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DIPLOMA IN LAW (DL_2)

COURSE TITTLE : LEGAL WRITING AND DRAFTING.

COURSE CODE : DLT 06205.

COURSE INSTRUCTOR : MR. WILLIAM MAMBO.

NATURE OF THE WORK : GROUP ASSIGNMENT. (NO.6)

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QUESTION;

What is meaning, elements and the rule of drafting plaint and WSD?

1.0. PLAINT

There is no definition of the term plaint in the civil procedure Code Act Cap 33 R.E 2019. From literature the plaint is defined to mean the statement of allegation, made by the plaintiff, setting out grounds for complaint and allegations that those grounds are legally and the plaintiff has force of law on them. The plaint are also be defined as a document written in a formal manner, embodying the cause of action and the relief or remedies sought. The plaint is a written statement, drawn by the plaint or his Advocate which contains in a concise form all the material acts on which the plaintiff relies for the relief which he seeks in the suit. The plaint sets forth relevant allegations of facts that give rise to one or more cause of action along with a prayers or reliefs sought. The plant is the first pleading which is filed by the plaintiff and which initiates the law suits[1]

1.1. Element of drafting plaint

The civil procedure Code [2] prescribes the elements of the plaint. According to this provision the plaint has the following general matters to be included in it, which are name, description and place of residence of the plaintiff, the name, description and place of the residence of the defendant and his relation or interest to the dispute or subject matter of dispute so far as may be ascertained, the statement as to the status of the plaintiff and the defendant, the statement or facts constituting the cause of action arose, the statement or acts showing g that the court in which the suit has been filed has jurisdiction to entertain the suit, the relief which the plaintiff seeks, the statement that the plaintiff has allowed set off or has relinquished a portion of the claim and the amount so allowed or relinquished, the statement as to the value of the subject matter precise amount of money so clam by the plaintiff, the description of the subject matter sufficient to identify it , the statement to show effect that the plaintiff has taken necessary steps to

[1] Omari Issa civil procedure preliminaries to litigations 4th edn 241
[2] Order VII Rule 1 of the Civil procedure Code Cap 33 R.E 2019

enable him to sue under the Representative capacity, where applicable, and the statement showing that the suit is filed out of time under the law of limitation Act and that the plaintiff has taken necessary steps to enable him to file the suit out of time, where applicable.

In the case of Fahari Bottlers vs Registrar of companies,[3] the plaint had one hundred paragraphs. These are three major parts of the plaint which are preliminary party, main part and the ending part of the plaint

1.1.2. The preliminary element of the plaint

Preliminary part of the plaint is the caption of the plaint[4] the preliminary elements of the plaint contain the name of the court in which the suit is to be filed. The name of the court include also the location where the court is found or located for example in the district court of Rujewa at Mbeya or in the Court of Resident magistrates' of Mbeya at Mbeya or in the High court of the United Republic of Tanzania o Mbeya . The name and location of the court is necessary to enable the defendant to know in which Court of law the suit is filed. There is aso the nature of the suit nd its case number. Each suit in the Court of law has its number which is distinctive from the other, the nature o dispute may be specific; for example commercial case, land dispute, employment cause and matrimonial cause. Then there is the name of the parties to the suit and description of their position. These means the plaint must show which party is the plaintiff and which one is the defendant. Lastly there is the name of the pleading, which in this case it is the plaint.

1.1.3. The main element of the plaint

The main element of the plaint contain the paragraph. The first paragraph is for description of the plaintiff the description of the plaint include stating position of the plaintiff, as he is a nature or legal person, his residence, his occupation or business, his proper postal and physical address and his

[3] Civil Case No. 98 of 1998, High court, Dar es salaam (Unreported)
[4] Kerr, O.S., '' How to Read a legal opinion : A Dude for New L aw Student,'' the Gren Bag, An Entertaining Journal of Law, p 52

relation and interest to the subject matter of the suit or to the suit generally [5] if the plaintiff sues under Representative capacity have then the plaint must show that proper steps or procedure required to be followed before instituting suit under Representative capacity have been complied with [6].

The other paragraph are which describe chronological order of event which constitute the cause of action, its mandatory for the plaint to describe the cause of action[7]for that the court of law in which the suit in instituted must be able, if it peruses the plaint, to find out whether the plaint disclose the cause of action even whether the defendant may have legal defense in the case of *Alli Mukibi vs Amblah Bavsar*[8] the advocate for the Respondent prayed for the dismissal of the suit because the plaint did not disclose the cause of action. The court of appeal held that under Order VII Rule 11 of the Civil Procedure Code where the plaint disclose no cause of action the Court is to reject it and not to dismiss it.

