

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL CASE NO. 111 OF 2004

SEED CAP LIMITED..... PLAINTIFF

VERSUS

**PRESIDENTIAL PARASTATAL
SECTOR REFORM COMMISSION..... DEFENDANT**

RULING

MANENTO, JK:

The plaintiff, Seed Cap Limited, a body corporate instituted civil proceedings against the Presidential Parastatal Sector Reform Commission as by its acronym PSRC being a Government body established and so responsible for the divestiture of the company described as Tanganyika Tegry Plastic Ltd for a total sum of Tshs.2.11 billion and USD 2,243,505.64 as special damages and general damages to be assessed by the court for a breach of a sale of shares and share holding agreement. The defendant denied liability. However, before further steps for the hearing of the suit proceeded, the defendants raised a preliminary objection on a point of law. The objection was that:

This honourable court lacks jurisdiction to entertain this suit pursuant to the provisions of section 19 of the Loans and Advances Realization Trust, Act No. 6 of 1991 as amended.

The learned counsel for both the plaintiffs and the defendants urged this preliminary objection by way of written submissions.

The defendants written submissions are divided into three parts, that of the law, that the suit is premature and thirdly that the Lart Tribunal has exclusive jurisdiction over the matter.

It is an undisputed fact that Tanganyika Tegry Plastic Limited is a specified corporation and was placed under the defendant for diversification. That the defendant while exercising its statutory obligations under section 4(1) of the Public Corporation Act No. 2/1992 as amended from time to time transferred Tanganyika Tegry Plastic Limited to the Loans and Advances Realization Trust (LART) for liquidation purposes. Secondly, the plaintiff and defendant had executed a sale of share and shares and shareholders agreement of which the plaintiff had paid part of the agreed amount of money equal to shs.300,000,000/= as part of consideration. Whereas the defendants are submitting that this court has no jurisdiction over the matter due to the operation of Insolvency laws, the companies (winding up) rules, 1929 and the Bankruptcy Rules 1931, any person claiming has to prove his

claim by affidavit to the liquidator, receiver or trustee in bankruptcy. It is only when the claimant is dissatisfied by the decision of the liquidator, can bring the matter to the court, and secondly that because the Tanganyika Tegry Plastics Limited was placed under LART for liquidation, it is only LART Tribunal which has exclusive jurisdiction to hear and determine all the matters relating to the Tanganyika Tegry Plastics Limited. On the other hand, the plaintiffs urged that this court has jurisdiction because Tanganyika Tegry Plastic Limited had entered into the contract with them even before it was transferred to the Loans and Advances Realization Trust (LART). On the basis of the Court of Appeal decision in William Kimaro and 475 vs. Coopers & Lybrand and Another (1996) T.L.R. 252, the defendants submitted that the suit is prematurely before this court because since the company, Tanganyika Tegry Plastics Ltd had been placed under a liquidator for liquidation, all claims against it can not be entertained in a court of law before they can first be submitted before a liquidator. Any action to the contrary is contrary to the laws, namely companies (winding up) rules 1929 and the Bankruptcy Rules 1931, where the proof is to be done by an affidavit. The defendants invited this court, then to dismiss the suit in its entirety with costs for its immaturity.

It has been urged further that within the LART Act, there had been established a Lart Tribunal with a specific purpose to deal with Lart Act by all players including Lart; and to hear and determine disputes in respect of all matters transferred to LART. Lastly on this, is that having all the affairs of the Tanganyika Tegry Plastic Limited been transferred to LART for liquidation, all its affairs are conducted in accordance to Lart Act No. 6/1991.

Urging for the plaintiff, Mr. Lyimo, learned advocate submitted with an equal force that the provisions of the insolvency Laws, the Companies (winding up) rules 1929 and the Bankruptcy Rules, 1931 which require any person to prove his claim to the liquidator, receiver or trustee in bankruptcy are not applicable in this case for some reasons:

- (a) The plaintiff's claim is not against the Tanganyika Tegry Plastic Limited but against the defendant for damages for breach of contract. That could be true, but the affairs of the said Tanganyika Tegry Plastic Limited has been laid to the liquidator, now Lart and any matter under Lart, has to be administered under the provisions of the Lart Act, in which there is a Lart Tribunal to adjudicate all matters falling under the Lart Act.

