meaning used in Order III rule of the Civil Procedure Code". In view of the above position, it was Mr. Kabunga's argument that the plaintiff instituted the present suit without authority or power.

In concluding, Mr. Kabunga urged this Court to dismiss the suit with costs as there is no document authorizing any person to sign the plaintiff's pleadings as a recognized agent.

Having carefully read the pleadings and pondered over the defendant's submissions, at the outset, I will state the defendants' arguments merit my acceptance.

It was the Court's observation that at the end of the plaintiff's plaint, his advocate signed at the bottom of the paragraphs in the plaint as "advocate for the plaintiff" as well as in the verification clause and in the certification clause. In the last clause, the advocate stated and I take the liberty to reproduce the passage as follows:

"I, Richard M. Advocate for plaintiff (sic), do hereby certify in terms of order V Rule 14 of the Civil Procedure Code, Cap 33 R.E. 2002, I am authorized by the plaintiff to sign these pleadings on his behalf as his agent"

**Signed
Richard, M."**

Rule 14 of Order V of the Code reads as follows:

“Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.”

This provision clearly is in regard to service on an agent in a suit for immovable property. Undoubtedly, it does not confer to any agent or person the power to sue on behalf of a claimant.

The proper provision is rule 14 of Order VI of the Code that states:

“Every pleading shall be signed by the party or his advocate (if any); provided that where a party pleading is, by reason of absence or for any other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or sue or defend on his behalf.”

I therefore agree with Mr. Kabunga that Mr. Richard M. has not been appointed by the plaintiff as his agent. Had Mr. Richard M.

stated that he was duly authorized by the plaintiff to sign in the pleadings to sue on behalf of the plaintiff, that would have had been a different matter.

For the above reasons, I find the suit is incompetently before the Court as there was no agent authorized by the plaintiff to sign in the pleadings on his behalf. In the result, I uphold the Court's 2nd observation and strike out the suit with a half of the costs.

It is so ordered.



**A. MOHAMED,
JUDGE,
27/9/2019.**