

IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISCELLANEOUS CIVIL APPLICATION NO. 6 OF 2003

BENARD MALINGA APPLICANT

VERSUS

1. PRESIDENTIAL PARASTATAL SECTOR)
REFORM COMMISSION (PSRC))
 2. NATIONAL INSURANCE CORPORATION } ... RESPONDENTS
LTD.)
-

R U L I N G

MACKANJA, J.

This is an application for leave to file a suit against the Presidential Parastatal Sector Reform Commission and National Insurance Corporation Ltd. We can take judicial notice that the second respondent is a specified public corporation as declared in G.N. No. 543 of 1997. Mr. Mbise, learned counsel for the defence, has lodged a preliminary objection against the potency of this application. I am minded to consider and to determine the objection first before I consider the merits. The defence contends that the application and the intended suit are pre-mature in that the claims have not been proved as required by the Companies (Winding Up) Rules 1929.

In these proceedings Mr. Mushokorwa, learned counsel, appears for the applicant, while Mr. Mbise, learned counsel, appears for the respondent. Both learned counsel have argued the preliminary objections quite exhaustively. It is, however, settled law now that where it is intended to sue a specified public corporation the Companies (Winding Up) Rules require the prospective plaintiff to prove the claim by affidavit to the liquidator first before he can enforce his right against a specified public corporation. For authority see William Kimaro & 45 Others Vs. Cooper & Lybrand & Another [1998] TLR. 252 and The District Labour Officer Mafinga Vs. Presidential Parastatal Sector Reform Commission & Southern Paper Mills Co. Ltd., Employment Cause No. 1 of 2002 (High Court of Tanzania, Mbeya Registry). It follows, therefore, that this application is pre-mature as no proof of debt has been made in compliance with the law.

In addition, since section 9 of the Bankruptcy Ordinance, Cap. 25, applies to these proceedings the plaintiff was also required to prove his claims in terms of the Second Schedule to the Bankruptcy Ordinance as read with Rule 213 of the Bankruptcy Rules.

Omission to comply with these statutory requirements have rendered the suit to be premature. In that circumstance the need to determine the last two preliminary objections does not arise. To do so would not be more than an academic exercise. Accordingly the application is struck out with costs.

Sgd. J. M. MACKANJA

JUDGE

31/10/2003

Date: 14/11/2003

Coram: J. R. Kahyoza, D.R.

Applicant: Absent

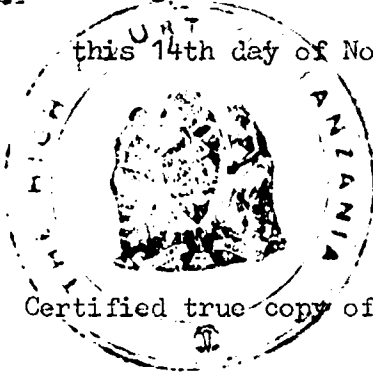
(adv.)

Respondent: Mr. Mbise for Respondent.

B/C. Mrs. V. Ndolezi

Court: Ruling delivered in the presence of the respondent's advocate

this 14th day of November, 2003.



Sgd. J. R. Kahyoza, D.R.

14/11/2003

Certified true copy of the original Ruling.

DISTRICT REGISTRAR

MBEYA

14/11/2003