

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 139 OF 2001

DAR ES SALAAM YATCH CLUB1ST APPLICANT

HECTOR ROBINSON2ND APPLICANT

V E R S U S

DOMINIC KASIGWA KEMIGWARESPONDENT

R U L I N G

KEMARO, J.

to appeal

Before me is an application for leave to the Court of Appeal filed by learned Mr. Majithia, Advocate for the applicants. The /^{tion} has been filed under Section 5 of the Appellate Jurisdiction Act, 1979 and or Rules 43(a) and 44 of the Tanzania Court of Appeal Rules, 1979.

A brief background to the application is as follows; the applicants who are Dar es salaam Yatch Club and Hector Robinson were sued by the respondent in the court of Resident Magistrate at Kisumu. Dominic Kasigwa Kemigwa who is the respondent was the plaintiff. He was claiming damages from the applicants for being a source for refusal to renew his contract. His contract was terminated instead of being renewed because of a cheque which he issued. He was employed on a contract of two years by the applicants. The refusal to renew the contract was occasioned by remarks made following the issuance of the cheque by the respondent.

A preliminary objection was raised by the advocate for the applicant that; (a) the court had no jurisdiction to entertain the case because the amount which was being claimed was beyond the pecuniary jurisdiction of the court. (b) the plaint was defective because essential facts were not pleaded. (c) the verification clause was bad in law therefore the plaint had to be rejected.

The trial magistrate rejected all the points raised in the preliminary objection. On the pecuniary jurisdiction, the trial magistrate observed that the plaintiff was claiming a total of T.Shs. 9,684,000/= which fell within the jurisdiction of the court. The trial magistrate said there were no essential particulars missing. Regarding the verification clause, the trial magistrate said the mistake was trivial and could be rectified by the amendment of the plaint. She dismissed the preliminary objection. The counsel for the applicant was aggrieved and he filed an appeal in this court. The appeal was heard by Kaganda, PPM (Extended Jurisdiction). She found that the appeal had no merit and she dismissed the appeal. The advocate was aggrieved and he wants to go to the Court of Appeal, hence the application before me now.

Mr. Majithia submitted that the important issues of law involved which require consideration by the Court of Appeal are that of the failure to enter a judgement on the undefended counter claim and the improper ruling on the pecuniary jurisdiction and the verification clause. The hearing of this application proceeded by written submissions. In this application the respondent is represented by Learned Mr. Rwebutaza, advocate. Both advocates are thanked for their submissions. I find the submissions very useful in determining the issues raised in this application.

Having gone through the plaint which was filed by the plaintiff/respondent, and the ruling of the trial court as well as the judgement of this court, I must agree with the learned advocate for the respondent that this application has no merit at all as there is no question of law involved requiring determination by the Court of Appeal. Paragraphs 13 and 14(1) of the plaint are very clear on the amount which the plaintiff says is claiming from the applicant/defendant. The amount claimed is T.Shs. 9,684,000/=. This amount falls within the pecuniary limit of the court as given in Act No. 27/91. Regarding the verification clause, in terms of Order VI rule 15 it is properly verified. The verification required in pleadings, should not be confused with the verification which is required in affidavits under Order xix of the Civil Procedure Code, 1966 which requires the source of information based on belief and the like be disclosed.

On the particulars which the advocate claims is missing what I should say is that, it is the plaintiff himself who knows his case. On the point raised by the advocate for the applicant that this court should have entered judgement on the undefended counter claim, what was before the court were points of preliminary objection and she could not have jumped on matters which were not at issue at the time the trial magistrate dealt with the preliminary objection. From the above exposition, it is obvious that the advocate for the applicant has no points of law to be placed before the Court of Appeal for consideration. The application is dismissed with costs.



N. P. KIMARO

JUDGE

10/11/2001