

TANZANIA / JUDGMENT

20000407 TZHC Dar es Salaam

COURT
TZHCDECIDED
7 April 2000

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. r ... , - ,. IN THE HJGH COURT OF TANZANIA (Commercial Division) AT DAR ES SALAAM COJH. CIVIL CASE NO. 4 OF1999 DIETER DAHLEM First Plaintiff .JURGEN RICHTER Second Plaintiff Versus Y ASS.IN MOHAMED YUSUFU ... First Defendant Dr. ABDULLAI-II OSMAN Second Defendant ZABLON MASIAGA Third Defendant / Counsel: Mr ..J. E. A. Mwakajinga For Plaintiffs Mr. 1-1. S. Mkumbi for Defendants • t, ~- ,~ IJ L l NG BWANA .. J. . The third Defendant has raised a,Plea.in LiminL: Litis that the "the two plaintiffs have no locus stand and no cause of action in-this suit". Two reasons are given namely - th ~ I. That on or abl)ut 25 .lu11L' 1998 when they cxc'.cutecl the Agreement, the plaintiffs were not shareholders ol'Z,\BLON LIMITED.

2. That in or about .lune 1998 ,vhe:i the plaintiff-; agreed to transfer to the first and second defendants 333 shares, the plaintiffs did not h~1vc the said 333 shares agreed to be transferred as no shares had been al lotted to them . In his written submission on the issue f'V!r. Mwakajinga raised the clclcncc of' . equitable cstopcl. On his part, Mr. fvlkurnbi relied 011 the provisions 01· Section 26 (~') of the Companies Ordinance. It is proper to state at this initial ·stage that most of the issues raised in the submissions do touch on the main case before the court. As such, I will not examine them in detail. In stead, I will restrict myself to the issue of the locus stancli of the parties. It is important to note that the pleadings contain important clues as to the issue at hand. In the Amended Written Statement of Defence, the defendants do admit that on 24 August 1998 some shares were allotted to the plaintiffs. However, they indicate that this was after June 1998, the point of contention. The third defendant docs admit in parn >of his defence the plaintiffs' claims that on or about 25 June 1998 the t\•VO plaintiffs executed an agreement ,:vhercby they agreed to transfer 30% of gold production by Zablon Ltd to the tvvo defendants on consideration of a loan to be procured. Again, it appeai·s that thereafter some further transfers of money, air tickets, etc, took place between the parties and there were constant correspondence between them. In his rejoinder statement, Mr. Mkumbi docs admit that the "plaintiffs came into the picture in 1997 ... " They also participated in subsequent company meetings and at one stage, it is alleged that the plaintiffs attempted to remove the then directors of the company. It is further admitted by Mr. Mkumbi that as late as 13 March 2000, (some days after the elate for this Ruling had been fixed), the two plaintiffs attended the company's meeting at Hotel Embassy in Dar es Salaam, together with some of the defendants. The foregoing clearly

show thM the plaintiffs v,,ould have not played such an active role in the allairs of the Company if their status was questionable. Indeed the pleadings clearly sho,:\\1 that both parties to this suit have been active in the affairs of the company since 1997, culminating to the transactions or June (or August) 1998. As lo the exact month or date in 1998, I consider this matter should be settled in the main trial and not at the preliminary stage. The plaintiffs have raised the defence of equitable estoppel - and rightly so. In Combe vs Combe (1951) 2 K.13 215, Lord Denning slated: 2 f. " When one part); has, by his words or conduct, made to lhe olher a promise or assurance which was intended to aftcct the legal relations between them and to be acted on accordingly, then once the other party has taken him at his word and acted on it, the one who gave lhe promise or assurance cannol aftcnvards be allowed to revert to the previous legal relations subject to such qualification ,which he himself has so introduced, even though it is not supported in point of law by any consideration but only by his word" The above statement by Lord Denning seem to be in conformity with the provisions of section 123 of the Evidence Act, 1967 as amended, v,ihich states; "\\hen one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such a belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such a person or his representative, lo deny the truth of that thing" A,s per pleadings before this courl, it would seem to be apparent that the plaintiffs (~ participated actively in the affairs of the company ,,with the encouragement and assurance of the defendants. Several documents - relevant to this issue and the main case at large - have been annexed lo the p.lcadings. Some of these documents indeed do indicated th~.\\1 the dealings between the parties goes as !~1r back as 1995. Whether the said documentls , are forged or not, they will have to be examined in clctais at the main trial. For the moment, I am of the view that for the reasons stated herein, the 3 . . . I I r. . . ,l . is applicable doctrine of equitable cstopd . iF1 this case. Therefore, the preliminary , objection raised by the third defendant, is c\\ismissccl, with costs. 7/4/2000 •• .l t I 4

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