

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 103 OF 2023**

WHET COMPANY LIMITED.....PLAINTIFF

VERSUS

VILLAGE AMANI LIMITED.....DEFENDANT

BY WAY OF COUNTER CLAIM

VILLAGE AMANI LIMITED.....1ST PLAINTIFF

RUPINDER SINGH SANDHU.....2ND PLAINTIFF

VERSUS

WHET COMPANY LIMITED.....1ST DEFENDANT

BILHA NECHESA HERING.....2ND DEFENDANT

ERASMUS MATHIAS TARIMO.....3RD DEFENDANT

RULING

9th to 12th October, 2023

E.B. LUVANDA, J

The Plaintiffs to the counter claim raised a preliminary objection on that: The written statement of defence in the counter claim is untenable in law for having been signed by the Second Defendant on her behalf and at the same time on behalf of the First Defendant company contrary to the ruling of this court on this matter dated 10/08/2023 which disqualified the Second Defendant from signing pleading on behalf of the First Defendant company.

Ms. Hamida Sheikh learned Advocate and Killey Mwitasi learned Counsel for the Plaintiff in the counter claim submitted that Bilha Nashesa Hering was banned by this court to sign any pleading on behalf of Whet Company Ltd (sic, Limited), arguing if it happen she sign pleadings, it amount to circumventing and disrespecting the court order already made. They submitted that a joint written statement of defence to the counter claim has only nine paragraph, including the facts by Whet Company Ltd to which Ms. Bilha Nechesa have been banned to sign on its behalf. They opined that the proper way was for Bilha Nachesa Hering to have her separate written statement of defence to avoid circumventing or disobeying the order of this Court. He cited the case of **Tanzania Breweries Ltd vs. Edson Dilobe & Nine others**, Misc. Civil Application No. 96/2000 HC DSM; **Stick s/o Kinza & Another vs. Republic**, Criminal Appeal No. 106/2019 HC Mbeya, they prayed for the written statement of defence to the counter claim to be struckout.

In reply, Capt. Ibrahim Mbiu Bendera learned Counsel for Defendants to the counter claim, submitted that Ms. Bilha Nachesa Herings signed in the written statement of defence to the counter claim before the ruling was delivered, argued her revocation is yet to be done by the primary court therefore all matters done by her prevails. He submitted that Mr. Erasmus Tarimo is a shareholder and director of the First Defendant in the counter claim, arguing

his signature cannot be removed on the verification clause, arguing it was a joint written statement of defence which covers all three Defendants to the counter claim. He submitted that Erasmus Tarimo is a share holder and director of WHET Co. Ltd, (sic, Company Limited) therefore the nine paragraphs refers to him as well. He argued this Court to utilize Paragraph 3 of the Fifth Schedule of the Magistrates Courts Act, Cap 11 R.E. 2019, to issue notice to Kigamboni Primary Court to revoke letters of administration granted to Ms. Bilha Nachesa Hering.

On rejoinder, the learned Counsels for the Plaintiff to the counter claim reiterated their argument that the Second Defendant is not supposed to sign and verify pleadings of the First Defendant. They submitted that it is inappropriate for this Court to an invitation to give notice to the Primary Court so that to revoke grant of letters of administration of Bilha Nachesa.

Actually I was unable to grasp the concern and complaint by the learned Counsels for the Plaintiff to the counter claim, for reason that: One, they are saying a written statement of defence to the counter claim which was signed by Ms. Bilha Nachesa Hering on 15/06/2023 circumvent and disrespect the order of this Court delivered on 10/08/2023; Two, they are saying this Court banned Ms. Bilha Nachesa Hering to sign all or any pleadings; Three they are saying Ms. Bilha Nachesa Hering ought to have prepared and filed her separate written

statement of defence to the counter claim; Four; they are now inviting this Court to struck out the entire written statement of defence to the counter claim, without regard that it was a joint written statement of defence in respect of all three Defendants to the counter claim including one Erasmus Mathias Tarimo (Third Defendant to the counter claim) who is the shareholder and director of the First Defendant to the counter claim, who also signed and verified the impugned written statement of defence to the counter claim.

For item number two above, surely this objection was taken as an afterthought. If the Plaintiff to the counter claim wished for Bilha Nachesa Hering to be banned to sign all pleadings, they could have raised this concern at an earliest opportunity soon after filing the impugned written statement of defence on 15/06/2023 and prior hearing of their first notice of objection with a similar ground which was embedded into their written statement of defence filed on 25/05/2023, subject for the ruling dated 10/08/2023. A proposal in item three above, is like the learned Counsels are saying Ms. Bilha Nachesa Hering could forecast and prophesy that later this Court could ban and debar her signing any pleadings in this Court.

A proposal in number four above, suggest that the Plaintiff to the counter claim raised this objection in bad faith, because in their argument they said nothing

as to what should be done regarding the rights and interests of Erasmus Mathias Tarimo, as explained above.

Generally speaking without, prejudice to the above discussion and observations, this objection is whole unmerited; One, no provision of the law was cited apart from taking a cover on the ruling of this Court delivered almost two months later on 10/08/2023 from the date when the impugned written statement of defence was signed on 13/06/2023. I am saying the Counsels for Plaintiff counter claim are taking cover on that ruling, because the line of their argument tend to persuade this Court to believe that Ms. Bilha Nachesha Hering is disrespecting court orders, for which this Court should feel jelous and thereby protest against the course. Two, in their counter claim at paragraph four they sued Bilha Nahesa Hering as a natural person and at paragraph ten, they accused her personally that she is interfering with their ownership. Three, in the impugned written statement of defence to the counter claim, Bilha Nachesa Hering signed under her personal capacity as referred under paragraphs four and ten of their counter claim. Nowwhere Bilha Nechesa Hering, indicated that she is signing on behalf of WHET COMPANY Limited or as an administratix thereof. That is why I have said this objection was taken and raised in bad faith in furtherance of confusing determination of a real issue.

As I have intimated above, this is a second objection raised by the Counsel for the Plaintiff to the claim after this Court sustained their first objection on 10/08/2023. In the case of **Hammers Incorporation Co. Ltd vs. The Board of Trustees of the Cashewnuts Industry Development Trust Fund**, Civil Application No. 93/2015, CAT, held, I quote,

*"Nearly half a century ago, the erstwhile Court of Appeal for East Africa in the case of **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd** [1969] E.A. 696, made this pertinent observation, It said*

*"The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. **The improper raising of points of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuses issues"***

The objection is overruled. The Plaintiff to the counter claim will foot costs of this ruling, for a bill to be lodged after the final verdict of the counter claim.



E.B. LUVANDA
JUDGE
12/10/2023

Ruling delivered through virtual court attended by Mr. Killey Mwitasi learned Counsel for Plaintiff – counter claim and in the absence of Capt. Ibrahim Mbiu Bendera learned Counsel for Defendants counter claim



E.B. LUVANDA
JUDGE
12/10/2023