

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND CASE NO. 17 OF 2021

HILAL Z. MAFTAH	1ST PLAINTIFF
ABDULMAJID Z. MAFTAH	2ND PLAINTIFF
UWESO Z. MAFTAH	3RD PLAINTIFF
YAHYA Z. MAFTAH	4TH PLAINTIFF

VERSUS

IBRAHIM ZAKARIA MAFTAH (As Administrator of the Estates of the late AISHA BILAL HAMIS)	1ST DEFENDANT
ZAKARIA MAFTAH	2ND DEFENDANT
SALAMA ALLI ULIZA	3RD DEFENDANT

RULING

Date of Last Order: 10/08/2021

Date of Ruling: 07/09/2021

A.MSAFIRI, J

The suit beforehand was jointly filed by the plaintiffs claiming among others for a declaration that the intention of sale or sale of the property situated at Plot No.29 Mikocheni Medium Density Kinondoni Municipality, Dar es Salaam, with a title deed No. 31028, (herein as suit property) is illegal, null, and void. While filing their written statement of defence, the defendants duly represented by Mr. Jerome Joseph Msemwa, the learned counsel raised a point of preliminary objection challenging the suit for want of cause of action, meaning that the plaint does not disclose any cause of action against the defendants.



On 10th August 2021, when the matter came before me, I granted permission for the parties to argue the preliminary objection by way of written submissions. Defendants' submissions in support of the preliminary objection were drawn and filed by Advocate Salha Saleh Mlilima while the plaintiffs' reply submission were drawn and represented by Advocate Augustine Mathern Kusalika.

Ms. Salha has submitted that, the plaint in this suit contravene Order VII Rule 1 (e) of the Civil Procedure Code Cap.33 R.E 2019 for failure to disclose facts constituting a cause of action and when it arose. In her point of view, Order VII Rule 1 (e) (supra), it is mandatory requirement that the plaints filed in Courts manifest brief and concise facts that constitute cause of action. The plaintiffs has failed to show clear intention of their suit presented before this Court since the plaint does not disclose any law that has been violated in the subject matter since the claim against defendant is the sale of suit property which in fact the defendants did not sale and have no intention to sale.

Several decisions were cited in her argument among them is ***Zebedayo Mkodya vs. Best Microfinance Solutions Limited and Others, Commercial Case No. 95 of 2016, HC (Commercial Division), Anthony Leornard Msanze and Another vs. Juliana Elias Msanze and 2 Others in Civil Appeal No. 76 of 2012 CAT.***

In the end the learned counsel prayed the suit be dismissed with costs for failure to disclose cause of action as defined in the Civil Procedure Code (supra).

In reply, Mr. Kusalika the learned counsel for the plaintiffs, responded that, the plaint indeed disclose the cause of action against the



defendants. The same is depicted at paragraphs 3,4,5,6,7,8,9,10,11,12 and 13 of the plaint, therefore, the preliminary objection lacks merit, it should be overruled and the Court proceeds with the matter on merit for the interest of justice. Mr Kusalika argued that the plaint and its annexure GF – 1 and GF-2, shows clearly an involvement of defendants in disposing or intention of disposing of or selling of the suit property.

Having giving a brief summary on what has transpired in the argument for and against the preliminary objection by both parties, my first task is understanding what is legally recognized as cause of action.

Attempts have been made to define a term "cause of action". Many of the definitions are descriptive in nature. If I may paraphrase in summary, I will define a cause of action to mean a fact or facts committed or attributed to one person which give rise to a claim by another. It follows therefore, that such other person (in this case, a plaintiff) must state those facts and attribute them to the defendant in order to disclose a cause action against the defendant.

Having said that, the question to be answered is whether the preliminary objection is meritorious. The act or conduct complained of by the plaintiffs and which is fundamental cornerstone of the suit is that what is stated in paragraphs 4 and 12 of the plaint and it refers to all defendants. It is alleged that the defendants jointly intends to dispose of the suit property. According to the said paragraphs, the material facts are clear in the sense that, the persons involved here are the 1st, 2nd and 3rd defendants. The material involved is suit property mentioned. And the plaintiffs are yet to enjoy the fruit of the said suit property being the estate of the late Aisha Bilali Hamis because of the acts of the defendants.



My understanding of the requirement of Order VII Rule 1(e) of the Civil Procedure Act (supra) is that the facts connecting the defendants with the act which is the subject of the suit is mandatory. And the same has been adhered accordingly in the plaint. Order VII Rule 1 requires the plaintiffs who move the court by suit, to plead particulars in their plaint to disclose a cause of action. Order VII Rule 1 (e) in mandatory terms requires plaints that are filed in courts to manifest brief and concise facts that constitute the cause of action.

In the decision of Biron,J; in **Fakurudin Ebrahim vs. The Bank of Tanzania** [1978] LRT (Part III &IV) No.45 which was cited by Kyando J, in **Hans Nargosen vs. Bp Tanzania Ltd [1987] TLR 175**. The late judge said this about a cause of action:

"...in my view, all that is necessary to set out in a plaint is the averment which if not traversed would entitle the plaintiff to judgment..."

The principles of pleading indicated in above were adhered to. The plaintiffs have a claim against the defendants for intention to sell the suit property which is likely to cause damages on their side as they are entitled to benefit from the suit property as beneficiaries of the estate of the late Aisha Bilali Hamis. All these facts constitute cause of action. Whether the intention to sell the suit property is there or not, that remain to be the subject of proof in the main suit by parties to the suit.

I therefore agree with Mr Kusalika counsel for the plaintiffs that indeed the preliminary objection is devoid of merit. In the foregoing the preliminary objection is hereby overruled with costs.



It is so ordered.

Dated at Dar es Salaam this 07th Day of September 2021.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal dotted line.

A.MSAFIRI

JUDGE