

TANZANIA / JUDGMENT

mrc motors t limited another vs netis tanzania limited 2022 tzhc 14852 23 november 2022

COURT
TZHCDECIDED
23 November 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA CIVIL CASE NO. 30 OF 2022 MRC MOTORS (T) LIMITED
..... 1st PLAINTIFF MAHESH CHOUDHARY RAWTARAM t/a MRC
AUTOPARTS 2nd PLAINTIFF VERSUS NETIS TANZANIA LIMITED
..... DEFENDANT

RULING

10th August & 23rd November, 2022 ITEMBA, J. The defendant herein has raised 3 points of preliminary objections which are:

1. That the suit is bad in law for misjoinder of cause of action, the 1st and 2nd Plaintiff have distinct and separate cause of action that cannot fathomably be joined in one suit.
2. That the suit is bad in law for the reason that it has been instituted contrary to the principle of laws that the suit must follow the defendant.
3. The 2nd plaintiff has no cause of action against the defendant, his names ought to be struck out from the suit/plaint. At the hearing, the plaintiff was represented by Mr. Godfrey Martin, advocate while the defendant was represented by Mr. Peter Kibatala both learned advocates. Upon parties' consensus, the objections were argued by way of written submission. Arguing in support of the grounds for objections, the counsel for the defendant opted to argue ground one and three jointly. He averred that looking at the plaint and its annexures (in particular the demand notice and its replies), the 2nd Plaintiff's is an alien to the suit based on the facts are 'self-evident' and need no drawn-out process of investigation. He expounded that the 2nd plaintiff is wearing two hats the first as an individual and the second as a director of a 1st plaintiff and in his own names and that, this is against the provisions of section 184 of the companies Act, Cap 212. RE 2019. It is his further contention that, the 2nd Plaintiff's joinder in the suit creates duplicity of legal personalities and causes of action, it creates discernible conflict of interest between a director versus a company in which he serves something which lead to confusion of issues and will embarrass and delay the

prospective trial. The defendant prayed that the suit be struck or the names of the 2nd plaintiff be struck out from the plaint/suit. In reply the plaintiffs submitted that this objection has been taken out of context on the following reasons; first, that a preliminary objection being on the point of law the defendant ought to have cited the provision of the law which have been contravened by the plaintiffs and that even the submission in support of the preliminary objection is wanting. He proceeded by submitting that the demand notice dated 1st July, 2021 which is annexed in the plaint and marked as LZA 7 was from the 2nd plaintiff and the same was duly received, signed and stamped at the defendant's office in Mwanza (House No.200, block X, Hill top Capri Point, Mwanza). The amount which was demanded by the 2nd plaintiff was Tshs. 152,100,000/= arising out of tire supplies. Second, he submitted that unlike the plaintiff contentions, the law encourages joinder of causes of action where the Plaintiffs are jointly interested against the same defendant as per Order II. Rule 3 (1) of the Civil Procedure Code. Cap 33. R.E 2019. Also Order I, Rule 1 of the CPC [Supra] provides for who may be joined as plaintiffs to include all persons to whom any right to relief in respect of or arising out of the same transaction. He explained that as the 1st plaintiff is a seller of car tires and the 2nd plaintiff is running a garage which deals with car repair services and car hire, the businesses are jointly managed by the same entrepreneurs, and due to the fact that the services were offered to the same person (the defendant Company) in the series of same act and or transactions, therefore, the joining of the causes of action by the Plaintiffs has neither contravened the provisions of Order 11, Rule 3 (1) nor Order I, Rule 1 of the CPC [Supra]. 3 Thirdly, he argued that the demand notice is not a pre requisite condition for instituting a suit rather it is a step taken by the prospective plaintiff to realize his cost in case the suit is filed and that the defendant pays the amount claimed or found due at or before the first hearing as per Order 70 of the Advocates Remuneration Order, 2015. He added that even if there was no demand notice it does not make a suit unfamiliar to the defendant and it cannot amount to mis-joinder of causes of action only because the 1st plaintiff had earlier on informed the defendant of his intention to sue. The defendant did not have any rejoinder. After thoroughly going through the parties' written submission, I will start to dispose the first and the third grounds, which deal with misjoinder of cause of action and whether the plaintiff has a cause of action. As rightly stated by the plaintiff, Order II. Rule 3 (1) of the Civil Procedure Code. Cap 33. R.E 2019. provides that; "save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the 4 same defendants jointly may unite such causes of action in the same suit". Also Order I, Rule 1 of the CPC [Supra] states that: "All person may join in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transaction is alleged to exist, whether/jointly, severally or in the alternative where, if such persons brought separate suits. any common question of law or fact would arise". Without dwelling much on this issue, the cited law above shows that the law requires that parties may join in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transaction, is alleged to exist, whether jointly,

