

TANZANIA / JUDGMENT

great vision africa ltd vs planetel communication ltd 2011 tzhccomd 2048 8 april 2011

COURT
TZHCCOMDDECIDED
8 April 2011

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA COMMERCIAL DIVISION AT DAR ES SALAAM
COMMERCIAL CASE NO.98 OF 2009 GREAT VISION AFRICA LTD.....
PLAINTIFF VERSUS PLANETEL COMMUNICATION LTD..... DEFENDANT Date of
Hearing: 4th & 5th August 2010 and 9th February 2011 Date of the Last Order: 09/02/2011 Date of
Final Submissions: 07/03/2011 Date of Judgment: 08/04/2011

JUDGMENT

MAKARAMBAJ: This is judgment on the suit the Plaintiff filed in this Court on 13th March 2009 claiming against the Defendant for the payment of Tshs.48,309,534/= as at 30th July 2008 being unpaid balance for the services rendered by the Plaintiff to the Defendant. In the Plaintiff, the Plaintiff also claims for payment of interest of 24% from the date when the debt was due to the date of judgment, together with costs of the case. It was the case for the Plaintiff that on the 31st day of March 2008, the Plaintiff and the Defendant entered into agreement on how best the claim by the Plaintiff could be liquidated by the Defendant, after the same i had remained unpaid for a long period of time. The Plaintiff claims further that initially the Defendant was indebted to a sister company of the Plaintiff one AKO CATERING SERVICES to the tune of Tshs.61,000,000/-. Further, that upon agreement, the Plaintiff had to take over the debt from the sister Company. Further, that after taking over, the Plaintiff had to assist in capitalization of the business of the Defendant by paying Tshs. 12,000,000/= which made the debt to reach Tshs.73,000,000/=-, with a view of assisting the Defendant to pay the debt promptly. It is further claimed by the Plaintiff that it was agreed that the Defendant would refund Tshs. 12,000,000/= in the payment of the first installment of Tshs. 15,000,000/= on or before 15th May 2008. The Plaintiff claims further that the Defendant has failed to comply with the payment schedule as such out of Tshs.73,000,000/=-, the Defendant has paid only Tshs.24,690,466/= and therefore Tshs.48,309,534/= has remained unpaid until the date of the filing of this suit. The Plaintiff claims further that despite repeated demands and an intention to sue the Defendant has willfully neglected and/or failed to heed to the same. In this suit, the Plaintiff prays for judgment and decree against the Defendant as follows:

- a) Payment of Tshs. 48,309,534/= being the Principal sum as at 3Cfh July 2008.
- b) Payment of genera! damages to be assessed by the court. 2
- c) Payment of interest at rate 24% from the debt when was due to the date of judgment.
- d) Interest at Court's rate of 12% from the date of judgment till full liquidation of the debt.
- e) Costs
- f) Any other relief(s) that this Honourable Court shall deem fit and just to grant. The Defendant has denied the whole claim as set in the Plaint by the Plaintiff. The Defendant has pleaded that the Deed for Settlement of the debt was entered into between the Plaintiff and one officer from the Defendant who had no mandate to do so. Further, that the Deed of Settlement was signed by the Defendant's Training Manager who did not have mandate to enter into contracts on behalf of the company. Further, that the Defendant is unaware of the existence of Plaintiff's sister companies and the Defendant averred that there is no "sister company" in law. In this suit, the Plaintiff is represented by Mr. M. Kalua, Learned Counsel while Mr. A. Bahebe, Learned Counsel advocated for the Defendant. When the suit came for first hearing the parties framed and agreed, and this Court accordingly recorded the following issues for determination of the suit, namely:- 3
 - 1. Whether there was a valid deed of settlement between the parties
 - 2. If (1) is in the affirmative, whether there was breach of the deed of settlement
 - 3. If (2) is in affirmative to what extent was the breach
 - 4. To what reliefs (if any) the parties are entitled In support of its case, the Plaintiff brought two witnesses, one John Toboso who testified as PW1 and one Partha Saradhi who testified as PW2. The Defendant on its part called two witnesses, one Mr. Nole Charles Shilatu who testified as DW1 and Mr. Vishnu Vardhan Reddy as DW2. PW1, Mr. John Toboso, who is the Managing Director of Great Vision Africa dealing with Marketing and Financial Consultancy since 2007, testified that he knew Planetel Communication Ltd, who approached them to do the business of selling Miss Tanzania Tickets. PW1 testified further that the agreement was that the Plaintiff would be the sole agency owning all rights to sell tickets, but after they had bought the tickets, they came to realize that they were not the sole agency to sale the tickets. It was the further testimony of PW1 that by that time they had already bought tickets and ended up suffering a loss of Tshs.61,000,000/=. PW1 testified further that they convened a meeting and came up with the disputed Deed of Settlement. PW1 testified further that sometimes, the Defendant entered into business with Vodacom of which the Defendant wanted a financial 4 support of Tshs. 12,000,000/= from the Plaintiff. PW1 testified further that so from Tshs.61,000,000 and Tshs.12,000,000/= as financial support it came to a total of Tshs.73,000,000/=. It was the further testimony of PW1 that the agreement was reduced into writing which was tendered in this Court and admitted as Exhibit Pl. PW1 testified further that the Defendant as a trader, agreed to pay the debt in installments, Tshs. 15,000,000/=

