

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO. 109 OF 2020

CRDB BANK **PLAINTIFF**

VERSUS

PETER STEPHEN BILLA **DEFENDANT**

RULING ON PRELIMINARY OBJECTION

K. T. R. Mteule, J

07/09/2021 & 13/09/2021

This ruling is in respect of preliminary objection raised by the Defendant challenging the plaint filed in this suit asserting legal defects therein. The plaintiff lodged the challenged plaint before this court seeking for the recovery of TZS 101,192,864.72 (Tanzania shillings one Hundred and One Hundred and One Million One Hundred Ninety-Two Thousand Eight Hundred Sixty-Four Cent Seventy-Two), interests and other reliefs.

Along with the Written Statement of Defense in response to the plaint, the Defendant raised this Preliminary objection asserting that the plaint contravenes the following legal provisions:

- (a) Section 44(2) of the Advocate Act Cap 341 R.E 2002
- (b) Order VII Rule 1(c)(e)(f)(i) and (g) of the Civil Procedure Code (CAP 33)



(c) Order VII Rule 2 and Rule 11(a) of the Civil Procedure Code Act (Cap. 33).

(d) Section 13 of the Civil Procedure Code Act (cap 33)

The preliminary objection was heard by a way of written submissions the plaintiff being represented by **Samwel Mathia Advocate** while the Defendant, although unrepresented in the suit, enjoyed the services of **Advocate Saiwello T. J. Kumwenda** who drafted the Written Submissions.

In his submission the defendant dropped part (a) of the objection which alleged violation of **Section 44(2) of the Advocates Act, Cap 341** and proceeded to argue the rest seriatim.

Starting with part (b) of the preliminary objection on the assertion that the plaint contravenes Order VII Rule 1(c)(e)(f)(i) and (g) of the Civil Procedure Code (CAP 33 R.E.2019) hereinafter referred to as (CPC) I will hereunder reproduce the alleged contravened Order VII Rule 1:

"The plaint shall contain the following particulars-

(a) N/A;

(b) N/A;

(c) The name, description and place of residence of the defendant including email address, fax number, telephone number and post code if available, so far as they can be ascertained.

(d) N/A

(e) The facts constituting the cause of action and when it arose;

AJ

- (f) *The facts showing that the court has jurisdiction.*
- (g) *The relief which the plaintiff claims.*
- (h) *N/A*
- (i) *Relinquished a portion of his claim, the amount*
- (j) *NA....."*

It is the submission by the Defendant that the contents of the plaint do not comply with paragraphs (c), (e), (f), (g) and (i) of Order VII Rule 1 in the following context. The Defendant avers that the plaint neither mentions the place of residence of the defendant, email address, fax number, telephone number and post code (Ord. VII (1) (c)), nor does it disclose the date when the dispute and the cause of action arose. The Defendant contends that, since his salary has been on constant deduction to repay the said loan, no cause of action against the defendant. It is further defendant's submission that the plaint neither contains the facts showing if the court has jurisdiction nor does it contain reliefs sought. According to the defendant, the deduction of his salary has made the correct subject matter of the suit to remain 20,000,000/= which is not the pecuniary jurisdiction of this court which should at least be 50,000,000/=. The defendant disqualifies the statement of the plaint at paragraph 10" (which states "**for the purpose of court fees and jurisdiction of the court, the amount claimed is within the jurisdiction of this court**") from amounting to any description of court jurisdiction as according to him, the same is only trying to tell this court that the decision to file the suit was determined by the court fees and the amount defaulted. *At*

On part (b) of the objection, the defendant challenged the plaintiff asserting lack of compliance with Order VII Rule 2 of the CPC. This provision states:

"Where the plaintiff seeks for recovery of money, the plaintiff shall state the precise amount claimed"

According to the defendant no statement of precise amount of money in the plaintiff.

Submitting on part (d) of the objection, the defendant stated that the plaintiff wrongly filed the plaintiff in this court contrary to **Section 13 of the CPC** as the amount of money which have been defaulted by the defendant is less than TZS 20,000,000.00 whereas the pecuniary jurisdiction of this court is at least TZS. 50,000,000.00. Section 13 provides:

"Every suit shall be instituted in the court of the lowest grade competent to try it and, for the purposes of this section, a court of a resident magistrate and a district court shall be deemed to be courts of the same grade".

The defendant cited the case of **M/S TANZANIA -CHINA FRIENDSHIP TEXTILE CO. LIMITED VS OUR LANDY OF USAMBARA SISTERS (COURT OF APEAL NO. 84 OF 2002 (UNREPOTRED)** which nullified the wholly proceedings and the decision of the lower court for want of jurisdiction.

In response to the defendant's submissions, the counsel for the plaintiff refuted the entire objection. Reacting on the alleged contravention with



order VII rule 1(c) of the CPC, the plaintiff explained how he promptly served the defendant at Kibaha Regional Office and concluded that the defendant's argument should be expunged from the court. The plaintiff cited order VI rule 2 of the Civil Procedure Code.

Concerning noncompliance with Rule 1(e) of the Civil Procedure Code (Cap 33 R.E 2019) the plaintiff submitted that the plaint discloses the cause of action on paragraph 3,4,5,6,9. He submitted that the defendant's contention that no such a statement is unfounded. To support his argument, the plaintiff cited the case of **John Byombarirwa vs Agency Maritime International Tanzania Ltd 1983 T.L.R 1.**

On the alleged infringement of ORDER VII rule 1(f) of the civil procedure code R.E Cap.33, the plaintiff submitted that the plaint stated the facts establishing jurisdiction of this court at paragraph 10 and therefore it is not true that the plaintiff failed to establish jurisdiction of this court.

