

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA

LAND CASE NO.13 OF 2019

JEM INTERNATIONAL CO LTD1st PLAINTIFF

JONAS EPHRAIM MCHOME.....2Nd PLAINTIFF

VERSUS

NATIONAL MICROFINANCE BANK1st DEFENDANT

LJ INTERNATIONAL LIMITED..... 2nd DEFENDANT

RULING

Date of last Order: 09.09.2021

Date of Judgment: 16. 09.2021

A. Mambi, J.

This ruling emanates from the preliminary objection raised by the Defendants. Earlier, the plaintiffs filed the suit against Defendants. The Plaintiffs sought the following prayers at this court;



- 1) The plaintiffs be allowed time to look for prospective buyers to conduct a private sale of properties concerned.
- 2) The defendants be restrained from public auctioning of the properties to recover loan.
- 3) The plaintiffs be allowed to repay the loan and overdraft facilities in instalment 400,000,000/= per year from the date of the court order until the finalization of the whole loan.

Before the matter proceeded, the respondents raised preliminary objection on the ground that Plaintiffs have no cause of action under the plaint. The first respondent under the representation of Simon Ng'wigulu learned Advocate. He argued that, there is no triable issues in the Plaint. He averred that paragraphs No. 5, 6 and 7 of the plaint, show that the Plaintiffs are admitting that they secured the loan from the first defendant amounted at 1,701,000,000/= and they have not paid the whole amount of the loan. He further submitted that the Plaintiffs received an overdraft of 1 Billion for the first defendant.

The learned Counsel submitted that, even at para 10-11 of the Plaint, the Plaintiffs are admitting to have defaulted as they have only paid 500 million. He argued that para 11 and 12 of the plaint

show that the Plaintiffs are admitting to have received the Notice of default. He averred that the prayers by the Plaintiff show that they are admitting to have a debt/loan from the defendants. He referred an author (saker) of the famous book on Civil Procedure Vol. 1.I, 8th ed at page 125 – 128 who provided a clear definition of cause of action. He also referred the decision of the court in **Mashado Fishing Lord and two others Vs. Board of Trustees of National Park; TLR No. 319; 2002** and **NBC Vs. Dar Education and Stationaries 1995 TLR no. 272** respectively.

In response, the plaintiff's counsel Francis Kesanta submitted that the preliminary objection by the defendants has no merit since the plaintiffs have cause of action against the defendants. He argued that the claim of the Plaintiffs is to ask an order of this court to allow the plaintiffs to sale his Land at the better price to pay the loan. He argued that the Plaintiff is worried that the defendant can sell the Land at the lower report. He referred the decision of the court in **John Mombe Vs. Agency Martine International TZ. Ltd. TLR page 1 of 1983.**

I have considerably gone through the submissions by both parties. In my considered view, the main issue is whether the plaintiffs have Cause of action in their plaint or not.

The Respondents' Counsel Contended that the plaint by the plaintiffs neither show triable issues nor cause of action. His arguments was based on the fact the plaintiffs in their plaint are admitting that they secured the loan and they have not yet fully repaid the loan. On the other hand, the plaintiffs' counsel submitted that the plaintiffs have cause of action. His argument was based on the fact that they are seeking for an order of the court to be allowed to sell the land at the higher price than the price that would have been obtained if the defendants sell the house. Before I determine if the plaintiffs have cause of action, I wish to explain the Cause of action from legal perspective. Briefly, a cause of action is the legal right on which a claimant sue. This means that a Cause of action is a label for a type of facts which will justify a court award a legal remedy. In other words, the cause of action can be regraded as the fact or combination of facts that give a person the right to seek judicial redress as a result from some wrongful act or breach that has caused a person loss or damage.

Generally, a cause of action gives a person a right to sue or standing to sue or "locus standi" (or "locus" for short, from the Latin "A place to stand on"). It is trite law that where a person has no interest at all, or no sufficient interest to support a particular legal claim or action, the person will not have locus standi and thus no standing to sue.

Looking at the plaint as a whole. There is no any cause of action raised by the plaintiffs as the plaintiff in their plaint have dwelt much in admitting that they have secured the loan from the defendants and they need mercy of this court to simplify mode of payment. The plaintiff in their prayers are seeking an order of this court to allow them to sell the land that was subjected to the loan at the higher price fearing that the defendants can sell the land at the lower price. The plaintiffs in their plaint are also seeking for an order of this court to order the defendants to allow the plaintiffs to repay the loan and overdraft facilities in instalment 400,000,000/= per year from the date of the court order until the finalization of the whole loan. The plaintiffs believes that these prayers are the Cause of action. The question is, can these prayers be regarded as cause of action under the provision of the

law?. In my considered view these prayers cannot be said as the cause of action and indeed there will be no triable issues as the court will not have power to make such orders. It appears the plaintiff are also seeking the order of this court to interfere with the agreed mode of payment of the loan, something which cannot be done by the court. In my view failure, to indicate a cause of action means the plaintiff have no a right to sue or standing to sue or "locus standi" on the prayers they have sought at this stage. In other words the plaintiffs have no right to seek judicial redress since they have not indicated any wrongful act or breach done by the defendants that has caused a personal loss or damage. Each cause of action consists of points the plaintiff must prove and all of these elements must be satisfied in order to take court action. See also **JOHN M. BYOMBALIRWA v AGENCY MARITIME INTERNATIONALE (TANZANIA) LTD 1983 TLR 1** wherein the court pertinently considered the meaning of the expression "cause of action" appearing in Order VII Rule 1 of the Civil Procedure Code, Cap 33 [R.E.2002] and observed that that :

"although the expression "cause of action" has not been defined under the Civil Procedure Code, but that expression simply means

essential facts which a plaintiff in a suit has to plead and later prove by evidence if he wants to succeed in the suit”.

