

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

LAND CASE 197 OF 2021

JABIL HASSAN NDUMBALO (the Administrator of the
Estate of the late, **HASSAN NOOR NDUMBALLO****PLAINTIFF**

VERSUS

HASSY BESSEN KITINE **DEFENDANT**

RULING

Date of Last Order: 04/04/2022

Date of Ruling: 28/04/2022

DR.T. MWENEGOHA, J:

This ruling originated from the Preliminary point of objection raised by Advocate Taher Muccadam that: -

1. The Plaintiff has no cause action against the 1st defendant.

Hearing of the preliminary objection was conducted by way of written submission where by the defendant was represented by Mr. Mucadam while the Plaintiff was represented by Burton Majaga, Advocate.

Submitting in support of the preliminary objection Mr. Mucadam submitted that the plaintiff has no proof that the defendant unlawfully took possession of the said property. He argued that the applicant merely states the hearsay facts which are not true at all. To him there is no evidence that prove the

allegation that plaintiff claims against defendant. He cited different authorities, to stress his position including the case of **Musa Ngang'andwa v Chief Japhet Wanzagi & others (2006) TLR 351**.

In reply Mr. Mayage cited the case of **John M. Byombalirwa V Agency Maritime International (Tanzania) Ltd (1983) TLR1** which held that,

"The question the plaint discloses a cause of action must be determine upon perusal of the plaint alone, together with anything attached so as to form part of it and upon assumption that any express or implied allegation of fact in it are true."

He then pointed out paragraph 7,8,9,10 12 and 12 in the plaint that they show the act done by the defendant and that is the cause of action. He went further to explain how they are connected to the defendant's acts.

I have considered submissions of both counsels, the main issue for determination is whether the plaint has no cause of action.

The term cause of action has well been defined by the case of **Musa Ngang'andwa** (supra) cited above which held that,

"Cause of action means every fact which would be necessary for the plaint to prove in order to support his title to the decree; in other words, a cause of action is the sum total of those allegations upon which the right t relief claimed is founded"

Applying the above provision, I took time to revisit the case and paragraphs found in the plaint as pointed by the plaintiff's counsel that is paragraph 7,8,9,10 12 and 12. The above paragraphs indicate that the defendant

entered into lock out agreement with the deceased for sale of the landed property and it is alleged that the defendant failed to honor the terms of agreement. The said lock out agreement has been attached in the plaint. This court finds that the said allegation suffices to be allegation that is necessary for the plaintiff to prove in order to have the decree in his favor as required in the case above.

The defendant alleges that the plaintiff has no proof that the defendant took possession of the said property and what is stated is merely hearsay facts. This courts finds it suffices that there is allegation pointed against the defendant and the defendant disputes the said allegation. This is contested argument and its truth can be gathered in the vicinity of the court.

Therefore, this court find that the plaint has the cause of action against the defendant.

Having said that it is my finding that the Preliminary Objection has no merits and therefore overruled. Cost shall follow the cause.




T. N. MWENEGOHA

JUDGE

28/04/2022