severally or in the alternative where, if such persons brought separate suits any common question of law or fact would arise. In this case, both plaintiffs have made some transactions with the defendant in 2018 including, repairs of cars/vehicles, car hire and selling of tires. The plaintiffs are two distinct entities but under the same owner. As the Annexures to the plaint marked LZA 4, LZA 5, LZA 6, LZA7 and LZA9 shows that there were several transactions between plaintiffs and 5 the defendant. These transactions create joint interest in the part of the plaintiffs as per Order II. Rule 3 (1). I will also agree with the plaintiff who relied on the principle in *Salomon v Salomon and Co Ltd* [1897] AC 22 which established that “a company has a legal personality separate and independent from the identity of its shareholders. Hence any rights, obligations or liabilities of a company are discrete from those of its shareholders, where the latter are responsible only to the extent of their capital contributions known as limited liability.” It suffice to say that the 2nd plaintiff herein, who is an individual has different legal personality from the 1st plaintiff which is a company and both have dealt with the defendant at different levels, that means there is no misjoinder of plaintiffs. For this reason, these objections have no merit. The second limb of preliminary point of objection is that the suit is bad in law because it is contrary to the principle of law that ‘the suit must follow the defendant’. The defendant states that as per section 18(a) of the Civil Procedure Code, the suit must follow the defendant so that the defendant shall not be put to costs and inconvenience to defend a suit in a foreign arena but 6 to his residence. He added that the paramount of this consideration is that a defendant has no choice where the plaintiff has instituted a suit. He further submitted that annexure LZA 7 and 15 in the plaint are clear that the defendant’s official address is in Dar Es Salaam, so to that extent the suit ought to be filed at the High Court District Registry at Dar es Salaam. To back up his argument, he cited the case of *Ndoro Kili Meru Mountain lodge campsite Vs Twiga Bancorp limited and Thomas Barnaba mmbando*, Land Case No. 138 of 2017. HC at Dar Es Salaam. The defendant argues that the consequence of this is to have the case struck out. Nonetheless, it was submitted by the plaintiff that the same was misconceived. He argued that the suit does not necessarily follow the defendant as provided under Section 18 (a) of the Civil Procedure Code, Cap 33. R.E. 2019 but rather, it can be filed where the cause of action arises. Section 18 (c) of the CPC [Supra] provides that; “Subject to the limitations aforesaid every suit shall be instituted in a court within the local limits of whose jurisdiction; -

- (c) the cause of action, wholly or part, arises." The meaning it carries is that, a corporation shall be deemed to carry 7 on business at it sole or principal office in Tanzania. or, in respect of any cause of action arising at any place where it also has a subordinate office at such place. Looking at the pleadings and its annexures, the Plaint under paragraph 1, 2 and 3 has described the plaintiffs as residents of Kahama with its subordinate office in Mwanza. Likewise, and the defendant as a resident of Dar Es Salaam with its subordinate office in Mwanza. In the counter claim at paragraph 13 and 15 the plaintiff (defendant herein) has admitted that the cause of action arose in Mwanza where the 1st plaintiff’s vehicles were stored sometimes in between 10th January,2020 and 10th June2021. Again, annexures LZA10

and LZA 7 of the plaint acknowledges that the demand notice dated 1st July, 2021 and official correspondence dated 12th July, 2021 were received on 13th July, 2021, signed and stamped by Neema Siara at the subordinate's office of the defendant located at House No. 200, Block X, Hill Top Capri Point, Mwanza, and annexure TAL-in the counter claim is all about the storage charge for MRC vehicle parked at Netis Mwanza Office. Therefore, indeed, apart from being a corporate body, the defendant also has its subordinate office in Mwanza which was involved in receiving documents and processing the main suit up to this stage. Apart from that as rightly submitted by the plaintiff, the decision in 8 Ndoro Kili Meru Mountain Lodge & Campsite Ltd Vs Twiga Bancorp Limited & Another. [Supra] which was cited by the defendant is essentially in support of Section 18 (c) of the CPC which states that suit can be filed where the cause of action arose if there is the subordinate office of the defendant. At page 3 of the judgment, it was held that; "I have considered the submissions of the plaintiff, it must be made clear on the onset that in the current case, there are more than one defendant and according to para 3 of the plaint, the 2nd defendant works for gain in Mwanza, we therefore have two defendants with different places of residence/office/work for gain. Therefore, if the plaintiff would have wished to sue on the convenience of the defendants as he argued, then the applicable section would have been Section 18 (c)... It was further held that; "From the plaint as well as Mr. Kachenje submissions, all the transactions between the plaintiff and the defendants were done at Arusha where the 1st defendant has its subordinate office. This, coupled with the fact that the 2nd defendant is a resident of Mwanza, makes it even more important that suit should at least been filed where the cause of action arose". If one of the rationale of following the defendant is convenience of the defendant. In this matter the defendant has an office in Mwanza, the same office was responsible to receive some of the documents relating to the present case, so which inconvenience will be caused to the defendant if he is sued in Mwanza? Also as said above the cause of action arose in Mwanza, without doubt, I find that the place of suing is in accordance with the law. For this reason, the second point of objection is overruled. In the upshot, I hold that the preliminary objections are fruitless and, accordingly, the same is hereby dismissed with costs. It is so ordered. Right of appeal duly explained to the parties. DATED at MWANZA this 23rd day of November, 2022 10 Ruling delivered in the presence of Mr. Godfrey Martin and Ms. Scholastica Tefe both advocates appearing via audioconference. L. J. ITEMBA JUDGE 23.11.2022 11

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