

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 269 OF 2022

CENTAZA PLASTICS CO. LTD PLAINTIFF

VERSUS

ABDULKADIRI SHEIKH MOHAMED DEFENDANT

RULING

Date of last Order: 03.03.2023

Date of Ruling: 07.03.2023

A.Z MGEYEKWA, J

On 11th October, 2022, the Plaintiff herein, instituted this suit against Abdulkadiri Sheikh Mohamed, the Defendant seeking five reliefs as follows:-

- a) *A declaration that the Defendant is a treapsser to Plot No. 142 Chang'ombe Industrial area, also know as " in offensive factory sites',*

Temeke Municipality within Dra Es Salaam Region measuring 4181 square meters and holds Title No. 186080/10.

- b) A declaration yjay yje Defendant;s occupation of the portion of the Plot is wrongful and unlawful.*
- c) An order of evicting the Defendant and assigns and workmen and agents from the Plot,*
- d) Costs of this suit.*
- e) Any other relief (s) as this Court may deem fit and just to grant.*

The suit has encountered an impediment, coming by way of preliminary objections, raised by the counsel for the 1st Defendant' counsel. The objections are to the effect that: -

- 1. The Plaintiff has no cause of action against the Defendant.*
- 2. The necessary parties have not been joined to the suit.*

When the matter was placed before me for hearing on 3rd March, 2023. the Plaintiff enjoyed the legal service of Mr. Samson Mbamba, learned counsel whereas the Defendant enjoyed the legal service of Mr. Victor Kikwasi, learned counsel.

As the practice of the Court has it, we had to determine the preliminary objection first before going into the merits or demerits of the appeal. That is

the practice of the Court founded upon prudence which we could not overlook.

Submitting on the first preliminary objection, Mr. Victor submitted that the Plaintiff has no cause of action against Defendant, the Plaintiff is bound to his pleadings. Mr. Victor argued that the Plaintiff in his prayers and in the Plaintiff particularly paragraphs 3 and 4 stated that he is the owner of Plot No. 142 Chang'ombe Area. Mr. Victor went on to submit that reading the Plaintiff, shows that annexure CENTAZA1 alleges that the Plaintiff is the owner of Plot No. 141 Chang'ombe Area. The learned counsel went on to submit that the Defendant in his WSD particularly paragraph 3 stated that he is the owner of 142 Chang'ombe Area, Industrial areas.

The learned counsel for the Defendant continued to submit that the Plaintiff's Certificate of Titles which is attached to his Plaintiff varies from his claims as what is attached in his Plaintiff is different from what he has stated in his Plaintiff. He valiantly argued that the same shows that the Plaintiff does not know what he is claiming since he failed to attach a Certificate of Title of the suit plot which means he has no cause of action against the Defendant. Mr. Victor urged this Court to find the suit misconceived, hence the same be dismiss the suit for want of cause of action.

In alternative, Mr. Victor contended that in case the Plaintiff insists that he is the lawful owner of Plot No. 142 then they raise the second objection.

On the second limb of the objection, Mr. Victor argued that the Plaintiff has failed to join the necessary parties. He argued that the registered plot include the interest of other parties Commissioner for Land, the Registrar of Title, and the Attorney General. He submitted that the question will arise who allocated the said piece of land and the same is answered by the Commissioner who registered it. For those reasons, Mr. Victor stressed that the Commissioner for Land, Registrar of Title, and Attorney General are necessary parties to be joined. He went on to submit that the Plaintiff was required to issue a 90 days Notice to the Commissioner for Land, Registrar of Title, and Attorney General, failure to that the suit before this Court is prematurely filed because they have not attached any notice to sue them.

In conclusion, Mr. Victor invited this Court to find that the suit is incompetent before this Court, therefore, the same be struck out and allow the Plaintiff to comply with the Court order.

In response thereto, when Mr. Mamba took the stage to address this Court, Mr. Mbamba was emphatic that the preliminary objections are not pure points of law. Submitting on the first limb of objection. Mr. Mbamba came out

forcefully and argued that the Defendant has no evidence that he is the owner of the suit plot since he has referred to the annexures. It was his view that the raised objections are not pure points of law. He stated that a point of law must be on the pure point of law, but the objections at hand require this Court to look at the evidence, he believed that evidence be heard during the hearing. To fortify his submission, he cited the case **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd** [1969] EA 696, **National Insurance Cooperation of (T) Ltd & another v Shengena Ltd**, Civil Application No. 20 of 2007 and **Rafikihawa v Ahmed Mbourk & 2 other**, Civil Appeal No. 80 of 1998.

Arguing for the second limb of objection. Mr. Mbamba contended that non-joinder does not form part of an objection. To support his submission he cited the case of **Millicon (Tanzania) N.V v James Alan Russell Bell**, Civil Revision No.3 of 2017.

In conclusion, the learned counsel for the Plaintiff beckoned upon this Court to dismiss the preliminary objections for lack of merit with costs.

