

TANZANIA / JUDGMENT

t ROMUALD ANDREA MATTERU VS

COURT
TANZLII

DECIDED
30 August 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MBEYA SUB-REGISTRY AT
MBEYA LAND CASE NO. 6853 OF 2024 (Originating from the District Land and Housing Tribunal
for Songwe at Mbozi in Land Application No. 3 of2022) ROMUALD ANDREA MATTERU ©ANDREA
ROMUALD ANDREA ©ROMUALD A LUCAS ©ROMUALD ANDREA ©ANDREA ROMUALD
©ROMUALD A. N. MATTERU @ ROMUALD M. MATTERU @ROMALD MATERU ©ROMUALD L.
MATTERU @R.A. MATTERU.....PLAINTIFF VERSUS MBEYA CITY
COUNCIL..... 1st RESPONDENT CATHERINE
SWAI..... 2nd RESPONDENT MARRY
MAPUNDA..... 3rdDEFENDANT DORICE
SARINJO..... 4thDEFENDANT FORTNATUS
SALLA..... 5TMDEFENDANT DITRAM WILA @DIAMI
COMPANY LTD..... 6thDEFENDANT HAPPY MACHA/NESTORY
MUSHI..... 7thDEFENDANT HAWA SIMON
KAMETA..... 8thDEFENDANT SAID HAMIS
MGawe.....9thDEFENDANT MARTHA HERBERT
KOMBE/SHABAN MRISHO..... 10TMDEFENDANT BASILISA PIUS
SHIO..... 11TMDEFENDANT MESHAK EMMANUEL
MAKWETA..... 12TMDEFENDANT PHILIP AKWILINE KIMATH
©FAUSTIN KIMATH..... 13TMDEFENDANT MAULID
KINOGAH..... 14TMDEFENDANT PATRICK
KYANDO..... 15TMDEFENDANT MUGISHA
KAYUMPU..... 16TMDEFENDANT GIBONCE
MWAKATUMBULA..... 17TMDEFENDANT SIMPO
KYANDO..... 18TMDEFENDANT 1 PRISCA
MASSAGA..... 19TMDEFENDANT IRENE
NYAMBO..... 20TMDEFENDANT AIKANDE
MUSHI..... 21stDEFENDANT MARIA JULIUS
MLINGA..... 22ndDEFENDANT HON. ATTORNEY
GENERAL OF TANZANIA..... 23rdDEFENDANT

RULING

06th & 30th August, 2024 TIGANGA, J. This is a ruling on preliminary objections raised by Ditram Wila @Diami Company Ltd and Aikande Mushi (the 6th and 21st defendants respectively) against the suit. The plaintiff's suit is against the herein twenty-three defendants. The plaintiff alleges that the defendants had jointly and severally trespassed, causing damages and loss of property into sixty (60) business rooms at Sokoine @Sokoine Market in Sisimba ward in Mbeya City. He also alleges that the suit properties have no plot number nor are in a single consolidated area. He thus, prays for several orders to bind each defendant among others is a declaration order that the disputed 60 rooms belong to him. The plaint by the plaintiff is detailed, It has a total of 55 paragraphs, among them long containing a lot of information. In those long paragraphs bullets and Roman numbers have been used to 2 separate some facts. Also, the Articles of the Constitution of the United Republic of Tanzania have been referred to clarify some allegations. To wit, paragraph 38 is styled as follows: "That the 1st Defendant admitted few payments from the Plaintiff's tenants by the name of Romuald Andrea Matteru and later told the other Plaintiff's tenants that the Mbeya City Council Billing Computer program was not able to accept further payments in the same name of Romuald Andrea Matteru and that they should pay the rent in their own names. Indeed, this was a MOVE TO ROB OFF THE PLAINTIFF OF HIS LAWFUL OWNERSHIP OF THE ROOMS and is not acceptable. The 1977 Constitution of the United Republic of Tanzania has said it all and clear in paragraph 24 sections 1 and 2 and I beg to quote the Swahili version "1. Ki/a Mtu anayo haki ya kumiiiki ma/i na haki ya hifadhi ya mali yake aliyo nayo kwa mujibu wa sheria." "2. BHa kuathiri masharti ya ibara ndogo ya (1) ni marufuku kwa mtu yoyote kunyang'anywa ma/i yake kwa madhumuni ya kuitaifisha au kwa madhumuni mangingeyo biia idhini ya sheria ambayo inaweka masharti ya kutoa fidia inayostahiii." After being served with the plaint, the defendants filed their respective written statements of defence (WSD). In their joint WSD, the 3 6th and 21st defendants under the service of Advocate Abraham Essau Sengo raised three preliminary objections:

