

TANZANIA / JUDGMENT

cargo mgt logistics ltd vs efficient frieght t ltd another 2010 tzhccomd 24 16 april 2010

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TZHCCOMDDECIDED
16 April 2010

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT PAR ES SALAAM
COMMERCIAL CASE NO. 88 OF 2009 CARGO MANAGEMENT & LOGISTICS LIMITED...
PLAINTIFF VERSUS EFFICIENT FRIEGHT (T) LIMITED..... ,1s t DEFENDANT MOFED
TANZANIA LIMITED..... 2n d DEFENDANT R U LIN G Hon. Mruma. J This is a ruling on
preliminary objection on the points of law raised by counsel for the defendants. Briefly the facts
which gave raise to the said preliminary objection goes like this; The plaintiff, a limited liability
company registered in the United Kingdom and which described itself as carrying out its
activities of clearing, forwarding and logistics around the globe, instituted a suit against two
defendants namely Efficient Freight (T) Limited and Mofed(T) Limited for payment of USD
46,316.31 being specific damages for negligence allegedly caused by the 1st defendant. The
plaintiff is also claiming for interest at the rate of 30%, general damages and costs. 1 Upon being
served with the plaint, the defendants together with their joint written statement of defence
raised two preliminary objections on the points of law that:

1. The plaintiff has no locus standi to institute this suit.
2. The plaintiff has no cause of action against the defendants. The preliminary points were argued by way of written submissions. I commend both counsels for their brilliant well researched submissions. In disposing of these preliminary objections I propose to start with the cause of action. It is now settled that in law, a cause of action (sometimes called a claim) is a set of facts sufficient to justify a right to sue. The phrase may refer to the legal theory upon which a plaintiff brings suit such as breach of contract, battery, false imprisonment etc. In the case at hand the plaintiff alleges breach of contract. It is alleged in paragraph 4 of the plaint that sometimes in 2006, the plaintiff entered into a contract in which the plaintiff appointed the 1st defendant to handle copper cathodes ex-Ndola FOB Dar es Salaam for the lawful consideration. It is further alleged in paragraph 5 of the plaint that contrary to the agreed terms and conditions of the contract, in the cause of handling the consignment, the 1st defendant parked and declared 247 bundles of copper, this being short of 3 bundles of the total 250 bundles 2 which were in the custody of the 2nd defendant. The 3 missing

bundles are uncounted for which according to the plaintiff constitutes a violation of the covenant between the parties. The plaintiff complains that the breach of contract by the defendants in failing to handle the whole consignment safely as agreed or implied or warranted by the 1st defendant caused the plaintiff to be held liable by a Republic House for misallocation of 3 bundles worth USD 46,316.31. The allegations in paragraphs 4 and 5 of the plaint are strongly disputed by the defendants in paragraphs 3 and 4 of their joint written statement of defence. The existence of a contract between the parties is denied. However, in paragraph 4 of the written statement of defence the defendants state that the contract was to ship 247 bundles of cooper which the 1st defendant did her part of the obligation and the consignment reached the consignee at destination. It is submitted for the defendants that there is no connection pleaded at all between the plaintiff and the alleged missing bundles of copper cathodes, and further that annexure to the plaint appear to be just collection of unrelated papers even with the plaint itself. On this Counsel for the defendant argues that this court should not protect nebulous or shadowy interests because the law requires that clear interest or right in the subject matter must be asserted. 3 As I stated earlier to pursue a cause of action, a plaintiff must plead or alleges facts in a complaint, the pleading that initiate a laws suit. In this suit the plaintiff alleges that there is a contract and that the contract has been breached. In my view this assertions constitutes a cause of action. The points that the plaintiff must prove to win its case or the elements of that cause of action (for instance duty, and breach of that duty or negligence) do not belong to this stage of proceedings but the trial stage. What the plaintiff is required to allege at this stage is that he has the right and his right has been violated by the defendant or that the defendant has a duty or obligation towards the plaintiff and that the said defendant has failed and/or refused to discharge and/or perform his duty or obligation. As it was stated in the case of Serafin Antunes Affonco Vs Portan Enterprises Limited Commercial Case No. 17 of 2000(DSM) unreported " When deciding on whether or not a cause of action is disclosed we only have to cast our eyes within the four corners of the Plaint. We only have to peruse the plaint alone together with its annexures if any. At this stage we don't have the evidence before us, the plaintiff is simply alleging that the defendant has wronged him for which he believes is an actionable wrong. With this limited ambit we have to assume that the factual allegations thus made, whether expressly or impliedly are true." 4 In the present case paragraphs 3,4 and m5 of the plaint clearly alleges that the plaintiff has been wronged by the defendant. The facts alleged thereon if proved may entitle the plaintiff to remedies and they are sufficient to justify a right to sue. I accordingly dismiss the preliminary objection related to the ground of lack of cause of action. Having found that the allegations of existence of a contract between the parties and the breach thereof constitutes a cause of action it goes without saying that the preliminary objection based on lack of locus standi is crippled. If it is proved that there was a contract as alleged the issue of locus standi on the part of the plaintiff becomes baseless. In the circumstances therefore this point also goes. In upshot therefore the preliminary objection on the point of law are dismissed with costs.

A.R.MRUMA JUDGE 16/4/2010 5 Date 16.4.2010 Coram: Hon. A.R.Mruma, Judge. For the Plaintiff - Mr. Masaba for Plaintiff. For the Defendant - Mr. Daimu for Defendant. CC: R.Mtey.

Court: Ruling delivered. A.R.MRUMA JUDGE 16/4/2010 1,345 - words I Certify that this is a true and eorrect ot the onm na/nrd^r l . j Registrar, Commercial Court. DSM Date;..... m ...a / io t ■ 6

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