IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO.70 OF 2021

GOLDEN COACH LIMITED..... PLAINTIFF

VERSUS

ALLIANCE INSURANCE CORPORATION LIMITED.....1ST DEFENDANT

C. STEINWEG BRIDGE (PTY) LIMITED..... 2ND DEFENDANT

CITIC METAL (HK) LTD.....3RD DEFENDANT

RULING

Date of last order: 12/12/2023

Date of Ruling: 11/03/2024

GONZI, J.

On 8th June 2023, the Plaintiff sued the 1st Defendant alone that the 1st Defendant had breached an insurance contract by refusing to settle the Plaintiff's claim for indemnity at the tune of US Dollars 560,500.00 after the happening of the insured event without any justification or cause. The 1st Defendant duly filed a written statement of defence resisting the claim and the case proceeded through 1st Pretrial Conference, mediation and Final Pretrial Conference after which witness statements were filed by both parties to the case. Subsequently, on 11th September 2023, the Plaintiff applied to court for leave to amend the Plaint and add more

defendants. That prayer was allowed by the Court (Hon. Nangela, J.), and therefore on 20th September 2023, the Plaintiff filed an Amended Plaint in which the Plaintiff impleaded the 3 Defendants as shown herein above. Under paragraph 5 of the Amended Plaint, the Plaintiff's claim against the 3 Defendants is expressed thus:

> ***"That the Plaintiff's claims against the Defendants jointly and severally are for a Court Declaration that the First Defendant has breached the insurance contract by refusing to settle the Plaintiff's claim for indemnity after the happening of the insured event without any reason and justifiable cause; for a court order that the plaintiff is entitled to be indemnified by the first defendant under the insurance policy after the happening of the insured event; For a court order that the Plaintiff is entitled to payment of USD 560,500.00 (United States Dollars Five Hundred Sixty Thousand Five hundred) only which payment the 2nd Defendant deducted from the plaintiff as an indemnity for the actual loss of the cargo; payment of USD 900,000.00 (United States Dollars Nine hundred Thousand) only consequential damages for loss of business suffered by the plaintiff and general damages to be assessed by this court***

resulting from the inconveniences and unnecessary business hardships occasioned to the plaintiff owing to the 1st defendant's act of refusing to settle the claim; in the alternative, for a court order that the plaintiff is entitled to refund of USD USD 560,500.00 (United States Dollars Five Hundred Sixty Thousand Five hundred) which the 2nd Defendant deducted from the Plaintiff without any justifiable cause; the plaintiff also claims for interest and costs of the suit".

The defendants resisted the claims by filing their respective Written statements of defence. In the Written Statement of Defence for the 2nd Defendant, a preliminary Objection was raised therein that:

1. **The 2nd defendant cannot be a necessary party in this suit where this honourable court has no jurisdiction to hear and determine any dispute that arises from the contract between the plaintiff and the 2nd Defendant.**

   PARTICULARS

   Under Clause 24 of the contract entered between the Plaintiff and the 2nd Defendant grants jurisdiction to the courts of South Africa to hear and determine such disputes and no renvoi shall apply.

On 12th December 2023, the Court directed that the preliminary objection be disposed of by way of written submissions. In the hearing of the preliminary objections, the Plaintiff was represented by Mr. Norbert Mlwale and Ms. Fatma Songoro, learned Advocates while the 2nd Defendant enjoyed the services of Dr. Fred S. Ringo, learned Advocate. The totality of the submissions by the Learned Counsel are as follows:

The 2nd Defendant's learned counsel started his submissions by stating that the preliminary objection raised is one of pure point of law and hence fits within the meaning of a preliminary objection as per the case of **Mukisa Biscuits Manufacturing Co. Ltd Vs West End Distributors Ltd (1969 EA 606** where the Court of Appeal for Eastern Africa held:

> ***"a preliminary objection is in the nature of what used to be demurrer. It raises a pure point of law which if argued on the assumption that all the facts pleaded by the other side are correct. It can't be raised if any fact has to be ascertained...."***

The learned counsel for the 2nd defendant submitted that essentially there are two aspects in the preliminary objection. Firstly, it is on misjoinder of the 2nd defendant in the suit. Secondly it is about this Court lacking jurisdiction as the 2nd Defendant and the Plaintiff, have a transportation

agreement whose clause 24 thereof has categorically vested jurisdiction in respect of any disputes under that contract to the courts in South Africa, unless the 2nd Defendant agrees otherwise.

