

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

LAND CASE NO. 84 OF 2023

N & J INVESTMENT LIMITED.....PLAINTIFF

VERSUS

INTERNATIONAL COMMERCIAL

BANK (TANZANIA) LIMITED.....1ST DEFENDANT

MBUZAX AUCTION MART LIMITED.....2ND DEFENDANT

RULING

13-18 July, 2023

E.B. LUVANDA, J

The First Defendant named above raised the following preliminary objections: One, the court is not vested with pecuniary jurisdiction as the matter is based on declaratory orders; Two, the plaint does not disclose any cause of action against the First Defendant in contravention of rule 1(e) and 11(a) of Order VII of the Civil Procedure Code, Cap 33 R.E. 2019; Three, the plaint contravenes order VII rule 1(i) of Cap 33 (supra); Four, the plaint is fatally defective for contravening mandatory provision of Order VI rule 14 Cap 33 (supra).

Mr. Juventus Katikiro learned Counsel for First Defendant abandoned the fourth point of preliminary objection. Arguing for the first and third point

jointly, the learned Counsel submitted that looking at the statement of the reliefs sought by the plaintiff in her plaint it is clearly that there is nothing sought by the Plaintiff rather than declaratory orders which is against the guiding principle of the law governing civil suits in Tanzania, that requires every suit presented before the court to state the value for purpose of court's jurisdiction, citing Order VII rule 1(i) Cap 33 (supra); **The Registered Trustees of the Islamic Solidarity Centre vs. Jaabir Swalehe Koosa & 4 Others**, Civil Appeal No. 1/2020 HC. Arusha, for a proposition that court must ascertain it is jurisdiction over the matter before it. He submitted that it is a substantive claim and nor general damages nor declaratory orders which determines jurisdiction of the court. He cited the case of **Tanzania – China Friendship Textile Co. Limited vs. Our Lady of Usambara Sisters** (2006) TLR 70; **Benard Kabonde (suing as Personal Representative of the Late Sophia M. Kabonde and the late Lugano Kabonde vs. Methusela Bundala and Another**, Civil Case No. 27/2011 HC Mwanza, **Manjit Singh Sandhu & 3 Others vs. Robiri R. Robiri**, Civil Appeal No. 121/2014 CAT; **Mwananchi Communications Limited & 2 Others vs. Joshua K. Kajula & 2 Others**, Civil Appeal No. 126/01 of 2016 CAT.

For the second objection, the learned Counsel submitted that the Plaintiff does not have cause of action against the Defendants contrary to Order VII rule 1(e) and 11(a) of Cap 33 (supra), in that it stipulate for a plaint to contain facts consisting the cause of action. He cited the case of **Nakalubo vs. Kibirige** (1973) E.A. 102; **John M. Byombalirwa vs. Agency Maritime International (Tanzania) Ltd** (1983) TLR 1; **The Black's Law dictionary**, 8TH Ed, Bryan A. Garner, 2007, for a definition of a term cause of action. He submitted that reading the whole plaint and annexures thereto, it is clearly shown that there is no any facts that show that the First Defendant has breached any loan agreement executed between the parties rather than merely words, because there is nothing which ought to have been concluded between the Plaintiff and the First Defendant. He therefore submitted that there is no any statement for cause of action that existed or that exists as between the parties for the court to issue any remedies in favour of the Plaintiff if the matter goes for the full trial.

In reply, Mr. Emmanuel Phalet Ukashu learned counsel for the Plaintiff submitted that the High Court of Tanzania has jurisdiction to provide reliefs and remedies on declaratory orders, added that the statement of value has been stated under paragraph 4 of the Plaintiff's plaint in line with Order VII rule 1(i) Cap 33 (supra). He submitted that facts giving raise to this suit is a

claim for excessive and unconscionable loan that hinders the plaintiff to exercise his right of redemption. He submitted that the loan payable is Tshs 600,000,000/= and not Tshs 1,116,525,888.162 as claimed by the First and Second Defendants. He submitted that this court have pecuniary jurisdiction to determine the matter whose value range between Tshs 600,000,000/= and is 1,116,525,888.162 which is the subject matter in this suit. He cited Article 108 of the Constitution of the United Republic of Tanzania, 1977, the case of **Packaging and Stationers Manufacturers Limited vs. Dr. Steven Mworira and Another**, Commercial Case No. 52/2010. He submitted that the High Court has exclusive jurisdiction (Article 108 cited above), and that Tshs 600,000,000/= is a specific and substantive claim herein, which is within the jurisdiction of this court.

