

TANZANIA / JUDGMENT

ardhi plan limited vs crdb bank plc 2022 tzhccomd 183 11 july 2022

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TZHCCOMDDECIDED
11 July 2022

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IN THE HIGH COURT OF UNITED REPUBLIC OF THE TANZANIA (COMMERCIAL DIVISION) AT
DAR-ES-SALAAM REGISTRY COMMERCIAL CASE NO. 24 OF 2022 ARDHI PLAN
LIMITED..... PLAINTIFF VERSUS CRDB BAN K
PLC..... DEFEN DANT Date of the Last order: 14/6/2022 ' ' ,z ' Delivery of the
Ruling: 11/07/2022 < t

RULING

NANGELA, J.:, The Plaintiff herein filed this suit seeking for the judgement and decree against the Defendant as follows: , v 1. The'Defendant be ordered to pay |f x\ the Plaintiff special damages' in \ \ ' ' the sum of TZS 7,854,113,378.51 ' ! following breach of Cooperation Agreement dated 1st August 2018 as shown in paragraphs 13, 13(1) and 14(c) of the Plaintiff.

2. The Defendant be ordered to pay the Plaintiff 20% of each amount realized from each sale of the sold plots of land per the Cooperation Agreement as stated in Page 1 of 8 paragraphs 13(2) and 14(a) and (b)of the Plant.
3. The Defendant be ordered to pay general damages to be assessed by the Court for reach of the Confidentiality Clauses under the Cooperation Agreement.
4. An Order that the Defendant pay the Plaintiff punitive damages for breach of Cooperation Agreement . and related failures to remedy the breach. / (" ' ' < .A
5. An Order that the Defendant pay
- .. v an interest at a commercial rate of 21% from the time of breach of -the 'Cooperation Agreement to date, otejudgement.7 c / 6? \An Order against the Defendant x-'for. payment of interest at 7% on X;/' "NX X. \ "xX if ' X the decretal sum from the date of \A X X .judgement to the date of full X.xx j 'j x< a.. a /payment;
7. Costs of this Suit and

8. Any other relief(s) which this Honourable Court may deem fit and just to grant. On the 1st of April 2022 the Defendant filed her Written Statement of Defence (WSD) as well as a Notice of Preliminary Objection. The objection was to the effect Page 2 of 8 this suit is res sub judice and an abuse of court process since there is a substantial matter of similar nature between the same parties, i.e., Commercial Case No.90 of 2020, (CRDB Bank PLC vs. Ardhi Plan Ltd and 40 others (Under Counter Claim}), which was filed on the 05th day of November 2021 at the High Court of Tanzania, Commercial Division at Dar-es-Salaam, and the matter is still pending in this same Court. When the parties appeared before, me on the 05th of May 2022, this Court ordered them to \dispbse., of the preliminary objection by way of filing written submission. On the material date the Plaintiff\enjoyed thb services of Dr. Chacha Murungu,- Advocate while Mr Claudio Msando H x\ represented the<Defendant. This Court issued a schedule of filing and I am glad That the parties duly adhered to the schedule and filed their written submissions. I have gone through the submissions and the reply submissions filed by the parties ah.d I heed not reproduce them here. The jssue Jvchich I am confronted with is whether I should uphold the objection raised by Mr Msando. In the case of Kadori Chagoro vs. Waitihache Merengo, Civil Appeal No. 164 of 2018 (unreported), the Court of Appeal had the following to say about the doctrine of res sub judice: "The doctrine of res-subjudice prevents a court or tribunal from Page 3 of 8 proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with the previously instituted suit between the same parties pending before same or another court with jurisdiction to determine it." There is no doubt that there is, within this Court, a pending suit, Commercial case No. 90 of 2020 which involves the Plaintiff and the Defendant. In.that pending suit, a facility letter dated 30th June 2016, and, a cooperation agreement between the parties, dated 1st' . August 2018 are subject matters of this Court's determinatiomas well in this new suit. Considering such; a situation, Mr Msando has urged this Court to make a finding that the latter suit is re-subjudice. To support)his position, he relied on the decision of this Court/ Magbiga, J., in the case of Exim Bank (T) Ltd vs. I ! \ v \ Deogratius Katunzi Petro t /a Geita Upendo Dispensary, Commercial case^No.20 of 2020 (Ruling, unreported). In that decision, this Court held, (citing the case of Wengert Windrose Safaris (Tanzania) Limited vs. The Minister Of Natural Resources and Tourism And Another, Misc. Commercial Case No. 89 of 2016 (unreported) that, "the substantiality and directness of the suit is not to be determined on the basis of the Page 4 of 8 remedies sought in either suit but on the subject matter or key issues in both cases." Taking into account the above stated position by this Court and looking at what the Plaintiff is also seeking as a Defendant (and Plaintiff in the counter claim) on Commercial case No. 90 of 2020, I am in agreement with Mr Msando that the doctrine of res-subjudice will apply. In his objection Mr Msando did as well contend that the filing of this suit while there is already the earlier one by the same? parties and on the same subject matter is tantamount to an abuse of the process of the Court. . \ _ Generally, an abuse of' court process means, that I / z- ' \ x process of the Court has not been used bona fide and properly. Perhaps it will be appropriate to refer to the decision of the Supreme. Court of Nigeria in case of Saraki vs. Kotoye (1992) 9 NWLR. (Pt. 264) 156, (1992) LPELR - 3016, where Justice Karibi-Whyte, JSC stated, at pages 33 - 34, the following regarding abuse of the

