

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 88 OF 2021

APPOLO INTERNATIONAL LIMITED TANZANIA PLAINTIFF

VERSUS

BRITAM INSURANCE TANZANIA LIMITED DEFENDANT

Date of Last Order: 16.11.2021

Date of Ruling: 10.12.2021

RULING

MAGOIGA, J.

This ruling is in respect of the preliminary objection on point of law taken by the defendant's learned advocate that, the instant suit is bad in law for it does not disclose any cause of action against the defendant.

The background to this dispute is imperative to be stated for better understanding the gist of this ruling. In 2018 the plaintiff and defendant entered into insurance agreement whereby the defendant insured the plaintiff goods stored at Kizota godown against theft and the plaintiff paid the required premium as agreed. On 11th February, 2020 at night, while the goods were under the insurance policy theft occurred and the plaintiff's goods worthy Tshs.139,260,000/= were stolen. The matter was reported to



police for investigations and to the defendant for indemnification or reinstatement but in vain, hence, this suit.

Upon being served with the plaint, then, respondent, among others, raised a preliminary objection against the maintainability of this suit as stated above, hence, this ruling.

The plaintiff is enjoying the legal services of Mr. Stanslaus Ishengoma, learned advocate and whereas the defendant is enjoying the legal services of Mr. Heriel Munisi, learned advocate. The matter was ordered to be argued by way of written submissions and parties' learned advocates complied to the schedule of filing the same. I record my sincere gratitude to them for the industrious contribution in making this ruling possible.

Mr. Munisi arguing the objection that, the suit is bad in law for it does not disclose any cause of action against the defendant premised his arguments under Order VII Rule 1 which require the plaintiff to state facts constituting the cause of action and when it arose. The land advocate was inspired by the case of JOHN BYOMBALIRWA vs. AGENCY MARITIME INTERNATIONALE (T) LTD [1983] TLR 1 which defined the phrase cause of action and told the court that the plaint ought to be rejected.



Further advancing the arguments, Mr. Munisi changed the story without court's leave into names of the plaintiff that, annexures 2, 3, 4, 5 and 6 attached to the plaint, the plaintiff is referred as APOLO INTERNATIONAL LIMITED and not APPOLO INTERNATIONAL LIMITED TANZANIA as such concluded that looking at insurance policy, therefore, the plaintiff is not a party to the policy.

Mr. Munisi insisted that these are two distinct names and represents two distinct legal personalities in law. In support of his new stance cited the case of TOSI JATEGI vs. TANZANIA HARBOURS AUTHORITY, CIVIL APPLICATION NO. 164 OF 2006 which was cited with approval in CIVIL APPLICATION NO. 129 OF 2018 BETWEEN ALEX MWITA MSAMA vs. ROSE MHANDO AND 2 OTHERS, (HC) DSM (UNREPORTED) where it was held that general principle of the law directs that, it is essential for the names of the parties either in a suit or an application to be clearly stated. This is because such mistakes in the names of the parties may be fatal and bring confusion and not be executable.

On that note, Mr. Munisi argued that insurance policy has to be between insured and insurer and not a third party or non-existing party and strongly urged this court to reject the plaint with costs.



On the other adversary part of the plaintiff, Mr. Ishengoma argued in rebuttal and submitted that, in his view, the objection raised do not fit in the four corners of the famous MUKISA BISCUITS MANUFACTURING CO. LIMITED vs. WEST END DISTRIBUTORS LIMITED (1969) E.A. 696.

As to the names, Mr. Ishengoma the inclusion of the name 'Tanzania' after limited was inadvertently included but was quick to point out that same is curable and cited the case of CHRISTINA MRIMI vs. COCA COLA KWANZA BOTTLERS LTD, CIVIL APPLICATION NO. 113 OF 2011, in which the mistake was held to be curable by deleting the word bottlers. The learned advocate for the plaintiff strongly urged this court to order the delete the word 'Tanzania' and continue with hearing of the suit on merits.

On the foregoing the learned advocate for the plaintiff urged to overrule the objection for want of merits with costs and order for deleting the word 'Tanzania' reading in front of APPOLO INTERNATIONAL LIMITED.

In rejoinder, Mr. Munisi almost reiterated his earlier submissions and insisted that the issue of names is central for identification and urged in strong terms to reject the plaint with costs.



Having carefully and dutifully listened to the rivaling arguments of the learned trained minds for the parties' on the so called objection on point of law, I am inclined and increasingly going to overrule the objection. The reasons why I am taking this stance are abound. One, for the interest of justice, spirit of doing justice without necessarily tied up with issue as provided under article 107 (e) and guided by overriding objective principle now we celebrate in deciding cases in our jurisdiction, I see no harm and no prejudice will be caused to the defendant if I order that the name **"TANZANIA"** appearing at the end of the proper name be deleted and the suit continue to be heard inter parties on merits. Two, I agree with the learned advocate for the plaintiff that the name was inadvertently inserted there and the defect, if any, is curable as it was held in the case of CHRISTINA MRIMI (supra). On that same parity and for the interest of justice, I hereby order that the name of 'Tanzania' be deleted and the case proceeded from where it lied. Three, Mr. Munisi's point objection raised was that the plaint does not disclose cause of action but without leave of the court charged the arguments into two distinct legal personalities which is quite different from the first formal filed point of objection.



On the foregoing, the preliminary objection must be and is hereby overruled with no order as to costs because defect noted was not intentional.

It is so ordered.

Dated at Dar es Salaam this 10th day of December, 2021.



A handwritten signature in blue ink, consisting of a series of vertical lines and a long horizontal stroke.

S. M. MAGOIGA
JUDGE.
10/12/2021