

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 311 OF 2022

EDNESS AMINIEL MINJA PLAINTIFF

VERSUS

PETER ANTONY MAJUVA T/A

NAFAKA COMMISSION AGENT LIMITED 1ST DEFENDANT

NATIONAL MICROFINANCE BANK PLC 2ND DEFENDANT

ADILI AUCTION MART.....3RD DEFENDANT

Date of Last Order: 10/07/2023

Date of Ruling: 31/07/2023

RULING

I. ARUFANI, J

The plaintiff filed the present suit in the court seeking for various orders against the defendants. After the defendants being served with the claim of the plaintiff, the first and second defendants filed in the court their written statements of defence. The written statement of defence of the second defendant is prefaced by a notice of preliminary objection on point of law which states the suit is untenable for offending Order VII Rule 1 (i) of the Civil Procedure Code Cap. 33 R.E 2019 (hereinafter referred as the CPC).

When the matter came for hearing the raised point of preliminary objection the plaintiff was represented by Mr. Joseph Kambamwene, learned advocate and while the first defendant was represented by Mr. Moses Gumbah, learned advocate, the second defendant was represented by Mr. Ally Hamza, learned advocate. The matter proceeded ex parte against the third defendant after being dully served and failed to appear in the court. The preliminary objection was argued by way of written submissions and I commend the counsel for the parties for filing their written submissions in the court within the time frame given to them by the court.

The counsel for the second defendant stated in his submission that, after his client being served with the plaint and thoroughly read the same, they found the plaintiff's suit is incompetent for being filed in the court in violation of Order VII Rule 1 (i) of the CPC. The cited provision of the law requires a plaint to contain 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.

He submitted that, reading of the paragraphs of the plaint has not shown the requirement provided in the foregoing cited provision of the law has been expressly or impliedly complied with and argued the stated anomaly touches the jurisdiction of the court to entertain the matter. He

argued that, even if it will be assumed paragraph 11 of the plaint is purporting to comply with the stated requirement but to their view the stated paragraph pleads facts in the normal way of pleading and does not suggest it is a statement of the value of the subject matter for the purposes of showing jurisdiction of the court as required by the cited provision of the law.

He submitted the consequences of filing a suit in the court in violation of the above cited provision of the law has been stated in number of cases and cited in his submission the case of **Jamal Said & Three Others V. Karmal Aziz Msuya**, Land Case No. 42 of 2007 HC at DSM District Registry (unreported). The court held in the cited case that the suit which its plaint does not contain a statement of the value of the subject matter of the suit for purpose of ascertaining both pecuniary jurisdiction of the court and the court fees as required by Order VII Rule 1 (i) of the CPC was incompetent and the suit was struck out.

He also cited in his submission the case of **Fanuel Mantiri Ng'unda V. Herman Mantiri Ng'nda**, [1995] TLR 159 where it was stated it is risky for the court to proceed with the case assuming it has jurisdiction. He stated that may prejudice the parties if the proceeding of the court is nullified later on for this earlier raised concern. He argued it is the practice of drafting in our jurisdiction that the last paragraph of the

plaint must contain the statement of the value of the subject matter of the suit.

He also bolstered his submission with the case of **Abdallah Ally Selemani t/a Ottawa Enterprises (1987) V. Tabata Petrol Station Co. Ltd & Another**, Civil Appeal No. 89 of 2017, CAT at Iringa (unreported) where when the Court of Appeal was upholding the decision of the High Court it stated the cited provision of the law is couched in mandatory terms because of the use of the term "shall". The court stated it is not enough for a party to state that the court has jurisdiction, rather the court has a duty to ascertain that indeed it has the jurisdiction stated. At the end he prayed the suit be struck out with costs.

In his response the counsel for the plaintiff stated that, it is not a prescribed procedure or legal requirement that the last paragraph of the plaint must contain a statement of the value of the subject matter of the suit as submitted by the counsel for the second defendant. He argued that, court cannot be conferred jurisdiction where it does not have, just by a sentence or so in the plaint. He referred the case of **Abdallah Ally Seleman t/a Ottwa Enterprises (1987) Ltd** (supra) where it was held it is not enough to state the court has jurisdiction, rather the court has the duty to ascertain that indeed it has the jurisdiction to entertain the matter.

