

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 29 OF 2023

BETWEEN

TANZANIA ZAMBIA RAILWAY

AUTHORITY.....1ST PLAINTIFF

THE ATTORNEY GENERAL.....2ND PLAINTIFF

VERSUS

MARY EXECUTIVE RESTAURANT Alias

MARY EXECUTIVE LODGE.....DEFENDANT

RULING


Date of last Order: 14/06/2023

Date of Ruling: 26/06/2023

A. MSAFIRI, J.

The plaintiffs mentioned herein above, have instituted a suit against the defendant seeking for a declaration that the defendant is in breach of the tenancy agreement with the plaintiffs. That the defendant has failed to pay rental and utility charges from 2015 to date making an outstanding rental arrears contrary to the tenancy agreement.

The defendant, in defence, filed her written statement of defence and with it a Notice of preliminary objection to the effect that;

- 1. That the suit is not maintainable and bad in law for want of pecuniary jurisdiction. *

2. That the suit is not maintainable and bad in law for contravening Order VII Rule 1 (f) and (i) of the Civil Procedure Code [R.E 2019].

The preliminary objection was argued by way of written submissions whereby the defendant had legal services of Mr. Shundu S. Mrutu from Nzia Advocates while Ms. Grace Lupondo, State Attorney represented the plaintiffs.

Mr. Mrutu started his submissions by abandoning the first limb of preliminary objection. On the second limb of objection, the counsel averred that paragraph 7 of the Plaintiff does not comply with Order VII Rule 1 (i) of the Civil Procedure Code (the CPC) as there is no statement of value of subject matter that gives pecuniary jurisdiction to this Hon. Court to determine the suit, which renders the said Plaintiff incompetent.

Mr. Mrutu pointed that, from the wording of Order VII Rule 1 (i) of the CPC, the word shall has been used which makes it mandatory. He submitted further that the consequences of failure to uphold the said requirement as provided by the law was stressed in the case of **Juma Salaha Makongo vs Exim Bank (T) Limited**, Commercial Case No. 17 of 2023 (unreported) where it was held that, compliance to the requirements prescribed under provision of Order VII Rule 1 of the CPC are mandatory and the omission to comply with the requirement is fatal, it renders the Plaintiff incurably defective.

Basing on his submissions, the counsel for the defendant prayed for this Court to strike out the suit with costs. *Alle*.

In reply, Ms. Lupondo acknowledged the abandonment of the first limb of objection by the defendant and went on to respond to the second limb of objection.

Ms. Lupondo drew attention of this Court to the provision of Section 6(4) of the Court Proceedings Act, Cap. 5 R.E 2019 which provides that;

"Notwithstanding any other written law, no civil proceedings against the Government may be instituted in any Court other than the High Court".

She argued that, looking at the quoted provisions herein above, it goes without saying that the law vests jurisdiction to the High Court to determine all suit in which the Government is a party to the proceedings.

Ms. Lupondo stated that, in the matter at hand, the plaintiffs fall under the definition of the term Government as per the Constitution of the United Republic of Tanzania of 1977 as amended, under Article 6 of the same which provides;

"..... the Government includes the Government of the United Republic, the Revolutionary Government of Zanzibar, Local Government authorities and any other person who exercises power of authority on behalf of either Government".

The state Attorney argued that by that definition, the plaintiffs are automatically covered under the provisions of Order VII Rule 1 (f) and (i) of the CPC.

She added that paragraph 3 of the Plaint clearly state the value of the subject matter of the suit which is the claimed outstanding rent is to the tune of TZS 212,768,378.58 *Adelle.*

Ms. Lupondo argued that the case of **Juma Salaha Makongo (supra)** and other cases cited by the counsel for defendant are not applicable in the present suit, and the prayer for an order of striking out the suit is misconceived and misplaced.

She prayed for the preliminary objection to be overruled with costs.

There was no rejoinder.

Having considered the parties submissions on the preliminary objection raised by the defendant, along with authorities which has been referred, the issue for determination is whether the raised preliminary objection has merit.

Order VII Rule 1 (f) and (i) of the CPC provides that;

1. The plaintiff shall contain the following particulars;

(a) N.A

(b) N.A

(c) N.A

(d) N.A

(e) N.A

(f) the facts showing that the Court has jurisdiction,

(g) N.A

(h) N.A

(i) a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of Court fees, so far as the case admits.

Alle

I have read the contents of the Complaint and I am convinced that the same has complied with the above requirements of Order VII Rule 1 (f) (i) of the CPC.

The value of the subject matter is clearly seen at paragraph 3 of the Complaint which states that the plaintiffs bring this suit to recover from the defendant TZS 212, 768,378.58 being an outstanding arrears.

In addition, the value of the subject matter is shown at the relief section.

Furthermore, paragraph 7 of the Complaint states that the cause of action arose in Dar es Salaam which is within the jurisdiction of this Court.

I also agree with the submissions by counsel for the plaintiffs that, the same being Government institutions, they are well covered by the provisions of Section 6(4) of the Government Proceedings Act which makes a requirement for every suit which involves the Government to be instituted in the High Court within the area where the claim arose.

Since the plaintiff's claim arose in Dar es Salaam, and it arose from tenancy agreement, then the plaintiff was correct to institute the same before this Court.

Having said that, I find this suit competent before this Court, and I overrule the preliminary objection with costs for lack of merit.

It is so ordered.


A. MSAFIRI
JUDGE
26/06/2023