1.1.4. Ending part of the plaint

After all that there is to be ending part of the plaint by drawing jurat of the Plaint. This is drawn at the foot of the plaint. The jurat of the plaint explains who drew the plaint and where the plaint was drawn if the plaint was drawn by the plaintiff in person then the plaintiff should write his full names, addresses and the place the place where the plaint was drawn. If the plaint was drawn by his advocate or the Officer of the Legal Aid Center, addresses and location of the office of the Advocate or the Legal Aid Center as the case may be, must be described as therein. Thereafter the ADVOCATE, who drew the plaint, shall have to endorse the plaint at its jurat. The endorsement of the plaint is required by section 44 (2) of the Advocate Act, the jurat of the plaint is not numbered but it is known by being printed ‘‘DRAWN AND FILED BY ’’ again at the foot of the plaint and below the

[5] Order VII Rule 1 (b) of the Civil Procedure Code Cap 33 R.E 2019
[6] Order VII Rule 4 of the Civil Procedure Code Cap 33 R.E 2019
[7] Order VII Rule (e) of the Civil Procedure Code Cap 33 R.E 2019
[8] (1966) EA 557

jurat of the plaint, there must be full name, address and location of the defendant or the Advocate of the defendant or the Legal Aid Center where the defendant gets Legal Aid. These part is identified by being printed the words ‘‘COPY TO BE SERVED UPON’’ this then completes the drawing of the plaint according to law and practice of Mainland Tanzania.

1.2. The Rule of drafting plaint

Where the plaint is drawn and it does not comply with the Rule, the court of law shall reject or return the plaint [9] where the court return or reject the plaint t must state out the reason for so doing, the plaint must also be returned where the suit is not triable by such Court but by another Court in the case of *Joseph Constantine vs Losilale Ndaskoi*[10] Plat, J.: refused to hear the matter before him because it was triable by the primary Court. Order VII Rule 11 of the Civil Procedure Code prescribes the reasons for which the plaint may be rejected by the Court of law. The reason are where the plaint does not disclose any cause of action, where no relief sought is stated in the plaint or if stated it is undervalued, where the suit appears to be time barred and steps has not been taken to obtain leave of the Court to file the suit out of time. Other reason where the plant does not confer jurisdiction to the Court due to the nature of the cause of action, monetary value claimed by the plaintiff and nature of the subject matter

2.0. WRITTEN STATEMENT OF DEFENSE (WSD)

Meaning of the WSD is the written answer of the defendant to the plaint. It is the reply of the defense to the content of the plaintiff in written form, in which the defendant may admit or deny the claim of the plaintiff. The written statement of defense is one among the pleadings which comes after the plaint. It is the pleading which is drawn by the defendant individually or by more than one defendant jointly, if the suit was filed under joinder of defendant. For that if the case is of joinder of the defendant, then the

[9] Order VII Rule 1 and 11 of the Civil Procedure Code Cap 33 R.E 2019
[10] (1968) HCD 381

written statement of defense should state out whether it is for the first or second defendant or it is for both or all of the defendants jointly. If the case is of single defendant then the WSD shall be for the single defendant alone.[11]

2.1. The element of the written statement of defense

There is no provision in the Civil Procedure Code Cap 33 R.E 2019 providing for element of WSD. However the WSD contain almost the same matters as they are for the plaint that is to say *mutatis mutandis*. Thus the WSD shall indicate the name of the Court, the case number as already indicate in the plaint and the summons, the name, the description and the place of the residence of the defendant and his relation or interest to the dispute or the subject matter of the dispute so far as may be ascertained, the statement as to the status of the plaintiff and the defendant, the statement or the facts disputing the cause of action alleged by the plaintiff, the relief which the defendant seeks and the statement to the effect that the defendant has taken necessary steps to enable him to file the defense of time, where applicable. The WSD therefore is drawn following all rules of drawing of the pleadings

WSD should contain the heading of the case, after the heading if there is only one Defendant then the following words should follow WRITTEN STATEMENT OF DEFENCE" where there are more than one Defendant after the above words i.e. WSD it should be shown whether the WSD is "on behalf of Defendant No. 1 or 2 as they have been mentioned in the plaint. WSD should contain only a statement in a concise form of the material facts on which the Defendant relies for his defense but not the evidence by which these facts are to be proved

In WSD the Defendant may rise preliminary objections. These are mainly points of law and are very important because they would first determine the

[11] Omari Issa Civil Procedure Preliminaries to Litigations 4th edn 283

jurisdiction of the court and other legal issues which will decide whether the suit should continue or be dismissed. The preliminary objections are jurisdiction, time limit, res judicata, non or misjoinder of parties and non-payment of court fees. Non-disclosure of cause of action is yet Order VIII rule 1 of Civil Procedure code Cap 33 R.E 2019 another preliminary objection whose consequence if proved is the rejection of the plaint for amendment. Preliminary objection must be purely on the point of law.

2.2. The rule of drawing the WSD

Where the WSD does not complied with the rule of drawing the pleadings then the written statement of defense shall be defective and it will make such a defense nullity with no legal effect the court of law has power to strike out the WSD which falls short of the rules of drawing pleadings[12].however the court may order the defendant to amend the same upon application by the defendant for and leave to be granted by the Court or by the Court suo *moto* to order defendant to amend WSD.

3.0. CONCUSION

Pleadings are provides material fact of the case which claimed by plaintiff against defendant. Those facts of the case defines what are the real issues in controversy so that the court can easily adjudicate what is in dispute. Pleadings brings parties to the suit to the specific triable issues. Pleadings includes plaint, written statement of Defense ((WSD) and Reply

[12] Order VI Rule 16 of the Civil Procedure Code Cap 33 R.E 2019

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STATUTES

The Civil Procedure Code [Cap 33 R.E 2019]