For the second preliminary objection, the learned Counsel submitted that Order VII rule 1 requires the Plaintiff to plead particulars in the plaint to disclose a cause of action. He cited Biron J in **Fakurudin Ebrahim vs. The Bank of Tanzania** (1978) LRT (Part III and IV) No. 45 which was cited by Kyando, J in **Hans Nargosen vs. BP Tanzania Ltd** (1987) TLR 175. He submitted that facts set out by the Plaintiff in his plaint were traversed by the First Respondent (sic, Defendant) in the written statement of defence, hence if the Defendant would have not traversed the Plaintiff would have

entitled to the judgment. He submitted that the Plaintiff has a claim against the First Respondent (sic, Defendant) for the claim of excessive and unconscionable amount of loan which is likely to cause damages on the Plaintiff side as they are entitled to benefit from the right of redemption but is barred to such right due to the First Respondents (sic, Defendant) acts. He submitted that the Plaintiff has all the evidence to prove his claim against the First Respondent (sic, Defendant) hence the plaint under paragraph 4 and 5 provide for essential facts that constitute the cause of action as were traversed by the First Respondent (sic, Defendant). He cited the **Black's Law Dictionary** 8th Ed, (supra).

Going through the Plaintiff's plaint, nowhere pleaded specifically a statement of the value of the subject matter of the suit for purpose of ascertaining jurisdiction and court fees, as stipulated under Order VII rule 1(i) Cap 33 (supra). The Counsel for Plaintiff was suggesting that the claim range in between 600,000,000 and 1,116,525,888.162 and at a certain point said a specific and substantive claim should be taken to be 600,000,000/=. To my view, the argument of the learned Counsel for Plaintiff was based on assumption. This is because in paragraph 4 of the plaint, the Plaintiff averred that he is disputing the loan facility of Tshs 1,116,525,888.162 for being excessive and above the actual amount owed of Tshs 600,000,000/=.

Nowhere the Plaintiff pleaded explicitly that a substantive claim or the subject matter is a sum of Tshs 600,000,000/=. Even on paragraph twelve whereas a matter of practice it was expected to be pleaded, but the Plaintiff merely stated that the action arose in Dar es Salam and Defendants situated in Dar es Salaam and hence this court is vested with jurisdiction to adjudicate this matter. At paragraph twelve, there is no mention of Tshs 600,000,000/= being a specific or substantive, neither mentioned it being a gauge for purpose of jurisdiction. The wording of Order VII rule 1(i) Cap 33(supra), are clearly stipulated on the following terms, I quote,

"The plaint shall contain a statement of the value of the subject matter of the sui for the purpose of jurisdiction and of court fees, so far as the case admits"

I therefore found merit on the first point of preliminary objection.

Regarding the point that the plaint does not disclose a cause of action. The Defendant's Counsel argued that there is no statement for cause of action that existed or exist as between the parties. In rebuttal, the Plaintiff's Advocate submitted that a claim is for excessive and unconscionable amount of loan which is likely to cause damage on the Plaintiff side, arguing that the Plaintiff is entitled to benefit from the right of redemption but is barred to such rights due to the Defendants'

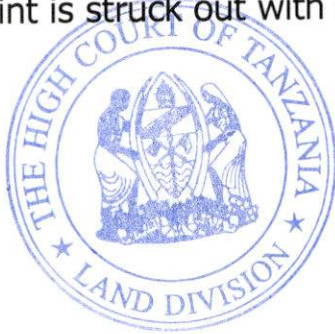
act. It is common knowledge that the subject matter of this suit is a credit facility made via the offer letter termed renewal secured overdraft (SOD), term loan (TL) and short term loan (STL) facilities annexure NJ-01 to the plaint. In the plaint, the Plaintiff did not plea specific clause subject for the purported breach by the Defendant, apart from general complaint that the Defendant are in breach of the contract and the alleged excessive claims. In fact the complaint by the Plaintiff for breach of contract is hinged on the so called restructured agreement (paragraph 8) which according to the Plaintiff averment no ink was appended on it as per paragraph 7. Therefore, the argument of the learned Counsel for Defendant that the Plaintiff allegation for breach of loan agreement are based on mere word without justification, is valid. To my opinion, a mere fact that the Defendant denied the alleged claim, is untenable, because to my view traversing of allegations in the opposite party's pleading on itself does not give raise to a cause of action. In the **Black's Dictionary**, 8th Ed (supra), define a phrase cause of action to mean; "a factual situation that entitles one person to obtain remedy in court from another person"

Herein the Plaintiff's Counsel argued that if the Defendant could not traverse to the alleges breach, she could be entitled to reliefs claimed.

But among the reliefs claimed, there is no relief pertaining to a purported breach of a credit letter of offer.

Therefore the preliminary objections are sustained.

The plaint is struck out with costs.



E.B. LUVANDA
JUDGE
18/07/2023