IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT MWANZA

COMMERCIAL CASE NO. 7765 OF 2026

CASE REFERENCE NO. 202603261000007765

HABIB AFRICAN BANK LIMITED..PLAINTIFF

VERSUS

UHURU HOSPITAL LIMITED...1ST DEFENDANT

DERICK DAVID NYASEBWA...2ND DEFENDANT

NYAOGA ELIADA MSIKA..3RD DEFENDANT

RULING

Date of last order: 15/06/2026

Date of Ruling:26/06/2026

GONZI, J.

The Plaintiff instituted the present suit against the Defendants claiming for payment of TZS 3,729,907,652.34, being the outstanding amount allegedly due from the Defendants as at 21st November, 2025 arising from an alleged breach of contractual obligations in respect of loan facilities advanced to the 1st Defendant and guaranteed by the 2nd and 3rd Defendants.

Upon filing their joint written statement of defence, the Defendants, additionally, raised a preliminary objection to the effect that this Court has no jurisdiction to entertain the suit as it was prematurely filed for non-compliance with the provisions of section 13 of the Civil Procedure Code, Cap. 33 R.E. 2023.

With leave of the Court, the preliminary objection was argued by way of written submissions. The Defendants were represented by Mr. Mutatina, Learned Advocate. The Plaintiff was represented by Mr. Dennis Maganga, Learned Advocate. I thank both Learned Counsel for their submissions.

Submitting in support of the preliminary objection, Mr. Mutatina, Learned Advocate, argued that the suit is bad in law and premature for contravening section 13 of the Civil Procedure Code, Cap. 33 R.E. 2023. He submitted that the Plaintiff instituted the present proceedings without first taking bona fide steps to resolve the dispute out of Court.

Mr. Mutatina, Learned Advocate, submitted that section 13 of the Civil Procedure Code imposes an obligation upon parties intending to institute court proceedings to take bona fide steps towards resolving the dispute before resorting to litigation. He argued that the Plaintiff failed to comply with that statutory requirement before filing the present suit. In his submission, such non-compliance renders the suit premature, incompetent and bad in law.

Learned Counsel for the Defendants, further, submitted that section 13(2) of the Civil Procedure Code sets out the steps which ought to be taken before institution of proceedings while section 13(3) expands the available pre-action options. He also relied on section 13(4) of the Civil Procedure Code and argued that the said provision makes compliance with section 13 mandatory.

It was Mr. Mutatina's further submission that the Plaintiff rushed to Court despite the fact that the Defendants still had five good years to settle the outstanding loan balance. According to him, the nature of the dispute was such that the Plaintiff ought to have first engaged the Defendants through mediation, negotiation or other bona fide pre-action process before instituting the suit.

Mr. Mutatina, Learned Advocate, also invoked the doctrine of exhaustion of remedies. He submitted that where a party seeks to invoke the jurisdiction of the Court without first exhausting statutorily prescribed remedial mechanisms, the suit offends the doctrine of exhaustion and is liable to be struck out. To fortify his argument, he cited the case of **Salim O. Kabora v TANESCO Ltd & Others**, Civil Appeal No. 55 of 2014, [2020] TZCA 1812, where the Court held that where a certain law provides for a specific forum to first deal with a particular dispute, resort to such forum is imperative before recourse to Court.

Learned Counsel for the Defendants, further, argued that the Plaintiff did not attach any attendance record or minutes showing that a meeting or deliberation for pre-action engagement was convened. He, therefore, prayed that the preliminary objection be sustained and the suit be struck out with costs.

In reply, Mr. Maganga, Learned Advocate for the Plaintiff, opposed the preliminary objection. He submitted that the objection is misplaced and ill-conceived because the Plaintiff complied with the requirements of section 13 of the Civil Procedure Code. According to him, the Plaintiff took bona fide steps before instituting the present suit.

Learned Counsel for the Plaintiff submitted that the Plaintiff issued several demand notices and notices of default to the Defendants requiring them to make good their default. He referred the Court to annexures HABL-6, HABL-11, HABL-12 and HABL-13, which, according to him, demonstrate that the Plaintiff notified the Defendants of the default and demanded settlement before commencing the present suit.