He went on arguing that, no amount of sentence or so by the parties can grant jurisdiction to a court and added that, absence of a sentence or so in a plaint does not have the effect of taking away the jurisdiction of the court. He argued that, compliance with rule 1 of Order VII of the CPC is just an aid to the court and does not affect duty of the court to ascertain that it has jurisdiction. He referred the court to the case of **Elimeleck Francis Mchallo** (As administrator of Estate of the late **Janeth Francis Mchallo**) **V. Lawrance Simon Mchallo & Four Others**, Land Case No. 10 of 2023 where the court stated a plaintiff presenting a suit to a court of law must display value of the subject matter in his plaint for the determination of the requisite jurisdiction and for court fees assessment. He stated there is no mention of a need for a dedicated sentence or so in a plaint.

He argued that, in the case of **Jamal Said & Three Others** (supra) the court upheld the preliminary objection not because of reason of lack of paragraph stating the value of the subject matter of the suit but because the plaint does not contain particulars pertaining to assessment of value of the subject matter of the suit for the purposes of ascertaining both the pecuniary jurisdiction and court fees. He stated the similar issue was also discussed in the case of **Shose Sinare V. Stanbic Bank**

Tanzania Limited & Another, (HC) Civil Case No. 34 of 2016 (unreported).

He argued it was emphasized in the above cited case that, in order to comply with Order VII Rule 1 (f) and (i) of the CPC the plaintiff is required to state in the plaint facts showing that the court has jurisdiction and those facts should show very visibly the value of specific claims for purpose of determine court's jurisdiction and fees. He went on citing in his submission the case of **M/S Tanzania-China Friendship Textile Co. Ltd V. Our Lady of Usambara Sisters**, [2006] TLR 70 where it was emphasized that court jurisdiction is based on substantive claims and not on general damages.

He submitted that their plaint is in full compliance with Order VII Rule 1 (i) of the CPC. He stated the value of the subject matter in their case is conspicuously displayed in the plaint that the claim by the second defendant is Shs. 1,028,057.91 and threat to sell the plaintiff's house to recover the same. He stated there is no doubt that with the stated value of the subject matter the court has requisite jurisdiction. He stated the value of the subject matter displayed in the plaint is substantive and is not a claim for general damages. He submitted that sufficient particulars have been provided in the plaint to cloth the court with the necessary jurisdiction.

In his rejoinder the counsel for the second defendant argued that, the submission by the counsel for the plaintiff shows he agrees with his submission that it is a requirement of the law to state the value of subject matter of a suit in the plaint. He stated the value of the subject matter must specifically be pleaded on a separate paragraph of the plaint initiating the suit. He argued it is true as argued by the plaintiff's counsel that it was stated in the case of **Abdallah Ally Seleman** (supra) that parties cannot confer jurisdiction to the court but rather a statute does.

He stated the case of **Elimeleck Francis Mchallo** (supra) cited by the counsel for the plaintiff is supporting their submission that the value of subject matter in a suit must be stated in the plaint. He stated further that, as the value of the subject matter in the suit at hand is not stated in the plaint the preliminary objection be upheld. As for the cases of **Shose Sinare** and **M/S Tanzania China Friendship Textile Co. Ltd** (supra) cited by the counsel for the plaintiff he stated they are irrelevant to the matter at hand.

He submitted that the discussion in the two cited cases was in respect of the jurisdiction of the court in relation to the claims of specific damages and the general damages which is not an issue at hand and prayed the court to ignore the two cited cases. He stated to have been surprised by the submission by the counsel for the plaintiff that the plaint

is in full compliance with Order VII Rule 1 (i) of the CPC without stating which paragraph in the plaint is in compliance with the stated requirement of the law. Finally, he prayed the suit be struck out for failure to adhere to the requirement of the law.

Having carefully considered the submissions from the counsel for the parties the court has found the counsel for the parties are in agreement that it is a requirement of the law as provided under Order VII Rule 1 (i) of the CPC for a plaint to contain a statement of the value of the subject matter involved in a suit. The dispute is how the stated statement is supposed to be contained in a plaint and whether the plaint filed in the court by the plaintiff has complied with the stated requirement of the law. The court has found while the counsel for the second defendant argued it is the practice of drafting in our jurisdiction for the statement of the value of the subject matter of the suit to be stated in the last paragraph of the plaint, the counsel for the plaintiff argued the counsel for the second defendant has failed to assure the court that is a prescribed procedure or legal requirement.

