

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
CIVIL CASE NO. 239 OF 1996

IMPACK GENERAL AGENCIES PLAINTIFF
Versus
THE NATIONAL BANK OF COMMERCE..... DEFENDANT

R U L I N G

THEMA, J.:

On 30th August 1996 Impack General Agencies filed a suit in this Court against the defunct National Bank of Commerce claiming for payments amounting to TAS 1,569,969,000/= being principal sum as well as accrued interest at the time of filing the suit. The plaintiff also claimed continuing interest accruing at the daily rate of US \$ 1003 (or the equivalent of TAS 601.800/=) until judgment or sooner payment. Costs of the suit as well as relief deemed just and equitable to grant were also prayed for. In its written statement of defence, the defendant denied the claim contending among others the existence of no cause action against it by the plaintiff. In the course of the pleadings it became apparent that the defendant ceased to exist by virtue of the provisions of Act No. 2 of 1998 which came effect in March 1998 vesting the assets and liabilities of the National Bank of Commerce to the National Bank of Commerce Holding Corporation. In the event the parties were granted leave to amend their pleadings to reflect the statutory changes.

In the course of filing its amended pleadings in compliance with the order of the Court, the defendant discovered that the amended plaint was not in form or content as authorised or ordered by the court on 13th March, 1998. The defendant then prayed that the amended plaint be struck.

In his ruling Chipeta J. observed and I quote:

" The more serious blinder, in my view, is that this Court permitted the plaintiff, IMPACK GENERAL AGENCIES, to amend its plaint. But the amended plaint is in a totally different legal person namely Ashok Patel t/a Impack General Agencies."

...../2

Judge

The learned, further observed that and I quote:-

" Quite clearly that is not the party which this court permitted to amend the plaint. I therefore respectfully agree with learned counsel for the defendants that the amended plaint is not in the form and content as authorised or ordered by this court. For that reason alone, the amended plaint is liable to be struck out."

As a consequence the amended plaint was struck out with costs an eventuality which has given rise to an application for leave to appeal to the Court of Appeal pursuant to Section 5 (1) (c) of the appellate Jurisdiction Act, Rules 43 (A) and 44 of the Tanzania Court of Appeal Rules 1979.

The affidavit of Dilip Kesaria Advocate in support of the application for leave to appeal depones in para 4 and 5 as following:

" 4. The Hon Mr. Justice Chipeta has erred in his ruling in the following respects:-

(a) by finding that the Court granted the plaintiff leave to amend. The plaintiff had not applied to amend the plaint. The order to amend was made by the court on the submission of the defendant's counsel.

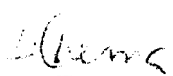
(b) the correct ~~identity~~ of the plaint was introduced in the amended plaint to consolidate what was previously pleaded in the Reply to the written statement of Defence. The court has the discretion to allow the said amendment under Order 1 Rule 10 of the Civil Procedure Code 1966 either upon or without the application of either party.

5. In order to determine the real matter in dispute, the Honourable Court should have considered the amended plaint as a whole, with or without the amendment of the plaintiff's identity. As such the Hon Judge should have of his own motion allowed the amendment or alternatively disallowed only such part of the amendment which offended the order to amend as opposed to striking out the amended plaint in its entirety."

On its part the defendant(s) have opposed the application for leave to appeal on the ground, among others, that there is no point of law for determination by the Court of Appeal.

I have given careful consideration to the application for leave to appeal as well as the affidavits for and against. In my humble view the points raised in paragraphs 4 and 5 of the affidavit in support of the application contain valid points for determination by the Court of Appeal. Accordingly I grant leave to the applicant to appeal to the Court of Appeal of Tanzania against the Ruling of Chipeta J. dated 19th January 2000.

Costs to be costs in the cause.


S. Ihemo

JUDGE

17/01/2003