process of the Court: "It is recognized that the abuse of the process may be in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a Party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. See *Okorodudu v. Okoromadu* (1977) 3 SC? 21, , *V Oyegbola v. Esso West Africa, Inc.*

(1986) 1 ALL NLR 170? Thus, the multiplicity of actions on the same matter between the same parties even where there exists a

- z. right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right, *W W* rather than the exercise of the right, *per se*." In this present suit, I have already stated that, the same is indeed sub-judice to the Commercial Case No.90 of 2020 which is yet to be determined. The Defendant was well aware of the pending suit and still brought this other suit. If anything, he even still has the opportunity to seek for amendment of his pleadings in the other suit and Page 6 of 8 accommodate whatever he wishes to, provided that, he does that in accordance with the dictates of the law. As this Court stated in *Starpeco Ltd and 3 Others vs. Azania Bank Ltd and Another*, Misc. Commercial Appl. No. 11 of 2020 (unreported), all litigants need to appreciate that, while it is in the interest of the public and justice that every person's rights are protected by the Court, multiplicity of suits is not an act to be condoned at any rate as it acts against the public policy which, as stated by Lord Bingham, in *Johnson vs. Gore Wood & Co* [2000] UKHL 65; [2002] 2 AC 1, at 30-1, is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. Where there is multiplicity of litigation, there can be no efficiency and economy in the conduct of litigation as Court's resources as well as those of the parties will be wasted. In the case of *Starpeco Ltd and 3 Others* (supra), therefore, this Court, being mindful of that fact stated that, where there is an element of an abuse of the process of the Court: Page 7 of 8 "a Court, correctly exercising its inherent powers, and in a proper case, can either struck off or dismiss any of such multiple suits or applications which constitute an abuse of its judicial process...." It is my resolve, in light of the discussion I held here above, that, the present suit is not only res-subjudice but does also constitute an abuse of the process of this Court given that the Plaintiff is fully aware of the pending Commercial Case No.90 of 2020 in this very same premises of this Court. } In the upshot of the foregoing, this Court settles for the following orders, that: . 1. this suit is hereby dismissed for not only being res-subjudice but also constituting an abuse of the process of this Court; 2. the Plaintiff is to pay costs. It is so ordered DATED AT DAR-ES-SALAAM ON THIS 11th DAY OF JULY 2022

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