

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND CASE NO. 42 OF 2019**

**HAMZA OMARI PANDAMILANGO AND 48 OTHERS...PLAINTIFFS**

**VERSUS**

**NAMERA GROUP OF INDUSTRIES (T) LTD.....DEFENDANT**

**RULING**

**OPIYO, J.**

On 4<sup>th</sup> of April 2019, Mr. Hamza Omary Pandamilango and other 48 persons filed their plaint in this court against the defendant above named, claiming among others a compensation to the tune of 825,000,000/= resulting from the defendant's unlawful demolition of their landed properties located at Gongo La Mbotto Ward, Ilala, Dar Es Salaam. When the case came for the Final Pre-trial Conference on 17<sup>th</sup> of February 2021, the court noted that, the names of the 48 plaintiffs who were represented by the plaintiff were not listed in the plaint or separate list provided. Therefore, it ordered the same to be amended to incorporate the names of the said 48 plaintiffs. The order was complied with and the amended plaint was filed on 24<sup>th</sup> February, 2021. A copy was served to the defendant who in turn filed two preliminary objections on point of law against the amended plaint to the effect that:-

1. The amended plaint contravenes the mandatory provisions of Order VI Rule 14 of the Civil Procedure Code, Cap 33 R.E 2019.
2. The amended plaint offends the provisions of Order VI Rules 3 and 5 and order VII Rule 1 (e) and (f) of Civil Procedure Code Cap 33 R.E 2019.

Hearing of the two objections was by way of written submissions, Advocate Abubakar Salim appeared for the defendant while the 1<sup>st</sup> plaintiff appeared in person. Submitting on the 1<sup>st</sup> objection, Mr. Abubakar for the defendant was of the view that, the said plaintiffs did not sign the plaint as mandatorily required by the law under Order VI Rule 14 of the Civil Procedure Code, Cap 33 RE 2019. He reproduced the said provision of the law as follows:-

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

The defendant's counsel also cited the case of **Jamal Said and 3 Others versus Karmal Azizi Msuya, Land Case No 42 of 2017** which cited with approval the decision of the **Court of Appeal of Tanzania in Shaaban Iddi Jololo and three others versus Republic, criminal Appeal No 200 of 2006** that: -

*"In this context, section 53 (2) of the Interpretation of Laws Act, (Cap 1 R.E. 2002) is important. It provides that where in a written law the word shall is used in conferring a function, such word shall be interpreted to mean that the function must be performed.*

*Therefore, the use of the word shall in order VII Rule I of the Civil Procedure Code (sic) (supra) denote mandatory compliance with that requirement".*

He contended that, there is no room for the pleadings not signed by the party to be exempted, save for the exceptions provided under Rule 14 of Order VI of the Civil Procedure Code (Supra), namely (i) reason of absence and (ii) for other good cause. In the present case parties have no advocate, therefore, they were supposed to sign the pleading personally. The absence of their signatures renders the pleadings null and void.

On the 2<sup>nd</sup> objection it was submitted that, under Rule 3 of Order VI of the Civil Procedure Code cap 33 R.E 2019, a party pleading has to make sure his pleading contains only a statement in concise form of the material facts on which he relies on. Rule 5 of the same Order requires the party pleading to give a further and better statement of the nature of the claim. There is no statement in the plaint showing that the defendant committed any wrong to the Plaintiffs. Further to this, there is no particulars of facts constituting the cause of action and when it arose those showing that, the court has jurisdiction as required under order VII Rule 1 (e) and (f).

Based on the above provisions, the plaintiffs were duty bound to show the facts constituting the cause of action and when it arose and the fact showing that the court has jurisdiction as decided in **Ahmed Chilambo versus Murray & Roberts Contractors (T) Ltd Civil Case No 44 of 2005** where it was held:-

*"It is true that Order VII r. 1 (f) of the Civil Procedure Act, 1966 requires among other things.."(f) the facts showing the court has jurisdiction" The law did not want to impose the duty to the court to determine whether it has jurisdiction or not. That duty is upon the plaintiff. That duty is equally wide because it covers both pecuniary and territorial jurisdiction.... To end up I would say that there is no cause of action in this suit, and the plaint is not in conformity the requirement of a plaint under order VII r (f) of the Civil Procedure Code, 1966. The objection is accordingly sustained and the plaint is dismissed with costs for reasons stated".*

Also, the case of **Lucas Malya Versus Mukwano Industries Limited, Commercial Case No 60 of 2004**, where it was held that:-

*In my view therefore, this rule is vital and goes to the root of the court's jurisdiction and it cannot be broken. The omission is therefore fatal and renders the plaint incurably defective. In the event, I find, hold and order that the plaint is curably defective, it is hereby struck out with costs.*

The defendant's counsel therefore, prayed for the objections to be allowed and the suit be should be dismissed with costs.

In reply, Mr. Hamza Omary Pandamilango argued the 1<sup>st</sup> objection that, the case is representative suit, that there is one Hamza Omari Pandamilango who is authorized by the other 48 plaintiffs to sign on behalf of all plaintiffs as evidenced by his signature on the plaint. Therefore, the requirements of Order VI Rule 14 of the Civil Procedure Code Cap 33 RE2019, has been complied with because the plaint bears the verification clause which contains the signature of a person who is authorized by the plaintiffs. He went on to argue the 2<sup>nd</sup> objection that, the Plaint under Paragraph 5 throughout clause (a) I up to clause (a) VII, shows the facts constituting the cause of action and when it arose. Therefore, Order VII Rule I (e) (f) of the Civil Procedure Code, Cap 33 RE 2019, has been complied with. Again Paragraph 4 of the plaint clearly provides facts that showing this Honorable Court to have Jurisdiction to determine this matter, he argued. The plaintiff insisted in the end that, the two objections have no merit and should be rejected.

In rejoinder, Advocate Abubakar reiterated his submissions in chief and added that, in the amended plaint, the Plaintiff only signed the verification clause and not the plaint and that is contrary to the cited provisions of the law. As far as the second objection, he argued that, it is misconceived as there is no single statement showing that this court has jurisdiction contrary to the mandatory provisions of Order VII Rules 1 (e) and (f) of the Civil Procedure Code, Cap 33 RE 2002.

It is settled that, an objection will be regarded to have merit only if it is founded to be on a point of law not on factual issues (**see Mukisa Biscuits Manufacturing Co. Ltd. Vs West End Distributors Ltd. (1969) EA**).

On the 1<sup>st</sup> objection, the defendant claimed that, the plaint was not signed by the plaintiffs, contrary to Order VI Rule 14 of the Civil Procedure Code. I have perused the plaint and found out that, it was only signed at the verification clause. It is well known that, the plaint contains two parts, the first one contains the information constituting the case itself and the second part is the verification clause, verifying the information given on the 1<sup>st</sup> part. Both parts have to be signed by the plaintiff failure of which renders the plaint fatally defective. The plaint at hand was not signed on the first part, save only at the verification clause, hence, the same clearly offends the mandatory provisions of Order VI Rule 14 of the Civil Procedure Code *supra*, see also **Jamal Said and 3 Others versus Karmal Azizi Msuya, supra**. The 1<sup>st</sup> objection is therefore allowed as it has merits.

In the event, I sustain the 1<sup>st</sup> preliminary objection and accordingly strike out the suit at hand. Since the determination of the first objection entirely disposes the suit, I need not dwell on the remaining points of objection. I make no order as to costs.



**M.P. OPIYO,**

**JUDGE**

**4/6/2021**