

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 363 OF 2023

**BETWEEN
HILDE HAPPY LYIMO.....PLAINTIFF**

**VERSUS
GINGO REAL ESTATE LTD.....DEFENDANT**

RULING

Date of Last Order: 14/02/2024

Date of Ruling: 16/02/2024

MWAIPOPO, J

This ruling is in respect of a Preliminary Objection raised by the Defendant to the effect that;

“The plaint has contravened the provisions of the Civil Procedure Code Cap 33 RE 2019 and the Advocates Act Cap 341 RE 2019 for not being signed by the Advocate who drew it.”

At the commencement of hearing the Counsel for the Plaintiff was represented by Learned Advocate Mngumi Samadani who held brief for Advocate Shalom Msakyi with instructions to proceed while the Defendant was represented by Advocate Alexander Kyaruzi. Hearing of the Preliminary Objection proceeded orally.

Submitting in support of the preliminary objection, the Counsel for the Defendant stated that; the Plaint is incompetent before this Court for want of the signature of the Advocate who drew the same. The learned Counsel submitted that; the Plaint has two sections whereby there is a part for the plaintiff and his advocate, if any, to sign and the second part is the verification clause which has to be signed by the Advocate alone. He asserted that if one looks at the Plaint, on the 1st part immediately after the paragraphs containing facts, one would note that only the Plaintiff signed and the Advocate for the Plaintiff did not sign. It was his submission that, the Advocate for the Plaintiff ought to have signed on the document and that failure of an Advocate to sign the pleading is contrary to order VI Rule 14 of the Civil Procedure Code Cap 33 RE 2019 which require every pleading to be signed by the Party and his Advocate if any.

The Counsel went on to submit that, in the instant case, the Plaint was drawn by Advocate Shalom Samwel Msakyi, however, she did not sign on the same. He contended that; the word "shall" has been used under Order VI Rule 14 to mean that it should be complied with. The word shall is a mandatory one. He thus concluded that failure by the advocate to sign renders the Plaint incompetent, liable to be struck out with costs.

Submitting in rebuttal, the Counsel for the Plaintiff stated and emphasized that, the Plaint has been signed by Advocate Shalom Msakyi on the last page where it shows the authority to draw and file the same. Based on the provisions cited by the Counsel for the Defendant, he saw nothing that was violated since the Plaint had already been signed on all the sections. He contended that if one interprets the provision, will note that it gives wide discretion on people who should sign pleadings and under what circumstances. He alluded that the Plaint can be signed by the party or in case of his absence can be signed by an advocate or any person upon good cause being shown. He thus prayed for the Court to dismiss the preliminary objection.

Having heard the submissions of the parties, my duty is now to determine the merit of the Preliminary Objection raised by the Defendant.

While the Counsel for the defendant has argued in his submissions that, the Plaint has not been signed by Advocate for the Plaintiff contrary to order VI Rule 14 of the CPC which mandatorily requires the Advocate for the Plaintiff who draws the same to sign it the, the Counsel for the Plaintiff has submitted that the said order VI Rule 14 has not been violated since the Plaint has been signed on all the sections and further that Order VI Rule 14 gives various options for people who should sign it

under various circumstances. That the pleading can be signed by the party, or in case of his absence it can be signed by an advocate or any other person. It was his view that, the Preliminary objection has no merit.

Based on the submissions of the Parties, I wish first to reproduce the provisions of Order VI Rule 4 of the CPC RE 2019. The said provisions read as follows:

"Every pleading shall be signed by the party and his advocate (if any), provided that, where a party pleading is by reason of absence or for other good cause unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf

In order to satisfy myself with the submissions of the parties and the position of the law cited above, I have perused the records, specifically a copy of the Complaint contained in the file and noted that the Complaint has been drawn by Advocate Shalom Samwel Msakyi Esq of Lior Attorneys and signed on the address part by the said Advocate. Similarly, immediately after the paragraphs setting out the facts of the case, the Complaint is only signed by the Plaintiff and also under the verification

clause, the Plaint is also signed by the Plaintiff as per Order 14 Rule 15 of the CPC RE 2019.

The issue is whether the plaint is incompetent for not being not being signed by the Advocate who drew it as contended by the defendant

Looking at the provisions of Order VI Rule 14 above, it clearly states that Pleadings **shall** be signed by party and his Advocate if any. (emphasis added).

The provisions of order VI Rule 1 have defined pleadings to include a Plaint. Therefore, it goes without saying that since the Plaintiff has an Advocate who is representing her and she has drawn the Plaint, then she ought to have signed the Plaint too alongside with the Plaintiff. In the case of **Nyusta Peter Kabezi vs Herodius Silus Mborowe Civil Appeal No. 153 of 2019**, the High Court affirmed the use of the of the word "shall" whereby it stated that,

"the word shall used is mandatory for the pleadings to be signed by the party and his advocate".

Now what is the consequence of the failure by a party to sign and or verify his pleading? The Indian Courts have held that the requirements are mere matters of procedure, the Plaintiff may be ordered to amend the Plaint by signing it. The omission to sign or verify it is not a defect that would nullify a Pleading or affect the jurisdiction of the Court. See

the case of **Ma Ngwe vs. Ma Hme (AIR) 1923 Rangoon 206** and also the case of **Transgem Trust vs. Tanzania Zoisite Corp Ltd (1968) HCD 501.**

Furthermore, in the case of **Nyusta Peter Kabezi (Supra)**, Hon. De Mello as she then was held:

"Thus, I find that, want of signature(s) does not render pleadings void for the court to strike out or dismiss. The anomaly to me, does not go to the root of the matter and can be saved through the oxygen principle."

See also the case of **Yuko enterprises & another vs M/s Maximine, Commercial case no. 30/2021, HCT** where Magoiga J held that;

" under the doctrine of oxygen principle the plaint can be cured by the advocate signing it".

Therefore, based on the discretion bestowed upon me and judiciously exercised, I order the amendment of the Plaint only to the extent of effecting the missing signature of the Advocate within seven days (7) from the date of this order. The Plaintiff should file an amended Plaint on or before 23rd of February 2023 and serve the Defendant, then the

suit will proceed for hearing on merit. No order as to costs. It is so ordered.



S.D. Mwaipo
S.D. MWAIPOPO

JUDGE

16/02/2024

The Ruling delivered this 16th day of February, 2024 in the presence of Learned Advocate Mangumi Samadani for the Plaintiff who also held brief for the learned Advocate Shalom Msakyi for the Plaintiff and in the absence of the Counsel for the Defendant, is hereby certified as a true copy of the original.



S.D. Mwaipo
S.D. MWAIPOPO

JUDGE

16/02/2023