

TANZANIA / JUDGMENT

nawal masawe vs international commercial bank tanzania ltd and 2 others

2021 tzhclandd 511 3 september 2021

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3 September 2021

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM LAND CASE NO.162
OF 2020 NAWAL MASSAWE.....APPLICANT VERSUS
INTERNATIONAL COMMERCIAL BANK (TANZANIA) LTD.....
1stDEFENDANT NAWAB ABDULRAHMAN MULLA.....2ndDEFENDANT
CRISPIN JOSEPH SEMAKULA..... 3rdDEFENDANT

RULING

14/07/2021 & 03/09/2021 MasoucL J, Three preliminary points of objection were. raised by the third defendant. They were to the effect that, firstly, the plaint is misconceived and bad in law for containing prayers instead of material facts particularly under paragraph 5, 6 and 7; secondly, the plaintiff and or the counsel for the plaintiff has no locus standi to institute the suit for lack of power of attorney as the plaintiff is currently residing in 1638 Willie DR Marieeta GA 30062; and thirdly, the plaint is misconceived and bad in law as it contravenes the provision of Order VI, rule 15(2) of the Civil Procedure Code as paragraph number 11 of the plaint is not verified in the verification clause. As to the first objection, the thrust of Mr Ahmed S. El-Maamry, learned Advocate for the third defendant was that the plaint with which the suit was instituted by the plaintiff violated the requirements of Order VI, rule 3 of the Civil Procedure Code (supra) which requires a plaint to contain material facts and not prayers. On the other hand, Mr Othman Omar, learned counsel for the plaintiff was of the view that the argument was misconceived and misleading. The contents of paragraphs 5, 6 and 7 of the plaint, according to the learned counsel, form part of the cause of action as per the mandatory requirements of Order VI, rule 3(e) of the Civil Procedure Code (supra). Having read the plaint in relation to the contents of paragraph 5, 6, and 7, I was satisfied that there was nothing wrong with the plaint. I was convinced that the contents were part and parcel of the cause of action. They stated the claims arising from the cause of action which the plaintiff is claiming as a matter of fact. It is the established practice for a plaintiff to state the claims which arise from the cause of action as the plaintiff did in the instant matter. I accordingly dismiss the objection forthwith. In relation to the second point of objection, the gist of the argument by : the counsel for the third defendant is that the plaintiff is residing in a 2 foreign country and the counsel for the plaintiff does not have a power of attorney

to act on behalf of the plaintiff. The plaintiff only sent an email address which does not suffice. The plaintiff therefore does not have locus standi to institute the matter. On his part the counsel for the plaintiff dismissed the objection and its respective arguments saying that the point of objection does not qualify as a pure point of law. Elaborating further on this argument, it was contended that evidential facts would be needed to establish the point. As to whether or not the counsel was so authorized was a matter that can be established by evidence. It was added that the signing of the plaint by the counsel for the plaintiff is in accordance with the requirement of the law. I examined the arguments in relation to the plaint. Clearly, the plaint was duly signed by the counsel for the plaint under a certificate of agency made under Order III, rule 1 and Order VI, rule 14 of the Civil Procedure Code, Cap. 33 R.E 2019 duly forming part of the plaint. Of significance, this certificate was neither mentioned nor disputed by the counsel for the third defendant. As such, I do not find anything wrong with the paragraphs. Indeed, the relevant paragraphs were drafted in a manner that is consistent with the cause of action, the requirements of 3 the relevant provisions of the Civil Procedure Code (supra) and the established practice of drafting plaint. The second point of objection, accordingly, fail. It is equally dismissed. The remaining point of objection challenges the competence of the plaint as it contravenes the provision of Order VI, rule 15(2) of the Civil Procedure Code because paragraph number 11 of the plaint is not verified in the verification clause. Considering the arguments advanced, I looked at the contents of paragraph 11 in relation to the verification clause. It was obvious that paragraph 11 was not included in the verification clause. It was not verified. This fact was not disputed by the plaintiff either. However, the counsel's argument was that the error is minor and can be cured by amendment of the plaint. Employing *JV Tangerm Construction Co. Ltd and Another vs Tanzania Ports Authority*, Commercial Case No. 117 of 2015 (unreported); and *Philip Anania Masasi versus Returning Officer Njombe North Constituency and Two Others*, Misc Civil Application No. 7 of 1995, the learned counsel -urged the court to allow amendment to be effected. Indeed, the authorities have to do with defective verification on account of, for instance, failure to disclose source of information and the principle that the failure is a mere irregularity which 4 is curable by amendment. The third defendant did not file a rejoinder and did not, therefore, oppose the argument and the corresponding prayer for amendment. In the light of the authorities, I was convinced that this was a fit case to allow amendment to only address the defect. In the upshot, the first and second points of objection are not meritorious. They are dismissed as pointed out above. The third point of objection is meritorious. However, instead of striking out the suit as prayed by the third defendant, I allow the plaintiff to amend her plaint within a period of time to be set hereinafter. The amendment should only address the failure to verify paragraphs 5, 6 and 7 of the plaint. No order as to costs. Dated and Delivered at Dar es Salaam this 3rd day of September 2021. B. S. Masoud Judge s

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