1. That the plaint filed by Plaintiff in this matter is bad in law for contravening the clear provision of Order VI Rule 3 of the Civil Procedure Code, [Cap. 33 R.E 2019],
2. That the plaint filed by the Plaintiff in this matter is bad in law for contravening the clear provision of Order VI Rule 13 of the Civil Procedure Code.
3. That the plaint filed by the Plaintiff in this matter is bad in law for contravening the clear provision of Order VII Rule (1) (c) of the Civil Procedure Code. In disposing of the preliminary objections, the plaintiff appeared without legal representation while Mr. Sengo learned Advocate appeared for the two defendants, and with leave of the Court, the PO were argued by way of written submissions. Arguing for the first limb Mr. Sengo stated that the law, Order VI Rule 3 of the CPC requires pleadings to contain a statement in a concise form of the material facts. Since the word 'concise' means short, brief, with no unnecessary words, then paras 38, 26, and 40 are short of the requirements. Because they contain legal arguments and conclusions. 4 He contended that many paragraphs are crafted in difficult words to be understood by a reasonable person. Also, they are unnecessarily grouped in a

way that would put the Court into a dilemma as to what reliefs to be awarded. Further, the entire plaint is not understood how each defendant is related to the facts alleged therein. As to the 2nd limb, Mr. Sengo contended that Order VI Rule 13 requires a party in pleadings not to allege matters of fact that the law presumes in his favour unless the same has first been specifically, denied. He, however, argued that the law restricts quoting provisions of the law in the pleadings. In Mr. Sengo's view, the plaint under para 38 contravenes the law by quoting the Articles of the Constitution. About the 3rd limb, Mr. Sengo said that Order VII Rule (1) (c) of the CPC requires a plaint to give the name, description, and place of residence of the defendant. However, the plaint by the Plaintiff has a mixed legal person and natural person which will confuse them in the long run of the proceedings. Mr. Sengo thought that if Ditrima Wila is a natural person and Diami Company Limited is a legal person he is to be held liable. In the given arguments, he implored this Court to uphold the preliminary objection and reject a plaint for failure to describe the name and address of the defendant. According to him, it will not be a strange decision as this Court did so (rejected a plaint of that nature) in the case of Alex Ndibalema & Another vs CRDB Bank PLC & Two others, Land Case No. 19 of 2010 HCT at DSM found in the Book titled Civil Procedure, Preliminaries to Litigations, 5th edition by Omary Issa. He thus prayed the suit to be struck out with costs. In reply to the 1st limb, the plaintiff argued that the alleged arguments in para 38 of the plaint were not elaborated. Also, the wordy and unclear nature of the plaint was not complained by other Advocates representing other defendants. Further, the complained grouping which would put the Court in dilemma as to the reliefs to be awarded the counsel did not elaborate on it and courts have discretionary powers either to grant or deny a relief sought. The plaintiff went on faulting the submission by the defendant's counsel that the plaint is not concise and contains evidence by contending that the counsel had intentionally left some part of Order VI Rule 3 which prohibits evidence from being included in a plaint. Concluding arguing the 1st limb the plaintiff said that determining the conciseness of the pleadings will attract lengthy discussion hence the objection does not qualify to be preliminary. 6 Responding to the 2nd limb, the plaintiff argued that the requirements of the law, that is Order VI Rule 13 and the submission attached to it are irreconcilable. That the referred para 38 of the plaint has already been dealt with in the 1st limb. On the 3rd limb, he argued that as much as the law allows suing whoever, then it is upon the 6th defendant or her counsel to point out who should be sued. According to the plaintiff, there is a position where two names have been used as one Ditrima Wila signed as the principal officer of Diami Company Limited. Also, that case cited by the counsel has no relation with the matter at hand as the same was about the affidavit. In the alternative, the plaintiff invited this Court to be guided by the overriding objective principle in overruling the preliminary objections. He relied on the Written Laws (miscellaneous Amendments) Act, 2018, Act No. 8 of 2018 without citing specific sections. According to him, the law came to promote substantive justice contained under Article 107A (2) of the Constitution of the United Republic of Tanzania. He further urged this Court in case it finds the preliminary objections hold water and the overriding objective principle does not 7 apply order amendment of the plaint to conform with the law or order correction by pen by removing all defective parts. In