being first installment to be paid before or on May 2008. The second installment of Tshs. 30,000,000/= was to be paid before or on 15th June 2008 and the third installment of Tshs.20,000,000/= before or on 15th July 2008. The last installment of Tshs.8,000,000/= was to be paid on or before 30th July 2008. PW1 testified further that the Defendant managed to pay Tshs. 12,000,000 on 8th July 2008, which is the amount that was granted to the Defendant as financial support. PW1 testified further that later on 23rd September 2008, the Defendant paid Tshs.5,000,000/= and Tshs.7,600,000/= on 19th November 2008, which payment was effected by way of vouchers tendered in this Court and admitted as Exhibit P2A (for Tshs. 12,000,000/=), Exhibit P2B (for Tshs.5, 000, 000/=) and Exhibit P2C (for Tshs.7,694,660/=) collectively. It was the further testimony of PW1 that these payment vouchers were prepared by Planetel Communication Ltd and dully signed and approved by the Managing Director of the Planetel Communication. PW1 testified that as for what was stipulated in the Deed of Settlement, this was a total breach and that PW1 5 made efforts to rectify the situation but nothing was forthcoming. The Demand Notice showing an intention to commence litigation was tendered in this Court and admitted as Exhibit P3. PW1 testified further that by the time the Plaintiff filed this suit, the Defendant was still indebted to the Plaintiff to the amount of Tshs.48,390,534/=, and therefore most of PW1's business has been incapacitated due to lack of money resulting from the Defendant's default. During cross examination, PW1 stated that they entered into a Deed of Settlement with Planetel Communication after the Defendant had failed to pay Tshs.61,000,000/= to the Plaintiff. PW1 stated further that AKO CATERING SERVICES and GREAT VISION AFRICA fall under SF GROUP OF COMPANIES and has the same shareholders and directors. PW1 continued to state that the Defendant told them (Plaintiffs) that, they (Defendants) wanted to enter into business with Vodacom and therefore they need to purchase a starter pack of Tshs.300,000,000/=. PW1 stated further that in order for the Defendant to get Tshs.300,000,000/=from the Bank, they (Defendants) needed to furnish a security bond of Tshs. 12,000,000/=. which the Plaintiff granted the Defendants for that purpose. It was the further testimony of PW1 that Tshs.5,000,000/= and Tshs.7,690,466/= were paid by the Defendant for Simcard from Vodacom. It was also the testimony of PW1 that Mr. Steven Akwera was a Managing Director of Planetel Communication, by virtue of which he had the mandate to act on behalf of the company and to sign the Deed of 6 Settlement, which also was signed by MR. JOHN NONI, the Training Manager of Planetel Communication. PW1 stated further that he (PW1) is praying for damages because his company has suffered financially due to the money owed to the Defendant. PW2, Partha Saradhi, Chief Accountant Officer of Planetel Communication testified that his duty was to look on the accounts and finance of the Company and that he knew Great Vision Company since 2007 when they had given subcontract to the Ako Catering Services in the event of Miss Tanzania, to sale tickets, some of which were returned unpaid and that Planetel Communication agreed to pay for the returned tickets. PW2 stated further that later, Planetel Communication had an agreement with Great Vision Africa for a grant of loan of Tshs. 12,000,000/= for the purchase of some salt boxes, and agreed to pay the Tshs. 12,000,000/= plus Tshs.61,000,000/= in installments, but managed to pay only Tshs. 12,000,000/=. It was the further testimony of PW2 that the deed of settlement was signed by