After considering the stated rival arguments from the counsel for the parties the court has found it is true as argued by the counsel for the plaintiff that the counsel for the second defendant has not stated the requirement for the statement of value of the subject matter of the suit

to be stated in the last paragraph of a plaint is a prescribed procedure or legal requirement. To the contrary the court has found Order VII Rule 1 (i) of the CPC simply states the plaint is required to contain a statement of the value of the subject matter of the suit without stating how and where the stated statement is supposed to be placed in a plaint.

The court has found that, although it is true that the above cited provision of the law is not prescribing the place of the plaint where the stated statement is supposed to be placed but the court has found as rightly argued by the counsel for the second defendant it has been a practice of drafting pleadings in our jurisdiction for the stated statement to be given at the end of the plaint. To the view of this court the stated statement may also be placed anywhere else in the body of the plaint provided it shows the value of the subject matter of the suit. The stated view of this court is getting support from the book by B. D. Chipeta, titled **Civil Procedure in Tanzania, A student Manual**, Revised Edition 2013 where the Author stated at page 91 that: -

*"As already stated, the nature of the claim, **the value of the subject matter of the suit**, where the cause of action arose, the defendant's place of business or residence., are matters that shows the fact of jurisdiction. **These must be stated in the body of the plaint** and it must also be stated how the particular*

court has jurisdiction to hear and determine the suit." [Emphasis added].

From the wording of the above quoted excerpt, it is crystal clear and specifically from the bolded part that the statement of the value of the subject matter of the suit is required to be stated in the body of the plaint. Although the court is in agreement with the counsel for the plaintiff that it is not a prescribed procedure or legal requirement for the statement of the value of the subject matter to be stated at the end of the plaint as argued by the counsel for the second defendant but from the wording of the above quoted excerpt it is crystal clear that stated statement must be stated in the body of the plaint.

Although the court is not in dispute with the counsel for the second defendant that it is a practice of drafting pleadings in our jurisdiction for the statement of the value of the subject matter of the suit to be stated at the last paragraph of the plaint but where a statement of the value of the subject matter of the suit is stated in any paragraph other than the last paragraph of the plaint, it cannot be said the plaint is in violation of Order VII Rule 1 (i) of the CPC. What is mandatory to be done as stated in the foregoing quoted excerpt is for the plaint to contain a statement of the value of the subject matter of the suit in its body.

That being the requirement of the law and as stated earlier in this ruling the issue to determine in this matter is whether the plaint filed in the court by the plaintiff contain a statement or facts showing the value of the subject matter of the suit as required by the law. The court has found the counsel for the plaintiff has argued in his submission that, the plaintiff's plaint is in full compliance with stated requirement of the law. He argued that, the value of the subject matter of the suit at hand is conspicuously displayed in the plaint as the claim by the second defendant of Shs. 1,028,057.91 and the threat to sell the plaintiff's house to recover the stated sum of money.

The court has found that, as rightly argued by the counsel for the second defendant, the counsel for the plaintiff has not stated which specific paragraph of the plaint showing the stated amount of money is the value of the subject matter of the suit at hand. The court has come to the stated finding after seeing that, although the stated amount of money is mentioned at paragraphs 5, 8, 11 and in the first paragraph of the reliefs the plaintiff is claiming from this court but there is nowhere in the mentioned paragraphs it is expressly or impliedly stated that is the value of the subject matter in the suit.

To the contrary the court has found the stated amount of money is the outstanding debt the second defendant is claiming from the first

defendant. The question to ask here is whether the stated amount of money is the value of the subject matter in the suit at hand. The court has found the answer as to what is a subject matter in the suit at hand can be found at paragraph 5 of the plaint which among other things states as follows:-

"That the plaintiff seeks from this court an injunctive order restraining the 2nd and 3rd Defendants from conducting sale by public auction of the plaintiff's landed property at Plot No. 81 Block 45C Kijitonyama Area Dar es Salaam, registered under Certificate of Title No. 107013 allegedly for the purpose of recovering loan of shs. 1,028,057.440.91 (One million, twenty-eight million, fifty-seven thousand, four hundred and forty and cents ninety-one only) that the 2nd defendant extended to the first defendant in 2017."