rejoinder counsel for the defendants came to dismiss the overriding principle referred by the plaintiff on the ground that it did not come into existence to overhaul the rules of procedure but to facilitate their application. To that effect, he cited the case of Puma Energy Tanzania Limited vs Ruby Roadways (T) Limited, Civil Appeal No. 03 of 2019 CAT at DSM. That a plant is competent when it complies with the provisions of the CPC, he insisted the suit be struck out with costs. I have considered the rival submissions by the counsel for the parties and the law. The major issue for consideration is whether the preliminary objections are sustainable. They will be resolved in the sequence they have been raised and argued. Starting with the first limb, that some paragraphs are too wordy and ambiguous to be understood thus contravening Order VI Rule 3 of the CPC. For easy reference let the law speak by itself. It provides that: "3. Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively; and dates, sums, and numbers may be expressed in figures." The above law, generally, requires pleadings to be the statement of material facts stated concisely. It also prohibits to include evidence. Now, it was argued by Mr. Sengo that they are not concise and are difficult to understand. He did not however tell the court if the 6th and 21st defendants did not understand the claim of the plaintiff against them. I have read the specified paragraphs that are paragraphs 26, 38, and 40 which are said to be wordy. Paragraph 26 for example, is the description of the units/discrete of the suit properties, 38 is about 1st defendant on how she turned down the agreement by stopping the other defendants from paying rent to the plaintiff, and paragraph 40 is about groups of the defendants as they were created after the alleged actions of the 1st defendant. The paragraphs, however, do not contain evidence as prohibited by the law. And Mr. Sengo did not say the paragraphs contain evidence. The issue of conciseness, in my view, is objective rather than subjective which depends on the understanding of one person from another. The arguments by the counsel were based on the assumption that an ordinarily person may not understand the plaintiff's claim. The rule about 9 preliminary objection is trite that the same should be based on a pure point of law and must be based on facts as apparent on the record. See Gurmit Singh Bhachu vs Meet Singh Bhachu, Civil Application No. 454/02 of 2018, CAT at Arusha, (unreported) and Olais Loth (Suing as an administrator of the estate of the late Loth Kalama) vs Moshono Village Council, Civil Appeal No. 95 of 2012 CAT at Arusha (unreported). In the premises, the first limb of the preliminary objection is unmerited it is thus, overruled. Turning to the 2nd limb of the preliminary objection that the pleading contravenes Order VI Rule 13 of CPC. Mr. Sengo's arguments, however, say that the plaintiff, paragraph 38 contains legal arguments which are prohibited by the law. The referred law provides as follows: "13. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (e.g. consideration from a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim)." The above law, as correctly argued by the plaintiff, does not provide anything about non-citation of law or legal

arguments. It restricts the allegation of facts presumed by law to be in favour of the io pleader. Unless the facts are opposed by the other party. Which is not the case in this matter. Nothing presumed by the law in favour of the plaintiff against the defendants is pleaded in the plaint. Concerning of legal arguments contained under paragraph 38 of the plaint as reproduced hereinabove, indeed, it is not good practice for pleadings to contain provisions of law. However, for this case, the referred law which is Order VI rule 13 of CPC is not related to the gist of the preliminary objection. The same, therefore, lacks merits and is also overruled. The last limb in the orders of the preliminary objection is that the plaint contravenes Order VII Rule 1 (c) of the CPC. The relevant law provides for the contents of the plaint which among others is the name and description of the defendants. This limb was specifically raised by the 6th defendant. In his arguments, Mr. Sengo contended that the plaintiff did not specify who is, between a legal person, that is Diami Company Limited, or the natural person, Ditrarn Wilais will be held responsible in this case. According to him, he thinks the non-specifying parties may lead to confusion. In response, the plaintiff submitted that he pleaded both names since in the dealings between him and the 6th defendant, two names were used interchangeably. According to him the li law, that is Order I Rule 7 of the CPC allows the inclusion of two or more persons whom he thinks he has a claim against. To be frank, the preliminary objection, the arguments, and the referred law do not relate. The spirit of the law, Order VII Rule 1 (c) is the plaint to give a description and address of the defendant to ascertain him and obvious for service purposes. However, counsel does not say that the description was not sufficient but, he is worried] about who is to be held liable in the combined legal and natural persons. In my view, the answer to this worry will depend on the evidence and proof which is the task of the plaintiff. It is thus, a pure point of law to be disposed of through preliminary objection. To be specific, the preliminary objection cannot lead to the rejection or striking out of the suit. The reason for the above holding is the provision of Order VII Rule 11 of the CPC which provides for circumstances in which a plaint can be rejected. It provides that:

11. The plaint shall be rejected in the following cases-
 - (a) where it does not disclose a cause of action;
 - (b) where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so; 12
 - (c) where the suit appears from the statement in the plaint to be barred by any law: From the above provision, it is clear that out of the specified irregularities or omissions the plaint can not be rejected. Instead, the remedy available is for the court to allow the plaintiff to amend the plaint. See the proviso of Order VII Rule 11 of the CPC. In that regard, this limb of the preliminary objection is also overruled. In the end, notwithstanding the resolution about the preliminary objection, the plaintiff is at liberty if he wishes, to amend the plaint only to specify the 6th defendant, he may choose either name according to his expected evidence to avoid confusion in the latter stage. Owing to the above discussion, the entire preliminary objections are overruled. I order no costs since the preliminary objections have not

succeeded but they have led to an order for amendment of the plaint. It is so ordered.
DATED and delivered at MBEYA this 30th day of August 2024. J.C. TIGANGA JUDGE 13

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