- (b) That the liquidation of the said company by Lart in so far as the plaintiff is concerned is merely the evidence of breach of contract of sale of shares and share holdings agreement.
- (c) That the suit now pending in this court has nothing to do with the liquidation of the company.
- (d) For the cited cases, the plaintiff's counsel urged that they had one thing in common, that the cause of action and or claim was against the non performing company, so that they are distinguished from the facts of this case. Hence, the suit is not prematurely filed in this court.

As to the exclusive jurisdiction of the LART tribunal in this case, the defendants urged that the case is not between the plaintiff and the Tanganyika Tegry Plastic Limited, which is under liquidation but it is between the plaintiff and the defendant for a breach of the contract, hence LART tribunal has no exclusive jurisdiction to try the matter.

The whole submissions by the learned counsel are on one main point, whether this court is vested with jurisdiction to hear and determine the suit or the jurisdiction is vested on another jurisdiction by the operation of the law.

It is not disputed that the defendants, the PSRC has transferred the then Tanganyika Tegry Plastic Limited to the Loans and Advances Realization Trust, (LART) which operates under the provisions of the Act itself. Under section 19(1) of the said Act, the LART Tribunal, which is a creature of the LART Act itself, jealously ousts the jurisdiction of other courts, other than the court of Appeal by the following words:

19(1) The Tribunal shall have exclusive jurisdiction to hear and determine all matters arising under this Act or relating to any non performing asset transferred to the trust under this Act.

Section 20(1) gives the right of appeal to an aggrieved person to the Court of Appeal only. This means that the Tribunal and the High Court has concurrent jurisdiction, though by section 19(1) of the Act, the High Court cannot hear and determine matters arising under the Trust Act.

The learned counsel for the plaintiffs are urging that the matters for hearing and determination in this court does not arise under the Act, because they are in regard to a breach of contract by the defendant. The counsel for the defendants on the other hand are urging that once the company has been put under the defendant who has in turn transferred it to a liquidator, now the LART, then everything should be determined in accordance with the procedures of the LART Act, and nothing else. Several cases have been

cited by the learned counsel for the defendant, but the plaintiff urged that they were relevant only to non performing assets. Its jurisdiction, according to s.19(1) of Act No. 6/91 extends to all matters arising under the Loans and Advances Realization Trust Act, No. 6/1991. The suit which the plaintiffs have instituted are matters arising from the defendant's act of transferring the Tanganyika Tegry Plastic Limited to Lart as a liquidator, and in the event it is found that there was a breach of contract, which necessitated the defendant to pay the damages, then the same will be from the sales realized from the assets of the Tanganyika Tegry Plastic Limited. Therefore then, you cannot isolate the defendant from act No.6/91 in order to give jurisdiction to this court.

The defendants urged that, in the event this court finds that the High Court has no jurisdiction over the suit, then it should dismiss it with costs for want of jurisdiction. The counsel for the plaintiff, in the alternate submissions, requested this court, not to dismiss the suit, but to order its transfer to the tribunal under section 22 of Act No.6/1991. The High Court judge has no such powers. Those powers of transfer are vested to the Registrar under the same section and the Act.

All in all, therefore, I come to the conclusion that this court has no jurisdiction to hear and determine the suit. The jurisdiction is vested on the

LART Tribunal. Therefore, the suit is struck out as being improperly before the court for want of jurisdiction. Costs are also awarded to the defendants.


A.R. Manento

JAJI KIONGOZI.

Order: Ruling on 18/3/2005 before DR-DSM. Issue notice.

18-3-2005

Coram: Rwakibarila – SDR-HC

For the Plaintiff – Mr. Lyimo

For the Defendant –Absent.

Cc: Livanga.

Mr. Lyimo: It is for ruling today and I am holding brief for defendant whom I undertake to inform what has been decided.

Court: Ruling has been delivered this 18th day of March, 2005 at presence of Mr. Lyimo for plaintiff who is also holding brief for defendant.

G.K. Rwakibarila

SENIOR DEPUTY REGISTRAR-HC.

18-03-2005