The 2nd Defendant's learned counsel submitted that under Order I Rules 3 and 13 of the Civil Procedure Code, Cap 33 of the Laws of Tanzania, an objection on misjoinder and non-joinder should be raised at the earliest opportunity, hence the present objection. He argued that the Plaintiff at paragraph 8 of the amended plaint acknowledges the existence of transportation contract with the 2nd Defendant and that Clause 24 of that Contract provides that parties have agreed that any dispute arising between them shall be adjudicated by South African Courts and, if in any other court, then it shall be at the option of the second defendant. He submitted that by that clause the Plaintiff had expressly waived its right to choose the forum of dispute. Therefore, he argued that the case at hand has been filed in Tanzania by the plaintiff in clear violation of clause 24 of their agreement.

The learned counsel for the 2nd Defendant further submitted that the right to relief to the plaintiff against the 2nd defendant is not based on the cause of action raised against the 1st Defendant, which is a separate contract on

insurance; and also it is not based on the transport contract between the plaintiff and the 2nd Defendant. Therefore, the learned counsel for the 2nd Defendant argued that no common questions of law or fact would arise between the plaintiff and any of the Defendants in this case, for the 2nd defendant to be joined under Order I rule 3 of the Civil Procedure Code Cap 33 of the Laws of Tanzania. He argued that under the doctrine of privity of contract, the 2nd defendant should not have been joined as a necessary party in the suit. He referred the court to the cases of **Leonard Peter vs Joseph Mabao, Ephraim Stanley Fimbo and Gregory Josia Mushema**, Land Case No.4 of 2020 which quoted the decision of the Court of Appeal **in Abdulatif Mohamed Hamis v Mehboob Yusuf Othman and another**, Civil Revision No.6 of 2017. He submitted that under the above case laws, the two test for determining a necessary party are that there has to be a right to relief against that party in respect of the matter involved in the suit; and that the court must not be in a position to pass an effective decree in the absence of such a party. Dr. Fred Ringo, learned advocate for the 2nd Defendant, therefore, proceeded to submit that though the 2nd Defendant was joined in this court pursuant to the Ruling of this Honourable Court as per Hon. Nangela, J., (the Predecessor Judge) in **Golden Coach Limited versus Alliance Insurance Corporation**

Limited, Misc. Commercial Application No.137 of 2023 which allowed the Plaintiff to join the 2nd defendant in the case, but the Ruling of Hon. Nangela, J., failed to make findings on the issues of existence of right to relief against the 2nd defendant and did not declare that the 2nd defendant was privy to the contract. Also, he argued that the ruling did not provide that the court cannot pass an effective decree without, or in the absence of, the 2nd Defendant. He argued that the ruling also did not provide that the alternative claim raised by the plaintiff against the 2nd Defendant is justiciable in this court. Advocate Fred Ringo, therefore, concluded that the Court issued an erroneous ruling in joining the 2nd defendant to the case at hand.

The 2nd Defendant's advocate submitted that the principle of privity to contract applies against the plaintiff. He referred the court to the decision of **Coface South Africa Insurance Co.Ltd Vs Kamal Steel Limited**, Commercial Case No.108 of 2020. He argued further that the contents of paragraphs 25 and 26 of the amended plaint are matters in dispute between the Plaintiff and the 2nd Defendant and that the Court of Appeal has ruled that where such clauses in contracts are before the courts in Tanzania, they are binding as between the parties. The learned counsel for the 2nd defendant concluded his submissions as such.

In reply, the Plaintiff's learned counsel Mr. Norbert Mlwale and Ms. Fatma Songoro, submitted that despite the voluminous nature of the submissions made by the learned counsel for the 2nd defendant, the submissions lack merits and that the cited provisions of the law and case laws relied upon by the 2nd Defendant, actually, operate against the 2nd defendant itself. They therefore argued that the preliminary objections are misconceived, misplaced and devoid of merit.

The learned counsel for the Plaintiff submitted that for a point of preliminary objection to be properly raised, it must be a pure point of law raised on the assumption that what the other side states, is correct. They referred this court to the case of **Mukisa Biscuits Manufacturing Co. Ltd Vs West End Distributors Ltd (1969 EA 606,** to this effect. They argued that the matters raised by the 2nd Defendant's advocate are factual ones which have to be ascertained and thus are not pure points of law.

