

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA
CIVIL CASE No. 14 OF 2021**

BUSHIR HUSSEIN RASHIDI..... PLAINTIFF

VERSUS—

JULIUS M. ONESMO.....DEFENDANT

RULING

Date of Ruling: 08.07.2022

Mwenda, J.

This ruling is in respect of the Preliminary objection raised by the defendants against the plaintiff's suit. The said preliminary objection reads as follows;

*"That this civil case has been filed premature (sic)
since the "J & B Ruhanga Fish Culture Company
Limited" is not yet winding up (sic) contrary to the
law."*

When this matter came up for hearing, the plaintiff appeared in person without legal representation whilst the defendant was represented by Mr. Abel Rugambwa, learned counsel. By the consent of the parties, it was agreed to dispose this preliminary objection by the way of written submissions. The scheduling order was then fixed and the parties complied accordingly.

In his written submission Mr. Abel Rugambwa, the learned counsel for the defendant submitted that the parties to this case are directors of J & B

RUHANGA FISH CULTURE COMPANY LIMITED which was duly registered on 3rd March 2011. He submitted that the said company being registered, it then became the body corporate and acquired assets. He cited section 15 (2) of the Companies Act, No. 12 of 2002 to support this point.

The learned counsel further submitted that the gist of the plaint is the distribution of the assets/ properties of the company among the parties as stated at 3rd, 5th and 9th paragraph, as well as in the 1st relief sought. He said the said properties are owned by J & B RUHANGA FISH CULTURE COMPANY LIMITED which cannot be distributed to the parties before winding up of the said company. He added in that PART VIII of THE COMPANIES ACT NO. 12 OF 2002 provides the procedure to be adopted before the life of the company comes to an end where distribution of the company's properties is allowed. The learned counsel stressed that since J & B RUHANGA FISH CULTURE COMPANY LIMITED is still in existence then this suit is filed prematurely. He thus prayed this suit to be struck out for being incompetent.

In response to the written submission by the counsel for the defendant, the plaintiff submitted that the preliminary objection raised by the defendant does not qualify to be a point of law. He said it requires some evidence to prove as to whether J & B RUHANGA FISH CULTURE COMPANY LIMITED is still in existence or it has been wound up. He supported his argument by citing a case of MUKISA BISCUIT MANUFACTURING CO. LTD VERSUS WEST END DISTRIBUTORS LTD [1969] EA 696.

The plaintiff further submitted that in the plaint there is not even a single property listed under the name of the said company but the said company is named as one of the properties owned by the partners. He then made reference to paragraph 5 of the plaint in that it is self-explanatory. He added by stating ~~that the plaintiff and the defendant successfully applied for a loan facility with~~ the aim of expanding their partnership business and that is why they mortgaged their personal properties.

He then concluded his submission by stating that the present preliminary objection lacks merits and prayed for it to be overruled with costs.

Having gone through submission by both parties the issue for determination is whether the defendant's Preliminary objection is maintainable.

In this suit, the plaintiff claims that sometimes in 1990 he entered into an oral partnership agreement with the defendant to carry out the business of buying and selling seafood and perch fishes. He said 24 years later, they successfully applied for a loan facility under the umbrella of their Company namely; J & B RUHANGA FISH CULTURE COMPANY LIMITED. Having secured the said loan they expanded their business and in 2019 they repaid the outstanding balance to the bank. He pleaded further that having completed to service the loan facility, the duo was discharged by the bank and all their securities were handled to the defendant. However, the plaintiff's Title Deed are withheld by

the defendant without any justifiable cause. He then prayed for equal distribution of the jointly acquired properties which he listed in paragraph 9.

It is trite principal that parties are bound by their pleadings. In the present suit, the plaintiff is of the view that in the cause of their partnership they established a Company mentioned above and for that matter the company is the property which was established out of their partnership. It seems the plaintiff failed to differentiate between their move to raise funds with the aim of establishing a company and a partnership. Section 190 and 191 of the LAW OF CONTRACT ACT, CAP 345 R.E. 2002 provides for a definition and rules for determining existence of partnership. Section 190 (1) and (2) reads as follows:

190 (1) "Partnership is the relationship which subsists between persons

carrying on business in common as defined with a view of profit"

(2) Persons who have entered into partnership with one another are

called collectively a "firm" and the name under which their business

is carried on is called the "firm name"

From this definition, it is evident that what the plaintiff purports to be a partnership is not a partnership at all. This is so because it had no defined operations and had no name as provided by the law.

What is visible from the pleadings as presented by the parties is the existence of the Company which was established by the duo. It is clearly stated, that

having registered the said Company the duo, using their private Title deeds as collaterals, successfully applied for a loan facility with TIB Bank. It is important to note here that using private title deeds by itself does not put the duo in a partnership relationship. What was done was meant to assist the company to ~~secure funds for its operation. This was similar to lending a company the said~~ title deeds which would later be returned to their respective owners.

The learned counsel for the defendant was of the view that the properties referred to by the plaintiff are the company's properties. He said, since the company is still in existence then the prayer to distribute its assets is brought prematurely. This court is in agreement with the learned counsel for the defendant. The properties listed in paragraph 9 of the plaint are the properties of J & B RUHANGA FISH CULTURE COMPANY LTD and some are the party's personal properties which were used as collateral in the application for the loan facility. As was rightly submitted by the learned counsel for the defendant, until when the life of the company comes to an end, no properties of the company can be distributed among its shareholders.

It is the trite law that when the company is registered it acquires a legal status. This position is stipulated under section 15(2) of the Companies Act [Cap 212 R.E. 2002]. The said section reads that;

"From the date of incorporation mentioned in the certificate of incorporation, the subscribers to the memorandum, together with


*such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, with power to hold land and having ~~perpetual succession and a common seal, but with such~~ **liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.***

Guided by the above provision of the law, since J & B RUHANGA FISH CULTURE COMPANY LIMITED is yet to be wound up, then its properties can only be divided among the parties upon its life coming to an end. This is so because upon its registration it acquired legal personality different from that of its shareholders/founders.

From the foregoing observations, this court is satisfied that the preliminary point of objection has merits and it is hereby sustained. This suit is hereby struck out for being incompetent and the plaintiff shall pay costs.

It is so ordered.





A. Y. Mwenda
Judge

08.07.2022

Ruling delivered in chamber under the seal of this court in the presence of the Mr. Abel Rugambwa learned counsel for the Defendant and in the presence of the plaintiff Mr. Julius M. Onesmo.




A. Y. Mwendha
Judge

08.07.2022