Mr. Maganga, Learned Advocate, further submitted that some of the demand letters and notices were replied to while others went unanswered by the Defendants. He argued that the Plaintiff pleaded the pre-action steps at paragraphs 18 and 19 of the plaint and that the Defendants did not seriously dispute the existence of such steps. Learned Counsel, further, submitted that annexure HABL-12 shows that there were negotiations held on 14th April, 2025 at the Plaintiff's head office in Dar es Salaam.

Learned Counsel for the Plaintiff, further, argued that section 13 of the Civil Procedure Code should not be read in isolation, but together with section 71(1) of the same Code. According to him, the said provisions encourage an out-of-court settlement by way of conciliation, negotiation, mediation or arbitration, but they do not create a jurisdictional bar to the institution of suits.

Learned Counsel for the Plaintiff, further, submitted that the objection does not meet the test of a proper preliminary objection because it invites the Court to investigate facts, particularly whether the alleged meeting of 14th April, 2025 took place and whether minutes or attendance records exist. He relied on the case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd** [1969] EA 696, as quoted in **COTWU (T) OTTU Union and Another v Honourable Iddi Simba, Minister of Industries and Trade and Another** [2002] T.L.R. 88, where it was stated that a preliminary objection must consist of a pure point of law which has been pleaded or arises by clear implication from the pleadings and which, if argued successfully, may dispose of the suit.

Learned Counsel for the Plaintiff, also, relied on **Camel Oil T. Ltd v Bahati Moshi Masabile & Another,** Civil Appeal No. 98 of 2021, [2024] TZCA 567, and Y**obama & Sons Co. Ltd v Raha Oil Ltd,** Civil Case No. 24 of 2021, [2022] TZHC 11404, for the position that a point which requires ascertainment of facts or investigation of evidence cannot properly be raised as a preliminary objection.

On the authority of **Salim O. Kabora v TANESCO Ltd & Others,** Learned Counsel for the Plaintiff submitted that the same is distinguishable from the present matter. He argued that the said case concerned a situation where a statute established a specific forum for determination of a particular dispute. In the present matter, Learned Counsel submitted, the dispute arises from default under loan facilities and there is no special statutory forum which the Plaintiff was bound to approach before instituting the suit.

Learned Counsel for the Plaintiff also relied on **Dew Drop Drinks Company Limited v Lemon Dove Company Limited,** Civil Case No. 26624 of 2025, [2026] TZHC 752, and **Imalaseko Investment Limited v Amer Mohamed Mbarak Company Limited & Another**, Land Case No. 29281 of 2024, [2026] TZHCLandD 189, for the position that section 13 of the Civil Procedure Code does not impose a duty whose non-compliance automatically renders a suit incompetent or deprives the Court of jurisdiction. On the basis of the foregoing, he prayed that the preliminary objection be dismissed with costs.

After having considered the rival submissions, the issue for determination is whether the Plaintiff's suit is incompetent and premature for alleged non-compliance with section 13 of the Civil Procedure Code, Cap. 33 R.E. 2023.

Under section 13 of the Civil Procedure Code, Cap. 33 R.E. 2023, bona fide steps are classified under three main categories. The first category includes those bona fide steps which are expected to be taken by parties before filing a case regardless of whether or not the parties had agreed to do so. These are:

(a) notifying the other person of the issues that are, or may be, in dispute, and offering to discuss them with a view to resolving the dispute;

(b) responding appropriately to any notification referred to under paragraph (a);

(c) providing relevant information and documents to the other person to enable the other person to understand the issues involved and how the dispute may be resolved;

(d) considering whether the dispute could be resolved by a process other than a Court action, including reconciliation, negotiation, mediation, arbitration, warning, diversion, as applicable.

The second category of bona fide steps is made up of those bona fide steps which are expected to be taken by parties before filing a case only if parties have agreed to pursue them. These are the processes referred to under paragraph (d) of section 13, namely reconciliation, negotiation, mediation, arbitration, warning, diversion, as applicable.