The plaintiff's counsel argued that there is a distinction between a necessary party and a proper party. He referred the court to the case of **Livingstone Michael Mushi versus Asha Magoti Magere,** decided by the Court of Appeal of Tanzania at Mwanza (2022) at page 12 thereof. They argued that nowhere does the Plaint describe the 2nd defendant as a

necessary party or proper party. They submitted that the Plaintiff's claim against the 2nd defendant is in alternative; therefore, determining at this moment as to whether the 2nd defendant is a proper party, necessary party or neither of the two, would, in effect, prematurely determine the substantive alternative relief sought by the Plaintiff against the 2nd defendant. They argued that there are issues of fact and issues of law, and that the issue of joinder of the 2nd defendant is an issue of law which should await determination of the case on merits and thus cannot be brought as a preliminary objection.

The learned counsel for the Plaintiff argued that Order I Rule 3 of the Civil Procedure Code does not bar joining the 2nd defendant, rather it justifies joining the 2nd Defendant as there is going to be a question for determination by the court which shall involve the 2nd defendant as such. Therefore, the court cannot determine that question unless the 2nd defendant is a party to the proceedings. They argued that the question that will arise in the trial is whether the 3rd defendant claimed refund from the 2nd defendant, who due to loss of copper cargo while in transit under custody of the plaintiff, could not deliver it to the 3rd Defendant, the owner thereof? They argued that the joinder of the 2nd Defendant in the case is therefore inevitable for that question to be determined by the court.

Further, the learned counsel for the Plaintiff submitted that even if the Plaintiff had not prayed to court and obtained leave of the court to join the 2nd defendant to the suit, the court could have ordered joinder of the 2nd defendant, suo mottu. To support this argument, the learned counsel referred the court to the case of **NUTA Press Limited versus Mac Holding and another** (2016) decided by the Court of Appeal of Tanzania at Dar es Salaam.

The Plaintiff's counsel argued that the issue of privity is misplaced. They explained that the 2nd defendant withheld the indemnity amount of USD 560,000 due to the Plaintiff. Hence the Plaintiff has a claim against the 2nd Defendant.

On jurisdiction of the court, the learned counsel for the Plaintiff argued that the claim in this case is for breach of insurance contract and not of the transportation contract which has just been pleaded to show how the 2nd defendant is connected in the chain of value. They argued that nowhere in the plaint has it been pleaded that there has been a breach of the transportation contract.

Having considered the rival arguments advanced by the learned counsel for both sides, I will now proceed to determine the preliminary objections

raised by Dr. Fred Ringo, learned advocate for the 2nd Defendant. And in my view, the present matter cannot detain much the court much as it is straight forward. The first, foremost and inevitable question that emerges from the submissions by the learned counsel and the records of the case is whether the preliminary objection raised qualifies as such? Dr. Fred Ringo premised his submissions by arguing that the preliminary objection raised is one that involves a pure point of law and that it has been raised at the earliest possible time. On the other hand Mr. Mlwalwe and Ms. Songoro for the Plaintiff have argued that the preliminary objection does not qualify as such because it raises factual issues rather that pure points of law. I think we need to revisit the preliminary point of objection as raised by the learned advocate for the 2nd Defendant. It goes thus:

1. **The 2nd defendant cannot be a necessary party in this suit where this honourable court has no jurisdiction to hear and determine any dispute that arises from the contract between the plaintiff and the 2nd Defendant.**

   PARTICULARS

   Under Clause 24 of the contract entered between the Plaintiff and the 2nd Defendant grants

jurisdiction to the courts of South Africa to hear and determine such disputes and no renvoi shall apply.

As it can be seen from the above preliminary point of objection and from the explanations and submissions by the learned counsel for the 2nd Defendant, two major constituent parts are embedded in the preliminary point of objection. The first one is that there is a misjoinder of a party, that is the 2nd Defendant has been joined without being a necessary party to the case nor a proper party. The second one is that as the 2nd Defendant and the Plaintiff have a clause 24 in their transportation agreement which requires any dispute between them to be determined by South African courts, then this court has no jurisdiction. In essence that is all that can be discerned from the submissions by the 2nd Defendant's learned advocate. Both allegations have been denied by the Plaintiff. Further the plaintiff's counsel have argued that the two aspects are factual and not pure points of law as to constitute a preliminary objection.