The court further observed that for purposes of deciding whether or not a plaint discloses a cause of action; courts should **NOT** go far into written statements of defence or into replies to the written statements of defence. Additionally the court laid down the principle that where the Plaint does not disclose a cause of action, the remedy is **NOT** for the court to dismiss the Plaint, but to reject it.

I wish to refer the relevant provision of the law that deals with cause of action. In this regard, I will specifically refer to Order VII Rule of the Civil Procedure Code Cap 33 [R.E2019]. This order requires the plaintiffs who move the courts by suits, to plead particulars in their Plaint to disclose a cause of action. More specifically, Rule 1 of Order VII states:

*“ 1.The plaint **shall** contain the following particulars-*

- (a) the name of the court in which the suit is brought;*
- (b) the name, description and place of residence of the plaintiff;*
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;*

- (d) *where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;*
- (e) ***the facts constituting the cause of action and when it arose;***
- (f) *the facts showing that the court has jurisdiction;*
- (g) *the relief which the plaintiff claims;*
- (h) *where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and*
- (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". [Emphasis provided]*

Reading between the lines on the above paragraph, the word “shall” implies mandatory as per the Law of Interpretation Act, Cap 1 [R.E.2002]. In other words, Order VII Rule 1 (e) mandatorily requires Plaints that are filed in courts to manifest brief and concise facts that constitute the cause of action. This means that the court has the duty to adhere to the legal principles governing to find if the plaintiff has clearly indicated ***facts constituting the cause of action***. See also ***JOHN M. BYOMBALIRWA v AGENCY MARITIME INTERNATIONALE*** (supra).

Therefore, since the plaintiff was claiming that they have cause of action, it was his legal duty to disclose all the facts indicating cause of action under their complaint but he did not do.

The cause of action is the heart of the complaint, which is the pleading that initiates a law suit. Without an adequately stated

cause of action the plaintiff's case can be dismissed at the outset. It is not sufficient merely to state that certain events occurred that entitle the plaintiff to relief. All the elements of each cause of action must be detailed in the complaint. The claims must be supported by the facts, the law, and a conclusion that flows from the application of the law to those facts. Cause of action can arise from an act, a failure to perform a legal obligation, a breach of duty, or a violation or invasion of a right. For instance for one to have cause of action for breach of contract there must have been an offer and acceptance. The other example for one to have cause of action in tort, the plaintiff must show there has been a negligence or intentional wrong doing.

I have gone through the plaintiff to find out if the plaintiffs have cause of action. It is on the records the plaintiff secured the loan from the defendants but they have not fully repaid the loan. The plaintiffs in their plaintiff have not indicated if the defendants have failed to perform their legal obligation, a breach of duty or any violation of right to justify cause of action.

It appears that when the first defendant intended to recover the loan, the plaintiffs rushed to this court to find the means of delaying payment of the loan. This in my view does not form the basis of cause action under the gist of Order VII Rule I of the Civil Procedure Code Cap 33 [R.E 2019].

Worth at this juncture making reference to Lord Denning in a persuasive case of ***R v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd*** [1966] 1QB 380 at 400-1 had once observed that:

"The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done."

Similarly in another persuasive decision the court underscored the same position. This was laid down by Lord Justice James, a distinguished English Judge, laid the principle down in 1880 in the ***Ex P. Sidebotham case*** [1880] 14 Ch D 458, [1874-80] All ER 588] who observed that:

"to the effect that a man was not a 'person aggrieved' unless he himself had suffered a particular loss in that he had been injuriously affected in his money or property rights".

In other words the plaintiffs in their plaint failed to disclose the cause of action. In one of the persuasive decision, Lord Denning in ***R v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd (supra)*** once explained that:

"The court will listen to anyone whose interests are not affected by what has been done."

Reference can also be made to the decision of the court of Appeal of Tanzania in ***The Director of Public Prosecutions v. ACP Abdalla***

Zombe and 8 others Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

“this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings.”

I wish to refer the decision of the court in **Joseph Ntongwisanguue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005** (unreported) where it was held that:

“... Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court”.

It is trite law that where the Plaintiff does not disclose a cause of action, the remedy is not for the court to dismiss the Plaintiff, but to reject it. See also **JOHN M. BYOMBALIRWA v AGENCY MARITIME INTERNATIONALE (Supra)**. Now, in terms of Order VII Rule 11 (a) of the Civil Procedure Code, Cap 33, I find it proper for this court to reject the plaintiff for non-disclosure of the cause of action and I hold so.



From my analysis and observations, I find the Plaintiff defective for lack of cause of action. In the event as I reasoned above, the

preliminary objection raised by the defendants is sustained. I make no orders as to costs. Each party to bear its own costs.





A. J. MAMBI
JUDGE
16.09.2021

Ruling delivered this 16th day of September, 2021 in presence of both parties.



A. J. MAMBI
JUDGE
16.09.2021

Right of appeal explained.



A. J. MAMBI
JUDGE
16.09.2021