

TANZANIA / JUDGMENT

integrated cotton field vs crdb bank ltd another 2013 tzhccomd 8 21 february 2013

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21 February 2013

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT PAR ES SALAAM
COMMERCIAL CASE NO. 66 OF 2011 INTERGRATED COTTON FIELD LTD
APPLICANT VERSUS CRDB BANK LTD..... 1st RESPONDENT EAGLE
AUCTION MART & GEN.BROKER..... 2nd RESPONDENT

RULING

BUKUKU, J This ruling emanates from the following running of events. On the 12th of August, 2011, the applicant herein filed in this court, a suit together with an application for temporary orders to wit: "That this honourable court may be pleased to grant an order of temporary injunction restraining the respondent by themselves or through agents, employees, workmen, assignees or any other person from disposing of or in any other way interfering with the applicants' possession on plot No. 2 Hinduki Village at Maswa as well as the guarantor's property on plot No. 398; Block "C" Kimara i area Dar Es Salaam pending final and conclusive determination of the main suit." On that same day, the court having considered the nature of the matter, ordered the status quo to be maintained pending the hearing of the application between the parties. On the 17th day of October, the day which the matter was to come for necessary orders, the applicant did not make appearance and upon a request by the respondent, this court made an order for setting aside the status quo, dismissed the application for want of prosecution and set a date for the matter to come for necessary orders. On 16th November, 2011, the date set for necessary orders, the applicant again did not make appearance. Again, upon an application by the respondent this court dismissed the suit with costs. The applicant then made an application to this court seeking to set aside the dismissal orders of this court, dated 17th October, 2011 dismissing the application for temporary injunction, as well as the order of 16th November, 2011, dismissing the main suit for non appearance. On 23rd July, 2012, this court (Hon. Makaramba, J.) dismissed the said application with costs. 2 On 6th of August, the applicant filed in this court a chamber summons made under section 5(l)(c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 and Rule 45(a) of the Court of Appeal Rules, 2009, seeking for the following orders

- a) Leave be granted to the applicant to appeal against the ruling and drawn order dated 23rd July, 2012 of the High Court Commercial Division in Commercial Case No. 66 of 2011 as per Honourable Makaramba, J.
- b) Costs be provided for.
- c) Any other order and/or relief that this honourable court may deem just and fit to grant.
- Simultaneous with the filing of the counter affidavit, the respondent has raised an objection in limine litis thus:- "That, the applicant in the application for leave to appeal to the court of appeal has no locus standi to institute this application as it was not a party to the High Court of Tanzania, Commercial Division, Commercial Case No. 66/2011." 3 The said preliminary objection which was argued orally, is the subject of this ruling. In support of the preliminary objection, Mr. Lyimo, learned counsel for the respondent submitted that, the applicant has no locus in that he was not a party to Commercial Case No. 66/2011, and that, he is also not a party to the ruling and orders of this court issued on 23/7/2011 the subject of the application. Mr. Lyimo further submitted that, legally, a stranger to a suit cannot appeal against the decision of the court. According to Mr. Lyimo, the Plaintiff and judgment debtor in Commercial Case No. 66/2011, was Integrated Cotton Fields Ltd, a complete legal personality from the applicant herein. It is therefore his humble submission that the application filed by a stranger is incompetent and thus should be dismissed with costs. In response, Mr. Ntanga, learned counsel for the applicant admitted that, it is true that there is a slight error on the face of the record in that, instead of the word 'Integrated' the word 'International' has been used. According to Mr. Ntanga, what has happened is a slip of a pen and according to section 96 of the Civil Procedure Code, this is a clerical mistake which can be corrected. In 4 addition to that, Mr. Ntanga submitted that, there is an authority from the Court of Appeal of Tanzania in Civil Appeal No. 9/2000 between GAPOIL (T) Ltd. V. Tanzania Revenue Authority and Director General Prevention of Corruption Bureau whereby, the Court ordered such a clerical mistake to be corrected. It is thus his humble submission that the counsel for applicant be allowed to rectify the said error since it is minor and has not disturbed the essence of the case. Mr. Ntanga said that, it is only the words used improperly. He thus prayed that the record be corrected. In addition, Mr. Ntanga submitted that, since the respondent has already filed a counter affidavit, it means that he has agreed with him that it was a slight error. In his brief rejoinder, Mr. Lyimo submitted that, the Court of Appeal's decision cited is distinguishable from the objection raised in that, in that decision the anomaly (slip rule) reflects the description of the parties between applicant and appellant. In this objection, the party himself is a stranger since there is no party known as International Cotton Field Ltd. He thus insisted that the application is not competent and should be dismissed or struck out with costs. In this particular case, it is not disputed that, on 12th August, 2011, Intergrated Cotton Field Ltd, filed a suit in this court against CRDB 5 Bank Limited, Eagle Auction Mart and General Brokers and L. J International. All along the proceedings, the plaintiff was known/described as "Intergrated Cotton Field Ltd", up to and until/ the 6th of August, 2012 when a chamber summons was filed in this court, and the applicant appeared as "International Cotton Field Limited". It is this chamber summons

