

TANZANIA / JUDGMENT

petrolube t ltd vs gulam punjani 3 others

2022 tzhccomd 385 7 december 2022

COURT
TZHCCOMDDECIDED
7 December 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT
DAR ES SALAAM COMMERCIAL CAUSE NO. 92 OF 2022 BETWEEN PETROLUBE TANZANIA
LIMITED.....PETITIONER VERSUS GULAM PUNJANI1ST
RESPONDENT MUSLIM KARIM2ND RESPONDENT SABRI KARIM
.....3RD RESPONDENT PRISTINE PROPERTIES LIMITED
.....4TH RESPONDENT

RULING

Date of last order: 06/12/2022 Date of Ruling:07/12/2022 AGATHO, J.: This brief ruling was prompted by two Preliminary Objections (POs) raised by the learned counsel for the Defendant that:

1. The plaintiff has violated Order VI Rule 4 of the C.P.C for its failure to particularize the breach of trust and influence.
2. Paragraphs 15, 16 and 17 of the plaint are embarrassing in violation of Order VI Rule 16 of the C.P.C I have painstakingly read the submission by Ashiru Lugwisa, the learned counsel for the Defendants in support of the POs, and the submission by Abdon Rwegasira, the counsel for the Plaintiff protesting the said POs. The Defendant in her first PO alleges that the Plaintiff contravened Order VI Rule 4 of the Civil Procedure Code [Cap 33 R.E. 2019]. But we ask, what does that provision of the law provide? I hereby reproduce it for the sake of clarity: “ In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence and in all other case in which particulars may be necessary to substantiate any allegation, such particulars (with dates and items if necessary) shall be stated in the pleading.” Looking at the plaint in the present case especially paragraphs 6 -19 the plaintiff has pleaded the issue of breach of trust, commitment, assurance and agreement or contract of the sale of four apartments on Plot No. 2406/5 located at Sea View, Dar es salaam. And from paragraphs 7 to 21 of the plaint the nature of the plaintiff’s claim is well elaborated. Therefore, the allegation that the particulars of trust that Defendants expected the Plaintiff to describe in the plaint in my view are unfounded. I am afraid a detailed particularization may be more of evidence than 2

particulars of trust as required under Order VI Rule 4 of CPC. It should be remembered that Order VI Rule 3 of the CPC bars the parties from including evidence in the pleadings. For consistency and clarity, the said provision states as follows: “ Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively; and dates, sums and numbers may be expressed in figures.” In the case at hand the Plaintiff’s plaint shows conspicuously the material facts of her claim and not evidence. That sync with Order VI Rule 3 and Order VI Rule 4 of the CPC. In my view the Defendant’s counsel misread or misunderstood the provisions of Order VI Rule 4 of the CPC. It seems that he wanted the Plaintiff to do more than setting out the details of trust and how the breach occurred. But the plaint is clear how the trust and sale of apartments contract was entered and how the breach arose. Regarding the second PO the Defendant claimed that paragraphs 15, 16 and 17 of the plaint, are embarrassing and are in violation of Order VI 3 Rule 16 of the CPC. I took trouble to go through the said paragraphs, I found nothing embarrassing of the Defendant. Order VI Rule 16 of the CPC provides: “ The court may, at any stage of the proceedings, order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.” The above provision deals with remedies in case the Court considers certain paragraphs of the plaint or pleadings as being unnecessary or scandalous or which tend to prejudice, embarrass, or delay the suit. Looking at the paragraphs 15, 16, and 17 of the plaint, it is disappointing to note that the Defendant has levelled false allegations. There is nothing embarrassing in what has been stated by the Plaintiff. All that is seen in those paragraphs are the elaboration of the Plaintiff’s claims. I am therefore not in accord with the Defendant’s second PO. It deserves nothing other than dismissal. Thus, without spilling anymore ink and wasting court’s precious time, what have been labelled as the POs fall short of the principle enunciated in *Mukisa Biscuits Manufacturing Ltd v West End Distributors Ltd*

[1969] E.A. 696. The POs at hand are factual issues. They are not pure 4 points of law. Considering the content of the plaint, the demand to particularize breach of trust and influence are unfounded because the said plaint has disclosed the cause of action. In my opinion, to demand more details would seem to lean towards facts or evidence. I think what is important is the disclosure of the cause of action. If the plaint discloses the cause of action, then particularisation or providing detailed content of that cause of action is superfluous as that may be revealed by the evidence at trial. It is trite law that the plaint fails to disclose cause of action if a thorough reading of it does not assist the Court to grasp the gist of the claim. In other words, if the claim is encrypted then the cause of action is undisclosed. Consequently, the plaint ought to be struck out. In *Auto Garage v. Motokov* (No3) [1971] EA 514 it was held that a plaint discloses a cause of action if its averments show that the plaintiff enjoyed a right which has been violated and the defendant is responsible for that violation. That said, I have taken note of the Defendant’s citation of

Order VII Rule 2 of the CPC [Cap 33 R.E. 2019], case law including Betam Communications Tanzania Ltd v China International Telecommunication and 2 Others, Civil Case No. 220 of 2012 HCT and detailed clarification on raising of PO. But with due respect, the provision of the law, cases cited, and lengthy submission made are merely academic exercise with little to add on the substance of the POs raised. 5 In the end the POs raised are overruled for not only contravening the principle in Mukisa Biscuits' case but also lacking substance. For that reason, the plaintiff shall have her costs. It is so ordered. DATED at DAR ES SALAAM this 7th Day of December 2022. Date: 07/12/2022 Coram: Hon. U J. Agatho J. For Plaintiff: Jonesia Rugemalira, Advocate For Defendant: Ashiru Lugwisa, Advocate. C/Clerk: Beatrice Court: Ruling delivered today this 7th December 2022 in the presence of Jonesia Rugemalira counsel for the Plaintiff, and Ashiru Lugwisa learned counsel for the Defendant. 6

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