The bona fide steps under paragraph (d) require an agreement because they are essentially methods or categories of ADR. The foundation of any form of ADR is agreement of the parties who, under party autonomy rule, determine the manner in which their disputes are to be determined. No one is compelled into an ADR process without free consensus unless a statute provides so. If any of the ADR mechanisms are agreed upon, the duty to take bona fide steps extends to agreeing on a particular person to facilitate the process, where feasible; attending the process; considering a different process; or attempting to reconcile or negotiate with the other person or otherwise engage in independent evaluation, with a view to resolving some or all the issues in dispute, or authorising a representative to do so, before escalating the matter to mediation or arbitration.

The third category of bona fide steps under section 13 of the Civil Procedure Code is made up of those bona fide steps which are expected to be taken by parties before filing a case and which are not mentioned under section 13 of the Civil Procedure Code. This is according to section 13(3) of the Civil Procedure Code, which provides that the provisions of subsection (1) shall not limit the steps that may constitute taking bona fide steps to resolve a dispute.

It is trite that categories of ADR are never closed. Also, what constitutes bona fide steps is not limited by the statute. It is based on the

Court's expectation of the ideal behaviour of prospective litigants, which expectation is, in turn, founded upon what the Court deems to be the customary or usual characteristic of the civil justice system of Tanzania, that the vast majority of civil cases would be settled without trial. Any bona fide step with a bearing or view to satisfying this judicial expectation shall be deemed to constitute a bona fide step before litigation, even if it is not one which is expressly included under section 13 of the Civil Procedure Code.

I find that section 13 of the Civil Procedure Code strongly encourages, rather than compels, the taking of bona fide steps before litigation. It is expected that bona fide steps before litigation will be taken in respect of all proceedings intended to be initiated in Court to which the Civil Procedure Code applies. Section 13 of the Civil Procedure Code does not impose upon the parties a mandatory requirement to take bona fide steps to resolve a dispute in the sense that non-compliance therewith automatically renders a suit incompetent or deprives the Court of jurisdiction.

The section proceeds on the assumption that such a requirement may exist under a statutory provision like the Arbitration Act, a contract between the parties to the dispute, or under customary law, that is, the usual characteristic of the civil justice system of Tanzania. Thus compliance therewith is simply "deemed" by the law upon parties doing any one or more among the acts enumerated under section 13 of the Civil Procedure Code.

Reading throughout the Civil Procedure Code, nowhere else in the entire Code is the obligation to take bona fide steps imposed in the manner suggested by the Defendants. In fact, the phrase "bona fide steps" is mentioned only in section 13 of the Civil Procedure Code. Thus, whereas it is expected that parties would, pursuant to the customary law or the usual characteristic of the civil justice system of Tanzania, take bona fide steps before filing a suit in Court, they are not obliged to do so unless they have expressly agreed to do so under their contract or there is a specific law expressly obliging them to do so.

However, even though parties might not have agreed to take bona fide steps before filing a suit in Court, and even though they are not obliged to do so in the strict mandatory sense argued by the Defendants, they are expected by the Court to take bona fide steps before filing a suit in Court because this is the customary or usual characteristic of the civil justice system of Tanzania, that the vast majority of civil cases would be settled without trial. It is an expected conduct of diligent prospective litigants to do so.

A litigant who, without lawful excuse, does not take bona fide steps before filing a suit in Court would, therefore, incur the wrath of the Court in the exercise of its discretion by the Court utilizing its case management tools as regards the award of costs and/or interest, as a disincentive to avoiding taking bona fide steps before filing a suit in Court. The case itself or proceedings, however, should not be vitiated.

Perhaps, I should add that looking at the phraseology of section 13 of the Civil Procedure Code, as it was held in **Imalaseko Investment Limited v Amer Mohamed Mbarak Company Limited & Another,** Land Case No. 29281 of 2024, [2026] TZHCLandD 189, that:

> *"The word 'shall be deemed' gives a discretion power to the Court on what to be considered as 'bona fide steps.' The provision also does not impose a duty to parties to state the said steps nor does it impose sanctions for non-disclosure of such steps."*

Further to the above reasoning, I have also considered the wording of section 13 of the Civil Procedure Code, Cap. 33 R.E. 2023, especially the use of the opening words:

> ***"13.-(1) For purposes of this Act, a person shall be deemed to have taken bona fide steps to resolve a dispute if the steps taken by the person in relation to the dispute constitute a sincere and genuine attempt to resolve the dispute out of Court… "***

In no way can the above phrase "shall be deemed to have taken bona fide steps" be taken as imposing a mandatory obligation upon the Court leaving no room for discretion, and that failure to exhaust the alleged statutory pre-action processes deprives the Court of jurisdiction and renders the proceedings incompetent, as it was argued by the Defendants' Learned Counsel.