Mr. Akwera, the Managing Director, and Mr. John Noni, the Training Manager of Planetel Communication. PW2 testified further that Planetel Communication paid Tshs.12,000,000/= to Great Vision as first installment, and Tshs.5,000,000/= as second installment and Tshs.7,000,000/=, but the amount was insufficient to liquidate the debt. PW2 testified further that Exhibit P2 are payment vouchers originating 7 from Planetel Communication and signed by the Managing Director, Training Manager, and the Administrative Manager of that Company. During cross examination, PW2 stated that Planetel Communication were the super dealer for Vodacom to sale Vodacom products such as airtime, starter packs, mobile phone, recharge vouchers and other related services. PW2 stated further that he was not involved in preparing the payment voucher. DW1, Mr. Nole Charles Shilatu, a Legal Officer of Planetel Communication Ltd since 24th April 2009 stated that his duty was to advice the Company and keep its records. It was the further testimony of DW1 that the claim before this Court of which they are aware is baseless since the dispute is not clear. DW1 stated further that he was aware of Exhibit P3 as it was attached to the Plaint but they have never been served before. DW1 acknowledged that the Deed of Settlement, Exhibit P1 was signed by officers from Planetel Communication but the document does not form part of their records and he has never come across it before and as if that is not enough, DW1 further testified, the deed for settlement was signed by the Training Manager who was not authorized to do so. It was the further testimony of DW1 that Exhibit P2 collectively, are the payment vouchers prepared by Planetel Communication for the payment of money to Great Vision. DW1 stated further that the first voucher, Exhibit P2A was prepared by E.M.Manji (Human Resources) and 8 checked by John Noni, the Training Manager, and also that the voucher appears to contain the name of Stephen Akwera for the payment Tshs. 12,000,000/=. DW1 stated further that the second payment voucher, Exhibit P2B was prepared by John Noni, the Training Manager and Stephen Akwera, the Managing Director. The second payment voucher Exhibit P2B was prepared by Manji and checked by Sam Kisandu an Auditor of Planetel and the payment was authorized by Stephen Akwera the Managing Director for the payment of Tshs.5,000,000/= to Great Vision Africa. DW1 stated further that the other payment voucher, Exhibit P2C was prepared by Mr. Manji and checked by Mr. John Noni, the Training Manager and that the payment was authorized by Mr. Stephen Akwera, the Managing Director, for the payment of Tshs.7,690,466/= to Great Visions. In re-examination, DW1 stated that, Planetel Communication has four Directors namely Peter Noni a Chairman, Ringo Tenga, Peter Machunde and David Managing. DW2, Mr. Vishnu Vardhan Reddy, a Chartered accountant qualified in 1999 in India, the equivalent of C.P.A in Tanzania, testified that he joined Planetel Communication since January 2010 as Cost and System Analyst and that his work was to review the company's pay roll systems, evaluate and to reduce costs. DW2 recognized the payment vouchers, Exhibit P2 collectively, the purpose of which was to make payment to third party and that these documents are for the company's use internally and are not released to a third party, although a third part may be aware of the 9 payment of money by being issued with a receipt. DW2 admitted that he did not have much idea about the business and that he was just informed by the Legal Officer that there was a contract between Great Vision Africa and Planetel Communication