My reading of the wording of the above quoted paragraph of the plaint together with what is averred in paragraphs 8 and 11 of the plaint does not show the subject matter of the plaintiff's suit is the stated amount of Shs. 1,028,057.91 which is an outstanding debt arising from the loan advanced to the 1st defendant by the 2nd defendant. To the view of the court the subject matter of the plaintiff's suit is the landed property which the plaintiff is seeking for an injunctive order from the court to restrain the second and third defendants from auctioning the same for

the purpose of the second defendant to recover the unpaid loan extended to the first defendant by the second defendant.

To the view of this court the value of the subject matter which the plaintiff was supposed to state in the plaint is the value of the landed property he is seeking for an injunctive order to restrain the second and third defendants from auction the same. It is not the outstanding debt which has caused the second defendant to initiate measures of recovering the same by selling the plaintiff's landed property pledged as the security for the loan facility extended to the first defendant by the second defendant.

The court has also been of the view that, even if it will be said the subject matter of the plaintiff's suit is the outstanding debt of Shs. 1,028,057.91 referred in the mentioned paragraphs of the plaint and not the landed property the plaintiff is seeking for an injunctive order to restrain the same from being auctioned by the second and third defendants, but as rightly argued by the counsel for the second defendant the plaintiff was required to state in the plaint that is the value of the subject matter of the suit he has filed in the court as required by the law.

Although the counsel for the plaintiff has argued in his submission the plaintiff was required to supply the facts or particulars showing the value of the subject matter in the suit and stated the stated particulars

are displayed in the plaint but he has not show the stated facts or particulars are stated or provided in which paragraph of the plaint. That being the position of the matter the court has found the question to ask here is what is the effect of failure to give the statement of the value of the subject matter of the suit.

The court has found the effect of failure to give the statement of the value of the subject matter of the suit in the plaint of the plaintiff as stated in the case of **Jamal Said & Three Others** (supra) cited in the submission made by the counsel for the second defendant is to render the suit incompetent for contravening the requirements of the law provided under the cited Order VII Rule 1 (i) of the CPC.

The court has found the requirement to give the statement of the value of the subject matter in the suit as stated in the above cited case is mandatory to be complied with for the purpose of showing the court has pecuniary jurisdiction to entertain the matter and ascertainment of the court fees to be paid. The court has come to the stated finding after seeing the cited provision of the law is couched with the word "shall". As provided under section 53 (2) of the Interpretation of Laws Act, Cap 1 R.E 2019 and stated in the case of **Abdallah Ally Seleman** (supra) when the word "shall" is used in a provision of the law connotes the function required to be performed must be performed.

The court has considered the submission by the counsel for the plaintiff that courts have a duty to ascertain their jurisdiction before entertaining a matter and find that is the correct position of the law as stated in the case of **Fanuel Mantiri Ng'unda** (supra) cited in the submission of the counsel for the second defendant. However, the court is of the view that, despite the fact that the court is bestowed with the stated duty but that does not absolve the plaintiff from complying with the requirement of giving a statement of the value of the subject matter in the suit provided under the law in his plaint. To the view of this court and as rightly argued by the counsel for the plaintiff, the requirement to give the the stated value of the subject matter in the suit is to enable the court to ascertain it has jurisdiction to entertain the matter or not. In other word the court cannot act an a vacuum to ascertain it has jurisdiction to entertain a matter or not.

Since the plaint filed in the court by the plaintiff is lacking a statement showing the value of the subject matter in the suit as provided under Order VII Rule 1 (i) of the CPC the court has found the preliminary objection raised by the counsel for the second defendant that the plaint is offending the cited provision of the law is meritorious. Consequently; the raised point of preliminary objection is hereby upheld and the plaintiff's suit is accordingly struck out for being incompetent. As the

plaintiff's case was being prosecuted under legal aid scheme, each party will bear his or her own costs. It is so ordered.

Dated at Dar es Salaam this 31st day of July, 2023



I. Arufani
I. Arufani
JUDGE
31/07/2023

Court:

Ruling delivered today 31st day of July, 2023 in the presence of the plaintiff in person and while Mr. Moses Gumbah, learned advocate appears for the first defendant, Mr. Ally Hamza, learned advocate appears for the second defendant but the third defendant is absent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani
I. Arufani
JUDGE
31/07/2023