Section 13 of the Civil Procedure Code imposes a mandatory obligation on the Court to "deem" any steps listed under section 13(2) of the Civil Procedure Code, or any similar process, as bona fide steps taken to resolve the dispute out of Court. What does this mean? It means that where the Court is obliged to deem any steps listed under section 13(2) of the Civil Procedure Code as bona fide steps taken to resolve the dispute out of Court, the law lowers the standard of proof and gives any benefit of doubt to the Plaintiff, whom the Court is required to simply assume or presume, without strict proof, to have duly taken the required bona fide steps to resolve the dispute out of Court before filing the case.

In **Shiminimana Hisaya and Another v Republic,** Criminal Appeal No. 6 of 2004, [2007] TZCA 260, the Court of Appeal of Tanzania, while interpreting the phrase "shall be deemed," held that the resident magistrate exercising extended jurisdiction is deemed to be a judge of the High Court because he is not, in fact, a judge of the High Court; and the Court of resident magistrate in which he sits when exercising such jurisdiction is deemed to be the High Court because it is not, in fact, the High Court.

Applying the same interpretation to the word "deemed" used in section 13 of the Civil Procedure Code, CAP 33 R.E. 2023, a person shall be deemed to have taken bona fide steps to resolve a dispute because, actually, he might not, in fact and strictly speaking, have taken the bona fide steps to resolve a dispute before filing the case in Court. Suffice it, on the face of it, without strict proof, if it is shown that such a person bona fides attempted or considered to take any of the bona fide steps listed under the provision.

Therefore, the provision of section 13 of the Civil Procedure Code, rather than intensifying the supposed heavy burden upon the Plaintiff of proving strict compliance with section 13, actually intensifies leniency on the Plaintiff when the Court is assessing such compliance. All this is because, from the very beginning, the law did not impose a mandatory obligation to do so in the absence of an agreement by parties or a specific statutory provision.

Another proof that the law never intended to make the bona fide steps under section 13 of the Civil Procedure Code mandatory is the fact that section 13(3) of the Civil Procedure Code provides that the provisions of subsection (1) shall not limit the steps that may constitute taking bona fide steps to resolve a dispute. This means that there may be other steps taken by parties to resolve the dispute before coming to Court and which steps do not fall under section 13(1) of the Civil Procedure Code.

How can the law, practically and logically, impose a mandatory obligation or duty upon parties to do the unknown? It would be unfair to punish non-compliance with uncertain, non-legislated conduct. What if parties did not do any of the bona fide steps stipulated under section 13(1) of the Civil Procedure Code, but they actually took some other steps that may constitute taking bona fide steps to resolve their dispute and for which there is no documentary proof? All this shows that what is imperative is for the Court to deem the bona fide steps and not to oblige parties to strictly take the enumerated bona fide steps.

The Defendants relied on section 13(4) of the Civil Procedure Code and argued that the provision makes compliance mandatory. I have considered that argument. In my view, section 13(4) cannot be read in isolation from section 13(1), section 13(2) and section 13(3). The whole section must be read harmoniously. When so read, the provision does not expressly state that failure to take bona fide steps shall render a suit incompetent or deprive the Court of jurisdiction. If the legislature intended to impose such a drastic consequence, it would have said so in clear terms.

The Plaintiff has also relied on section 71(1) of the Civil Procedure Code. That provision recognizes that parties may settle disputes out of Court by way of conciliation, negotiation, mediation or arbitration. I find that section 71(1) supports the general policy of encouraging out-of-court settlement of disputes. It does not, however, impose a strict jurisdictional bar to the institution of suits. The word "may" used in that provision shows that out-of-court settlement is encouraged and facilitated, but it is not made a compulsory precondition to the filing of every suit.