In his rejoinder, Mr. Victor reiterated his submission in chief. He stated that the counsel for the Plaintiff has not disputed what is stated in paragraphs 3 and 4 of their Plaint. Stressing on the point of the cause of action, Mr. Victor

stated that parties are bound by their pleadings, and the attached document forms part of the pleadings. He insisted that the attached document is contrary to what he has explained. Concerning the second objection, Mr. Victor rejoined that the counsel has not objected that the Commissioner and AG are necessary parties to the suit. He stated that this Court has the option to strike out the suit.

Having gone through the arguments of both parties, the question that presents itself for the Court's determination is *whether the preliminary objections are meritorious*. In the matter at hand, the Petition is complaining that the objections are not a pure point of law.

Reverting to the raised objections, I have scrutinized the Plaint alone, and noted that there is the disclosure of a cause of action against the 1st Defendant. Mr. Mbamba attacked the preliminary objection as superfluous, devoid of merits.

Before I get to the substance of the preliminary objection, it is apposite that I should address the issue raised by the Plaintiff's counsel in his reply to the objections raised by the Defendant's counsel. The nature and scope of a "preliminary issue" is cogently defined in the statement of Law J.A., in the case of ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*** [1969] EA 696. The Eastern African Court had this to say:-

“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit”. [Emphasis added].

Considering the *ratio decidendi* in the above-cited authority, I conclude, without much hesitation, that the objections fall squarely within the scope of a preliminary objection. The same arises by clear indication from the pleadings. It is in view thereof that, I find Mr. Mbamba's contention implausible and unmeritorious, and I do not go along with it. I choose to find that the objections are a pure point of law.

Before I determine the objections, I find it apposite to define a term “cause of action”. In the Black Dictionary 9th Edition, the word 'cause of action is defined to mean:-

“ The ground on which an action can be maintained; as when we say that such a person has no cause of action.”

I am aware that the cause of action as defined above must be found in the Plaintiff. I cannot attempt to go to the written statement of defence or wait for proof by evidence to find a cause of action and associate it with the Plaintiff. This is the essence of the decision of the Court of Appeal of Tanzania in

John M. Byombalirwa v Agency Maritime Internationale (Tanzania) Ltd
[1983] TLR 1.

Rreading the annexure CANTAZA1 attached in the Plaintiff, it shows that there is no any disclosure of a cause of action against the 1st defendant. Reading the Plaintiff, I found that the Plaintiff particularly in paragraph 4 has stated that he is the owner of Plot No. 142, Chang'ombe Industrial Area, and referred this Court to Annexure CANTAZA1. I have examined annexure CANTAZA1 and as rightly pointed out by Mr. Victor, the Certificate of Title is concerning Plot 141 Chang;ombe. I have laboured to read the Plaintiff and could not find any cogent explanation as to why the Plaintiff attached a Certificate of Title concerning Plot 141 while, he has pleaded that he is the owner of Plot No. 142.

In addition, in his reply, Mr. Mbamba claimed that the objections are not pure points of law because it requires evidence. It is my considered view that since the Plaintiff claimed that he is the owner of a registered land that means he had to prove it by attaching a respective Certificate of Title. Order VII Rule 4 (1) of the Civil Procedure Code, Cap.33 [R.E 2019] since the Plaintiff claims that he is the owner of Plot No. 141 Chang'ombe, the Court expected the Plaintiff to attach a document that is in his possession and attach the said

Certificate of Title. For ease of reference, I find it apposite to reproduce Order VII Rule 14 (1) as hereunder:-

“14.-(1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in court when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint”.

Applying the above provision of the law in the matter at hand, it is clear that the Plaintiff to prove his claims attached a Certificate of Title. The question is whether in the circumstances of this case, annexure CENTAZA1 is supporting the subject matter.

It is worth noting that a Plain is part of pleadings and pleadings include annexures attached to the Plaint. I have scrutinized the Certificate of Title attached in the Plaint and noted that not only the Certificate of Title number 141 is different from the one pleaded in the Plaint but also the attached sketched map is concerning Plot No. 141 while the Defendant in his WSD has pleaded that he is the owner of Plot No. 142 Chang'ombe and attached a Certificate of Title relating to Plot 142 and also attached a sketched map relating to Plot No. 142. Therefore, I am concluding by holding that the Plaint does not disclose a cause of action against the Defendant.

Given the foregoing, I deem it superfluous to deal with the remaining objection as by so doing amounts to dealing with a sterile exercise. I find the first preliminary point of objection raised worth sustaining and proceed to do so. Land Case No.269 of 2022 is thus struck out with costs.

Order accordingly.

DATED at Dar es Salaam this 7th March 2023.




A.Z.MGEYEKWA

JUDGE

07.03.2023

Ruling delivered on 7th March 2023 in the presence of all learned counsels.




A.Z.MGEYEKWA

JUDGE

07.03.2023