The contention between the learned counsel for the 2nd Defendant and the Plaintiff, necessitates re-looking at the settled position of the law on what constitutes a preliminary objection in law. Both counsel have cited the case

of **Mukisa Biscuits Manufacturing Company LTD v West End Distributors LTD (1969) EA 696.** At page 700 Law, J.A observed as follows:-

> ***"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings, and which, if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving to the suit to refer the dispute to arbitration."***

At page 701 Sir Charles Newbold P. had this to say: -

> ***"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is the exercise of judicial discretion".***

In **National Insurance Corporation of (T) Ltd and Parastatal Sector Reform Commission Versus Shengena Limited**, (Civil Application No.

20 of 2007, the Court of Appeal of Tanzania, at Dar Es Salaam), when the matter was called for hearing two Preliminary Objections were raised namely:

1. ***That this application is incompetent at law as there are other remedies available in the matters intended to be revised.***

2. ***That this application does not demonstrate that it falls within the established grounds for revision.***

A preliminary issue arose in the course of determining the preliminary objections. The issue was whether or not the preliminary objections raised constituted valid preliminary objections in law?. The Court of Appeal after restating the law on preliminary objections as stated in the celebrated case of Mukisa Biscuits Manufacturing Company Limited (supra) then held that:

> ***"We take that to be the position of the law on the meaning of a preliminary objection. With this in mind we ask ourselves: does the so called preliminary objection in the instant case pass this test? We think it does not. The two so called points of objection are not self-proof. They are subject to proof by some other material facts. For the foregoing reason we dismiss the respondent's preliminary objection with costs in the cause".***

I have asked myself whether the two components of preliminary objections raised by the 2nd Defendant's counsel, in the circumstances of the present case, fit within the meaning of a preliminary objection in the eyes of the law? I am guided by the words of the Court of appeal in the above referred case and I am settled that whether or not a particular point qualifies as a preliminary objection, does not depend on the name-tag given to it, but rather on whether or not, in the circumstances of the particular case, it passes **"the test of self-proof? It should not be subject to proof by some other material facts."**

I have considered the question of misjoinder of the 2nd Defendant. The question is whether from the Amended Plaint and anything attached to it, without the need of being ascertained further by evidence, it is settled and undisputed that the 2nd Defendant is neither a necessary nor a proper party? In other words, the issue is whether it is pleaded by the Plaintiff or it arises from necessary implications while reading the plaint and its annextures that there would be no common questions of facts or law in the present case which would necessitate the joinder of the 2nd Defendant? Inevitably, we need to have a look at the nature of the Plaintiff's claims in the Plaint and see whether it has any bearing to the 2nd Defendant? The rule as set out in the case of Mukisa Biscuits (supra) is that in determining

the point qualifies as a preliminary objection, we have to assume that what is pleaded by the other party (in this case the Plaintiff) is correct. To borrow the words of Sir Charles Newbold P., in the Mukisa Biscuits case (supra) "**a preliminary objection raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained.**" The question therefore is whether by assuming that all facts in the present case as pleaded by the Plaintiff in the plaint are correct, there are no claims by the Plaintiff against the 2nd Defendant as to warrant his joinder in the case? Paragraph 5 of the Amended Plaint becomes relevant again here. In relation to the 2nd Defendant's liability towards the Plaintiff, it says that:

> ***"That the Plaintiff's claims against the Defendants jointly and severally are For a court order that the Plaintiff is entitled to payment of USD 560,500.00 (United States Dollars Five Hundred Sixty Thousand Five hundred) only which payment the 2nd Defendant deducted from the plaintiff as an indemnity for the actual loss of the cargo; in the alternative, for a court order that the plaintiff is entitled to refund of USD USD 560,500.00 (United States Dollars Five Hundred Sixty Thousand Five hundred) which the 2nd Defendant deducted from***

the Plaintiff without any justifiable cause; the plaintiff also claims for interest and costs of the suit".