In the present case, I have also to consider the specific sub-issue as to whether the issuance of demand notices, notices of default and pre-action correspondence by the Plaintiff to the Defendants under the loan facility arrangement would amount to taking bona fide steps for purposes of section 13 of the Civil Procedure Code, Cap. 33 R.E. 2023.

It is the Plaintiff's case that following the alleged default to repay the loan facilities, it issued several demand notices and notices of default to the Defendants. The Plaintiff referred to annexures HABL-6, HABL-11, HABL-12 and HABL-13 as the documents evidencing such steps. The Plaintiff's Learned Counsel was emphatic that those notices and correspondences were issued before the filing of the suit, and that some were replied to while others went unanswered.

The Plaintif, further, contended that the Defendants acknowledged negotiations following issuance of demand notices and notices of default, and that negotiations were held on 14th April, 2025 at the Plaintiff's head office in Dar es Salaam. The Defendants, on their part, argued that the Plaintiff did not attach minutes or attendance records to prove such meeting or pre-action engagement.

On my part, I find that the demand notices; notices of default and correspondences issued by the Plaintiff to the Defendants, which required the Defendants to pay the outstanding amounts under the loan facilities, qualified to be deemed as bona fide steps to resolve the dispute before litigation under section 13 of the Civil Procedure Code, Cap. 33 R.E. 2023.

The demand notices and notices of default fell under notices notifying the other person of the issues that were, or might be, in dispute, and offering to discuss them with a view to resolving the dispute. The said notices also provided relevant information and documents to the Defendants to enable them to understand the issues involved and how the dispute might be resolved. In a banking facility dispute, the demand to pay the outstanding amount or remedy the default is, in itself, an invitation to resolve the dispute before escalation to litigation.

In **Medical Credit Fund II Cooperatieuf U.A and another v Mombasa Medical Center and another,** Commercial Case No. 05275 of 2025, High Court of Tanzania, Commercial Division at Dar es Salaam, the Court found that issuance of a notice qualified as a bona fide step. The Court further observed that where parties had agreed to serve each other a notice in the event of a dispute, such notice would be enforceable under the doctrine of party autonomy even without relying on section 13 of the Civil Procedure Code.

In the present matter, the Plaintiff's case is that the Defendants were notified of their default and required to settle the outstanding amount. The Defendants have not shown that they responded positively to the notices, proposed a concrete settlement, or demonstrated willingness to resolve the dispute out of Court. In those circumstances, it cannot be fairly said that the Plaintiff rushed to Court without making any attempt to resolve the dispute.

I am fortified in this position by the reasoning in **Exim Bank Tanzania Limited v Arusha Sundries Limited and Others**, Commercial Case No. 15988 of 2025, High Court of Tanzania, Commercial Division at Arusha, and **Imalaseko Investment Limited v Amer** Mohamed Mbarak Company Limited & Another, (supra).

As regards the Defendants' reliance on **Salim O. Kabora v TANESCO Ltd & Others,** I find that the authority is distinguishable. The principle in that case applies where a specific law establishes a specific forum or procedure for dealing with a particular dispute before a party approaches the Court. The Defendants have not shown any statutory forum established for determining the present loan facility dispute before the Plaintiff could institute the present suit. Section 13 of the Civil Procedure Code does not create such a forum. It only provides for bona fide steps which may be deemed to have been taken before litigation.

In the final analysis, I find that the Plaintiff's issuance of demand notices, notices of default and pre-action correspondence to the Defendants demanding settlement of the outstanding loan amount, in the circumstances of this banking facility dispute, constituted taking bona fide steps within the meaning of section 13 of the Civil Procedure Code, Cap. 33 R.E. 2023.

Consequently, the preliminary objection raised by the Defendants is hereby dismissed with costs.

It is so ordered.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
COMMERCIAL DIVISION

A. H. GONZI

JUDGE

26th June, 2026

Ruling is delivered in Court this 26th day of June, 2026 in the presence oof Mr. Dennis Maganga, Advocate for the Plaintiff and in absence of the Defendant who was notified of the date of the Ruling.

A.H.GONZI

JUDGE

26th June, 2026