Summitting on the alleged lack of statement of precise amount of claim as per Rule 1 and Rule 2 of Order VII of the CPC, the plaintiff's counsel stated that he clearly stated the amount of money claimed against the defendant in paragraph 3 of the plaint which is TZS 101,192,864.72 including commercial interest of 17% of the loan granted in favor of defendant in July 2018.

On the failure to disclose the jurisdiction of the court in the plaint, it is the plaintiff's submission that the plaint specified the pecuniary value of




the subject matter to be **TZS 101,192,864.72**, which is well within the pecuniary jurisdiction of the High Court Commercial Division.

Having read and analyze the submissions made by the parties, I find that the issues for determination are whether the plaint filed in this suit is defective and what are the available reliefs in this Preliminary Objection.


Starting with whether the plaint is defective, the 1st alleged is the failure to comply with Order VII rule 1 (c) of the CPC. This provision states:

"The plaint shall contain the following particulars:

(c) the name, description and place of residence of the defendant including email address, fax number, telephone number and post code if available, so far as they can be ascertained."

I have examined the plaint to see whether the particulars stipulated in the above provision are contained therein. On the existence of name, I saw the name of **Peter Stephen Billa** well indicated on the plaint on the section of parties' name. Paragraph 2 of the plaint described the defendant as a **"Government employee working with the Government Procurement Services Agency and previously he was working with the Prevention and Combating of Corruption Bureau"**. In my view this is a sufficient description. Paragraph 2 of the plaint further states that the address of the defendant is **"P. O. Box 9150"** and that the place is **"Dar es Salaam"**. 

According to this provision (Order VII rule 1 (c) of the CPC), other contents such as email address, fax number, telephone number and postal code, need to be given as far as they can be ascertained. This means they are not mandatory and failure to state them is not fatal so long as the plaintiff managed to serve the defendant through the address given. Nevertheless, the current judicial reforms and technological advancement requires these particulars to be disclosed as much as possible in order to enhance citizen centric service delivery such as "Posta mlangoni services" which have been administratively adopted by the judiciary to easy document services to clients. Since their disclosure is such important, in my view, it can be done by inserting them on the plaint by a hand. Since the defendant is available, he can provide these particulars with more certainty.

On the failure to disclose cause of action contrary to **Order VII Rule 1(e) of the CPC**, it is clearly shown in the plaint from paragraph 3,4,5,6,7 and 8 that cause of action arose between the parties herein for an outstanding balance of TZS. 101,192,864.72 resulted from loan facility letter which is alleged to have approved loan to the defendant. It is further alleged in paragraphs 3, 7 ,8 and 9 of the plaint that the said loan was not paid by defendant despite of the demand notice. In my view, the plaintiff's submission sufficiently establishes that there is a cause of action resulting from a loan agreement between the plaintiff and defendant with a claim of an amount of TZS. 101,192,864.72. It is my finding that the plaint discloses cause of action and there is no contravention with **Order VII Rule 1(e) of the CPC.** 

On the alleged lack of disclosure of the value of the subject matter, it is submitted by the plaintiff that such disclosure has been made in paragraph 3 of the plaint. That paragraph 3 states:

“The plaintiffs claim against the defendant is for the sum of Tsh.101,192,864.72 (Say Tanzanian Shillings One Hundred and One Million Hundred Ninety Two Thousand Eighty Hundred Sixty -Four; Cent Seventy Two) Being an outstanding loan balance.....” .

This statement apparently, discloses the value of the subject matter. I have failed to understand the kind of disclosure the defendant would expect. I find the defendant’s argument at this point unfounded.

The defendant asserted lack of reliefs sought in the plain the fact which is disputed by the plaintiff. On the plaint, it is stated at page 3 the plaintiff sought for the following reliefs:

- (a) An order of payment for Tsh.101,192,864.72 (say Tanzania shillings one Hundred and One Hundred and One Million One Hundred Ninety-Two Thousand Eight Hundred Sixty-Four Cent Seventy-Two).
- (b) Interest on item (a) herein above from the date of filling the suit to the date judgment at the rate of 12%per annum.
- (c)Interest on the decretal sum from the date of judgement to the date of full satisfaction of the decree at the rate of 21% per annum.
- (d) Payment of costs of the suit.
- (e) Any other reliefs the Honorable court will deem fit to grant.



Likewise, I haven't got a clue of what the defendant expects to be the reliefs. In my view, the above listed constitute reliefs. This point is as well unfounded.

There are some assertions named by the defendant which tried to challenge the claim. These facts are such as an assertion that the plaintiff paid part of the loan of the defendant. I disregarded these averments because they can't be entertained at this state of preliminary objection as they need evidence to be ascertained.

In a nutshell the Defendant has not managed to point out any defect on the plaint in contravention of any mandatory provision of law.

I therefore overrule the preliminary objection. In order to support the judicial reforms by easing document services, I order the plaintiff to insert by a hand the defendant's email address, phone number, postal code if available in collaboration with the defendant who shall provide them.

Dated at Dar es salaam this 13th Day of September, 2021



K. T. Revocati Mteule

JUDGE

Court: Ruling delivered this 13th Day of September 2021 in the Presence of Legal Officer for the Defendant and the Defendant in person.



A handwritten signature in blue ink, appearing to read "K. T. Revocati Mteule".

K. T. Revocati Mteule

JUDGE