Now, assuming that the above pleaded claims are correct, would it be necessary for the Plaintiff to sue the 2nd Defendant in the circumstances of the present case? My answer is the affirmative that it would be necessary for the Plaintiff to join the 2nd Defendant in the case in order for the 2nd Defendant to be heard in defence and in order for the court to pass an effective decree one way or the other after hearing both sides. The joinder of the 2nd defendant in the present case was therefore necessary. I find the preliminary objection based on misjoinder without merits. It is based on the 2nd Defendant's evidence and arguments which constitute his defence to the main case. Therefore, it calls for ascertainment of some pieces of evidence or facts hence an exercise better suited for the full trial rather than dealing with it as a preliminary objection.

There is another angle of looking at the preliminary point of objection on misjoinder of the 2nd Defendant. The learned counsel for the 2nd Defendant in his submissions raised a pertinent issue which was not sufficiently responded to by the Plaintiff's counsel. The argument advanced by the learned counsel for the 2nd Defendant was that although the 2nd Defendant

was joined in this court pursuant to the Ruling of this Honourable Court dated 11th September 2023, as per Hon. Nangela, J., (the Predecessor Judge) in **Golden Coach Limited versus Alliance Insurance Corporation Limited**, Misc. Commercial Application No.137 of 2023 in which the court allowed the Plaintiff, inter alia, to join the 2nd and 3rd defendants in this case, but the Ruling of Hon. Nangela, J., failed to make findings on the issues of existence of right to relief against the 2nd defendant and did not declare that the 2nd defendant was privy to the contract. Also, he argued that the ruling did not provide that the court cannot pass an effective decree without, or in the absence of, the 2nd Defendant. He argued that the ruling also did not provide that the alternative claim raised by the plaintiff against the 2nd Defendant is justiciable in this court. Advocate Fred Ringo, therefore, concluded that the Court issued an erroneous ruling in joining the 2nd defendant to the case at hand. The foregoing submissions reveal a disturbing fact. That is the fact that the question of joinder of the 2nd Defendant in the present case was dealt with by this same court and an Order was issued allowing the Plaintiff's prayer to have the 2nd Defendant joined in the suit. But the 2nd Defendant believes that the order of this court to have the 2nd Defendant joined was erroneous for the factors disclosed in the submissions of the

learned advocate for the 2nd Defendant. I have asked myself as to whether it was proper to challenge the orders of the court in the same court by way of raising preliminary objections? I have asked myself as to whether a successor Judge of the same court can overrule the decision of the predecessor Judge in respect of the same case file by way of determining preliminary objections raised to challenge the decision made by the predecessor Judge? My answer is firmly in the negative. This court is now functus officio with regard to the question of joinder of the 2nd Defendant in this case as the same issue was considered and determined by this same court earlier, albeit before a different judge. Even if I had to find that the predecessor trial Judge had erred in his orders allowing joinder of the 2nd defendant, I would not have the jurisdiction, in the absence of application for review, to vary the orders of the predecessor Judge on that issue. I could therefore have perfectly simply declined to consider the preliminary objection on the aspect of misjoinder of the 2nd defendant.

On the second aspect of preliminary objection, the 2nd Defendant argued that clause 24 of the contract entered into between the Plaintiff and the 2nd Defendant, grants jurisdiction to the courts of South Africa to hear and determine such disputes and no renvoi shall apply. The learned counsel for the 2nd Defendant therefore submitted that this court lacks jurisdiction.

The learned counsel for the Plaintiff submitted that their claim against the 2nd Defendant does not arise from the transportation agreement they have with the 2nd Defendant but rather it arises from the indemnity money paid under a contract of insurance. I asked myself whether the preliminary objection raised qualifies as such in order to be determined. If it does not qualify as a preliminary objection, I will have to reserve the point for full trial so that evidence can be tendered on it and the court can be in a better place to evaluate the evidence and reach a facts-based decision on the issue. I had to apply the same tests from the Mukisa Biscuit case. The key test is that of self-proof. That the preliminary objection must not require ascertainment by further evidence. It must be raised while assuming what the opposite side is alleging is true. Has the Plaintiff in the present case alleged that its claim against the 2nd Defendant is based on transportation contract between them or from the insurance policy? Once again, the long story in the plaintiff's amended plaint is summed up in paragraph 5 thereof where the Plaintiff raises the following claims against the 2nd Defendant:

1. **That the Plaintiff's claims against the Defendants jointly and severally are For a court order that the Plaintiff is entitled to payment of USD 560,500.00 (United States Dollars Five Hundred Sixty Thousand Five hundred) only**

which payment the 2nd Defendant deducted from the plaintiff as an indemnity for the actual loss of the cargo; in the alternative, for a court order that the plaintiff is entitled to refund of USD. 560,500.00 (United States Dollars Five Hundred Sixty Thousand Five hundred) which the 2nd Defendant deducted from the Plaintiff without any justifiable cause; the plaintiff also claims for interest and costs of the suit.