regarding Miss Tanzania issues. DW2 stated further that when a payment voucher is prepared, the result is to make payment to the party mentioned therein, either by cheque or cash. In examining the evidence in this case, both the oral testimonies of the witnesses and the exhibits tendered and admitted by this court, I have also looked at Counsel final submissions. Let us deal with the first issue whether there was a valid deed of settlement between the parties." In his closing submissions, the Defendant's Counsel submitted that the Plaintiff has failed to prove that the Deed of Settlement was properly executed and that the persons who signed it had no powers to do so. It was the further submission of the Defendant's Counsel that the deed of settlement does not disclose consideration either in the deed itself or in the plaint. The deed of settlement relied upon by the Plaintiff was not executed by the Defendant's directors and hence it is not binding upon the Defendant, and that DW1 admitted that the stamp indicated on the deed of settlement was the Defendant's stamp but the Training Manager who signed the deed of settlement did not have capacity to contract on behalf of the company. 10 The Counsel for the Plaintiff on his part submitted in his closing submissions that one of the signatories of the said deed was a Managing Director of the Defendant's company. The Plaintiff's Counsel submitted further that the deed was valid due to the doctrine of 'Indoor management', and that the Plaintiff had all confidence in the Defendant's company management when discussing the best ways of settling the debt. The Plaintiff's Counsel buttressed his argument by citing the case of Premier Industrial Bank Ltd v. Carlton Manufacturing Co. Ltd

- (1909) 1 KB 106, where it was held that: "If the directors have powers and authority to bind the company but certain preliminaries are required to be done through on the part of the company before the power can be duly exercised, then the person contracting with the directors is not bound to see that all these preliminaries have been observed. He is entitled to presume that the directors are acting lawfully in what they do." I have examined the impugned "DEED FOR SETTLEMENT OF A DEBT", which this Court admitted in evidence as Exhibit Pl. It was an agency agreement, to the extent that M/S Great Vision Africa Ltd (the "FINANCIER") on behalf of Ako Catering Services and SF Group of Companies Ltd entered into agreement with M/S Planetel Communication Ltd (the "TRADER"). The deed was signed by John Tobiso, the Managing Director another director who is also the Group Financial Controller of M/S Great Vision Africa Ltd. The deed was also signed by Mr. John Noni, the Training Manager and Mr. Steven Akwera, the Managing Director, of M/S Planetel Communication Ltd. The contestation is whether the Training ii Manager was competent to sign the deed for settlement on behalf of the Defendant's Company. In my view, and without prejudice to the Counsel submissions, section 10 of the Law of Contract Act, Cap.345 R.E 2002 may guide us as to which agreements forms a valid contract. That section provides as follows: "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void". In order therefore to determine whether the Training Manager was competent to sign the deed of settlement, section 10 of the Law of Contract Act is to be read together with section 181 of the

