

TANZANIA / JUDGMENT

19990730 TZHC Dar es Salaam 1

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TZHCDECIDED
30 July 1999

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM

CIVIL CASE 339 OF 1997 NO. GAPOIL TANZANIA LIMITED 000000000000 PLAINTIFF versus KITONGA COMFORT HOTEL LIMITED 0000000 DEFENDANT RULING CHIPETA, -2 Jo : In this case, the plaintiff, GAPOIL (T) LIMITED, is suing the defendant, KITONGA COMFORT HOTEL LIMITED for recovery of Shs12,963,842. The suit has been filed under Summary Procedure. This is a Ruling on an application by the defendant for leave to appear and defend the suit. With the permission of the Court, learned advocates of the parties filed written submissions. I have carefully perused and considered those

submissions.

In the first place, the defendant/applicant submitted that there is a misjoinder of parties and causes of action in that the Agreement (Annexure A to the plaint) was between the plaintiff and one Anderson Z.K. Mwanyato and not between the plaintiff and the defendant, and so the defendant's name should be struck off. As correctly submitted by learned counsel for the plaintiff/respondent, the pleadings clearly show that the plaintiff's cause of action is founded on the dishonoured bills of exchange. As to see it, the Agreement only provides the background to the relationship between the parties. Besides, I note that the defendant has not disowned, or denied having drawn the dishonoured bills of exchange. This objection, therefore, has no merit. The second submission was that there was no statement in the plaint that consideration passed from the plaintiff to the defendant. This objection is also without merit. Paragraph 3 of the plaint clearly states that consideration passed as the applicant/defendant received petroleum products from the respondent/plaintiff. What is more, the applicant does not allege lack of consideration. Thirdly, it has been submitted that the plaint is defective for failure to describe the defendant. I am unable to see the basis for this submission. The plaint described the name of the defendant and its mailing address. I do not know what other description the defendant wanted. It would have been a different matter if it had been alleged that there were two companies of the defendant with the same address. I now turn to the third objection, which was that the plaint was defective because it did not contain a statement that notice of dishonour was issued. In my view, paragraph 6 of the plaint sufficiently

alleges that there was such notice. This ground of complaint, therefore, is also baseless. As I understand the law, for an application such as the present one to succeed, the applicant must disclose substantive triable issues and not just a sham defence. Matters like fraud, lack of consideration, or a denial that the applicant drew, the dishonoured, bills of exchange. (See !!! _sm'; R. i Vo Banque . Du Congo, 5 E~A.C.A. 89) would be considered. In the instant case, the applicant's affidavit in support of the application the applicant has raised no substantial issues. It was only in its reply to the counter affidavit that the deponent states that the cheques were not issued by the defendant. To my mind, this is no more than an afterthought. 3 For these reasons, I am of the view that no triable issues have been disclosed by the applicant and such defence as has been raised is a sham defence. I therefore, decline to exercise my discretion in favour of the applicant. This application accordingly fails and so is hereby dismissed with costs. I hereby enter judgment for the plaintiff as prayed in the plaint with costs. B. D. CHIPETA JUDGE Ruling delivered in Chambers this 30th day of July, 1999. I / .. l: . _/. ' { . ! : ". B. D. CHIPETA JUDGE Ms. Bayona: for applicant For Respondent: Mr. Maira.

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