which sparked the preliminary point of objection raised by the respondent in that the applicant "International Cotton Field Limited" a distinct legal personality from "Integrated Cotton Field Limited" has no locus to bring up the application since it was not a party to the proceedings in Commercial Case No. 66/2011. I wish to state from the outset that, according to the record, the applicant/ plaintiff in Commercial Case No. 66 of 2011 is "Intergrated Cotton Field Limited. In his submission against the preliminary objection, Mr. Ntanga, Learned Advocate for the applicant, has conceded to the slight error, and admitted that what has happened is a slip of a pen and according to section 96 of the Civil Procedure Code, this is a clerical mistake which can be corrected. He then proceeded to pray this court to allow an amendment of the error. Section 96 of the Civil Procedure Code Provides:- 6 "Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may, at anytime, be corrected by the court either o f its own motion or on the application o f any o f the parties", (emphasis mine). My literal understanding of this section is that, it applies to the correction of clerical and arithmetical mistakes in judgments, decrees or orders arising therein from any accidental slip or omission. The provision does not however apply to errors committed by the parties in drawing up a document, which should be amendable by the party concerned on application to the court. According to the above section, the expression 'accidental' means any happening by chance or unexpectedly taking place, not according to the usual course of things, unintentional, something unforeseen and unexpected and casual. Further, an effect is said to be accidental when the act by which it is caused is not done with an intention of causing it and when it occurs, as a consequence of such act, is not so probable that a person of ordinary prudence ought, under the circumstance, in which it is done, to take reasonable precautions against it. 7 In other words, the expression "accidental" cannot be equated to the expression "negligence" or "willful negligence" on the part of the party. The test to determine whether the slip or omission is accidental or not, can be gathered from the intention of the party in preparing the pleadings. As demonstrated above, it is my considered opinion that, section 96 of the Civil Procedure Code is restricted to amendment of judgments, decrees or orders. That said however, even if the said provision is applicable to cure errors committed by parties in preparing pleadings, my understanding is that, an error like this one at hand can as well be corrected under section 97 of the Civil Procedure Code. Section 97 of the Civil Procedure Code gives the Court general powers to amend. It states "The court may at anytime, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding in a suit, and all necessary amendments shall be made for the purpose o f determining the real question or issue raised by or depending on such proceeding". This section confers a general power on the Court to amend defects and errors in any proceeding in a suit and make all necessary 8 amendments for the purpose of determining the real question at issue between the parties to the suit. This power is vested in the original as well as the appellate court. The power of correction is circumscribed by the condition that, it can be used only for determining the real question in controversy between the parties. Thus, the court can order corrections whenever it deems proper, without injustice to the other side, even where they have been put to certain expense

and delay. Likewise, section 17 of the Civil Procedure Code allows the court to amend pleadings at any stage of the proceedings. It provides: "17- The court may, at any stage of the proceedings allows either party to alter or amend pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties". I have considered the submission by both counsel on the preliminary objection. I am satisfied that, there was indeed a misdescription of the appellant in the chamber summons filed in this court. As submitted by learned counsel for the applicant, the misdescription was inadvertent and possibly a typing error. In view of the fact that the error is not reflected in the main text of the chamber summons and the affidavit, I am satisfied that the said misdescription of the applicant is a minor and curable defect under section 97 read together with section 17 of the Civil Procedure Code. I am convinced that, this is a fit case for this court to order that, the applicant causes the requisite amendment to the chamber summons. In the upshot and for the foregoing reasons, I overrule the preliminary objection and order the applicant to rectify the record of the chamber summons within seven days from the date of this ruling. I will order no costs. Each party to bear own costs. It is accordingly ordered. A.E BUKUKU JUDGE 21st FEBRUARY, 2013. io Ruling delivered this 21st day of February, 2013 in the presence of Mr. Ntanga, Learned Advocate for the Appellant and Mr. D. Lyimo, Learned Advocate for the respondent. A.E BUKUKU JUDGE 21st FEBRUARY, 2013. Word count: 1,918. 11

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