Companies Act, [Cap.212 R.E. of 2002], which provides for those who are capable of entering into transactions on behalf of a company, by clearly conferring all powers to directors to act for the company. It is without much dispute that Mr. John Noni signed the deed for settlement as the Training Manager. There is accordingly no any proof whatsoever tendered in this Court in the course of the trial to establish that John Noni was authorized to enter into a contract on behalf of the Company by virtue of being the Training Manager. The Plaintiff's Counsel however has invoked the doctrine of "Indoor Management" as their shield. In my view the doctrine of indoor management is inapplicable in a case where if the Plaintiff could make enquiry would discover the irregularities. Since Mr. John Noni plainly signed the Deed for Settlement as Training Manager, the Plaintiff ought to have made enquiry why the Training Manager was signing the deed of 12 settlement. The Plaintiff was supposed to refer to the Memorandum and Articles of Association of Planetel Communication for the simple reason that these are public documents and usually contain the list of the Directors of a particular registered company. Neither of the parties in this suit tendered in this Court Memorandum and Articles of the Defendant's Company to establish the competency of Mr. John Noni to sign the deed of settlement. On the basis of the deed of settlement and other evidence on record, this Court finds that a Training Manager is not recognized by the Companies Act as being capable of entering into any transaction on behalf of the company. In light of the above reasons, Mr. John Noni as the Training Manager was not competent to sign the Deed for settlement of debt and hence not capable of binding the Company. Let me explore further whether the agreement was for a lawful consideration and/or a lawful object. The Plaintiff is claiming for Tshs.48,309,534/= being unpaid balance for services rendered by the Plaintiff to the Defendant. The general picture painted from the Plaint filed in this Court by the Plaintiff in this suit is that the whole amount of money claimed by the Plaintiff has been taken over from Ako Catering Services. Further, that initially the Defendant was indebted to a sister company of the Plaintiff, one going by the name of Ako Catering Services, to the tune of TZS 61,000,000/=. However, it is not stated by the Plaintiff on which business the Defendant was initially indebted to Ako Catering Services to 13 this amount. Furthermore, at the same time the deed of settlement gives another story that the parties have agreed that previously they had conducted a business between themselves whereby the FINANCIER suffered a loss of TZS 61,000,000/=. It is in that regard and those reasons the Plaintiff has failed to prove before this Court whether the previous business between Ako Catering Services and Defendant was lawful. In their testimonies, both PW1 and PW2 testified on the business contract between the Plaintiff and the Defendant which involved the selling of Miss Tanzania Tickets and sim cards which had never been pleaded in the Plaint. The payment vouchers tendered and admitted in this Court as Exhibit P2 collectively show that the Defendant was paying for the Miss Tanzania Tickets and sim card to the Plaintiff. I am at one with the Defendant's Counsel that this is a new business which neither correspond with the Plaint nor with the Deed of Settlement. In his closing submissions the Defendant's Counsel cited the case of Patel v. Central African Commercial Agency (1959) EA 903 to the effect that "Courts only deal with the legal consequences of

pleaded facts", to which I am totally at one with. Defendant's Counsel further cited the case of Plotti v. the Acasia Company Ltd (1959) EA 248, to the effect that, "the function of the pleadings is to give a fair notice of the case which has to be met so that the opposing party may direct his evidence to the issue disclosed by thenf, to which I could not agree more with. 14 The Plaintiff has completely failed to prove how it has reached the claim of Tshs. 48,309,534/=. In the Plaint the Plaintiff pleaded that the debt to the tune Tshs.61,000,000/= had been taken over from the sister company and that after taking it over, the Plaintiff assisted the Defendant in the capitalization of the Defendant's business to the tune of Tshs. 12,000,000/=. In the deed for settlement we get a totally different and new story that the parties had previously agreed to conduct a business between themselves whereby the FINANCIER suffered a loss of Tshs.61,000,000/=. In his testimony, PW1 testified that on 8th July 2008, the Defendant managed to pay Tshs. 12,000,000, which amount which was granted to the Defendant as financial support while the payment voucher, Exhibit P2A provides to the contrary that Tshs. 12,000,000/= was for the payment of Miss Tanzania returned tickets. In my view and on the evidence on record, the Plaintiff has failed to prove before this Court whether the agreement was for lawful consideration. There was no consideration at all. The first issue whether there was a valid deed of settlement between the parties has been answered in negative. Considering that the first issue has been answered in the negative, I do not find any reason to determine the other issues framed for determination of the suit. 15 In the upshot and for the foregoing reasons the Plaintiff has failed to prove the case on a balance of probability. Judgment is hereby entered against the Plaintiff with costs. Order accordingly. R.V. MAKARAMBA JUDGE 08/04/2011 16 Judgment delivered this 8th day of April 2011 in the presence of Miss Gregory, Advocate for the Plaintiff and Miss Kabisa, Advocate for the Defendant. R.V. M AKA RAM BA JUDGE 08/04/2011 Words count: 3,675 17

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/308078/source_file/great-vision-africa-ltd-vs-planetel-communication-ltd-2011-tzhccomd-2048-8-april-2011.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/great-vision-africa-ltd-v-planetel-communication-ltd-validityofcontract-tzhccomd-2011

Prepared on 14 October 2026 · Esheria