

TANZANIA / JUDGMENT

Ngoma

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM LAND CASE NO. 8538 OF 2024 FATUMA MACHINGA NGOMA.....
PLAINTIFF VERSUS CRDB BANK PLC..... 1st DEFENDANT ALLIANCE
ACADEMY LIMITED..... 2nd DEFENDANT

RULING

Date of Last Order: 16.05.2024 Date of Ruling: 28.06.2024 T.N. MWENEGOHA, J The Ruling is in respect of two preliminary objections raised by the 1st defendant against the determination of the suit. Initially, the 1st defendant raised three objections, but during hearing, she abandoned the 3rd objection and remained with the first two as follows; -

1. That, based on the pleadings, the suit is non-maintainable for failure to disclose when the cause of action against the 1st defendant arose, contrary to Order VII, Rule (e) of the Civil Code, Cap 33 R.E 2019.
2. That, the plaint is bad in law for as the jurisdiction clause violates Order VII Rule 1(f) and (i) of the Civil Procedure Code, Cap 33, R.E 2019. i The objections were heard through written submissions. Advocate Matthew Ngaga appeared for the 1st defendant while the plaintiff was represented by Advocate Privat Rugambwa. In his submissions, the counsel for the 1st defendant started with the 2nd objection, but in this Ruling, I prefer to start with the 1st objection. Arguing on the 1st objection, Mr. Ngaga insisted that, in the present case, the plaintiff has not in any of the 9 paragraphs of the plaint, shown when exactly did the cause of action against the first defendant arose, if at all a cause of action can be traced therefrom. This is against the mandatory provisions of Order VII rule 1(e) of the Civil Procedure Code, Cap 33 R.E 2019, which states; "The plaint shall contain the following particulars:
(e) the facts constituting the cause of action and when it arose" That, the essence of indicating time when the cause of action arose has foundational roots and serves the main purpose of compliance to the mandatory requirement of Order VII rule 1(e) and that it enables the Court to be availed with all relevant particulars for purposes of determination of jurisdiction in that the matter before, if it is well within its proper time limitation, as stated in Juma Kadala v. Laurent Mnkande [1983] TLR 103. In reply, Mr. Rugambwa maintained on the 1st objection that, the same is devoid of merits. He insisted that if we go to paragraph 7 of the

Plaint the plaintiff categorically stated that recently it had come to her attention that her property was about to be auctioned by the first defendant upon seeing on the local tabloids and electronic media which collectively have been annexed in the plaint and attached as annexure Trill-4. And if we look 2 at the Local tabloids are dated April 3, 2024 which is the date that she found out all of this. That, this fact has been pleaded and annexures to the plaint are there. It is for the first defendant to read the plaint in full as well as with the annexure attached to comprehend the facts thereto. Therefore, the plaint is in conformity with Order VII Rule 1(e) of the Civil Procedure Code. This objection is devoid of merits as it requires evidence as stated in *Evod Augusti Mallya V Shedrack Kalinga & 20 Others Land Case 173 of 2022*, High Court of Tanzania Land Division at Dar Es Salaam (unreported).

Rejoining on the 1st objection, the counsel for the first defendant insisted that, the plaint should be self explanatory on the face of it. Therefore, the rules require it to show when the cause of action arose and not depend on the annexures to see when the same arose as stated in *Rebecca John Genya v. Tanzania Airports Authority & 3 Others*, Land Case No. 72 of 2023, High Court of Tanzania, Land Division at Dar Es Salaam (unreported), at pages, 16 & 17 where the Court struck out the Plaint for non-compliance with Order VII rule 1(e) that is failure to indicate when the cause of action arose. After reading the arguments of both counsels on the 1st objection, let me determine its merits or otherwise, before venturing into the 2nd objection. The center of the contention in this objection is whether the plaint, has disclosed when the cause of action arose. The 1st defendant, as argued by her learned counsel, insisted that, the plaint has not disclosed when exactly the cause of action arose, whereas for the plaintiff's counsel, has relied on paragraph 7 of the plaint, which shows that, the plaintiff "recently" discovered through medias that the 1st defendant is intending to action the suit property. That, if we read the annexures, particularly 3 annexure "Triii-4", we will find that, the cause of action arose on April 3, 2024. Indeed, I have gone through the plaint. As argued by Mr. Nganga, there : is a blanked statement on when the cause of action arose. The plaintiff I has used the word "recently" and Mr. Rugambwa, her learned counsel; has maintained that, if we read the plaint along with its annexures, we: will know exactly when the cause of action arose. In my opinion, the arguments by Mr. Ngaga are worth of consideration. The law is well clear that, a plaint should state the facts containing a cause of action and when the same arose, see Order VII Rule 1(e) of the Civil Procedure Code, (supra). The plaint at hand has just complied with part of this provision by stating the facts showing the cause of action between the parties on one hand, but when exactly it arose, the plaint silent. The words used at paragraph 7, that "the plaintiff discovered recently" do not fit to explain the time when the cause of action arose. The word recent may have different meaning, even a period of 15 years can be covered by the word recent, depending on circumstances. And we cannot depend on annexures to fill this gap, as the law is clear, it is the plaint itself that should be self-explanatory on this fact. Therefore, omitting the time when the cause of action arose, leaves the Court at a cross-road not knowing if the matter is within its jurisdiction to entertain it, see *Juma Kadala v. Laurent Mnkande*, (supra). In that regard, the proper decision to make by this Court is to declare the whole suit to be incompetent. And the for incompetent suits is well known. Therefore, the 1st objection is

sustained. With these finds, I will not proceed to discuss the 2nd objection, as the findings above have finalized the matter. 4 In the event, the suit is struck out with costs. Ordered accordingly. JUDGE 28/06/2024 5

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