The above reproduced claim by the Plaintiff against the 2nd Defendant reveals that the Plaintiff's claim is based on insurance indemnity money. The Plaintiff's counsel in their written submissions argued that the issue of the 2nd defendant's privity to contract is misplaced. They explained that the 2nd defendant withheld the indemnity amount of USD 560,000 due to the Plaintiff. They submitted that the Plaintiff has a claim for insurance money against the 2nd Defendant. The learned counsel for the Plaintiff argued that the claim in this case is for breach of insurance contract and not the transportation contract which has just been pleaded to show how the 2nd defendant is connected in the chain of value. They argued that nowhere in the plaint has it been pleaded that there has been a breach of the transportation contract.

In his written submissions, the learned counsel for the 2nd Defendant submitted that the right to relief to the plaintiff against the 2nd defendant is not based on the cause of action raised against the 1st Defendant, which is a separate contract on insurance; and also it is not based on the transportation contract between the plaintiff and the 2nd Defendant. Therefore, the learned counsel for the 2nd Defendant argued that no common questions of law or fact would arise between the plaintiff and any of the other Defendants in this case, for the 2nd defendant to be joined under Order I rule 3 of the Civil Procedure Code Cap 33 of the Laws of Tanzania. Here the learned counsel for the 2nd defendant was openly repudiating the 2nd Defendant being connected to the plaintiff anyhow in both the insurance contract and the transportation contract. The logical implication and effect of these submissions by the 2nd Defendant's learned counsel is to displace and disapply both the insurance contract and the transportation contract in relation to the claims of the Plaintiff against the 2nd Defendant in this case. Assuming that the argument by the Learned Counsel for the 2nd defendant is correct, it means that Clause 24 of the transportation contract which allegedly would oust jurisdiction of this court would not apply as it is part and parcel of the non-applicable transportation contract in which it is embedded. If the learned counsel for the Plaintiff are

correct, it would also mean that Clause 24 of the transportation contract which allegedly would oust jurisdiction of this court would not apply as well. Therefore, believing the submissions by either the Plaintiff's counsel or the 2nd defendant's counsel, would have the same effect of making clause 24 of the transportation contract between the 2nd Defendant and the Plaintiff, inapplicable. There would therefore be no basis for the 2nd defendant to argue, as a preliminary point of objection, that the court lacks jurisdiction. The averments in the paragraph 5 of the amended plaint, the submissions by learned counsel for the 2nd defendant and the submissions by the learned counsel for the Plaintiff, if believed, would all result into disapplication of the transportation agreement in which clause 24 thereof which is opting for South African courts, is contained. I therefore find that determination of the precise applicable legal basis (contractual otherwise) for the plaintiff's claim against the 2nd defendant, is a point in dispute between the parties and needs evidence to prove it. At any rate the second point of preliminary objection on jurisdiction of the court, though ordinarily would be properly raised as a preliminary objection, cannot be raised as a preliminary objection in this case. In the circumstances of the present case, its determination depends upon factual proof as to whether the insurance and or transportation agreement apply to the relationship between the

plaintiff and the 2nd defendant. I therefore decline to determine it as a preliminary point at this stage.

All said and done, I find the preliminary objection raised by the 2nd Defendant without merit. The same is hereby dismissed with costs to the Plaintiff. Costs shall be costs in the suit. It is so ordered.

A. H. GONZI
JUDGE
11/03/2024

Ruling is delivered in court this 11th day of March 2024 in the presence of Ms. Fatma Songoro learned Advocate for the Plaintiff on one hand, and Mr. Allen Nanyaro, learned advocate for the 1st Defendant, Dr. Fred Ringo, learned advocate for the 2nd Defendant and Mr. Peter Clavery, learned advocate for the 3rd Defendant.

A. H. GONZI
JUDGE
11/03/2024