

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 147 OF 2002

ENTERTAINMENT SYSTEMS (T) LTD PLAINTIFF

Versus

JAPAN TECHNICAL INDUSTRIES DEFENDANT

R U L I N G

LUANDA, J:

The defendant through his advocate one Mr. Jundu has raised two preliminary points namely:-

- (i) that the plaint is bad in law as it doesnot disclose the cause of action. This Contravenes O.VII, i.1 (e) of the Civil Procedure Code, 1966, and
- (ii) that the suit is bad and incompetent for failure to join the necessary party in the plaint.

By an order of this court, parties were ordered to file written submissions. The order was duly complied with.

It is Mr. Jundu's contention that it is nowhere in the plaint showing the plaintiff is ^{entitled} to sue the defendant. He referred to paras 3, 4 and 5 of the plaint and annextures. In short he said the plaintiff failed to establish the cause of action. He cited Autogarage & others V. MotokoV (1971) EA 514; Bullen and Leak: Precedents of Pleadings 11th Edition, 1975 and Sullivan V Ali Mohamed Osman (1959) EA 239. And in any case thereis only one defendant. He was wondering how and why the plaint refer to 2nd defendant.

As to failure to join the necessary party in the plaint, Mr. Jundu submitted that the contract entered was between Mr. Ngulukulu and Mr. Jende Dien Madilu and not between the plaintiff ^{as} a company and the said Mr. Madilu. It is Mr. Jundu's contention that Mr. Madilu ought to be joined as ¹ party in these proceedings. He is a necessary party. He cited a pasage from "The Code of Civil Procedure" by V.U.Chitaley and K.N.Annaji Rao, 351 Edition p. 1515. Unfortunately Mr. Jundu didnot say the Order it offended. ^{he} That as it may, ^{he} prayed the suit be dismissed with costs. Mr. Meira who advocated for the plaintiff on the otherhand submitted that there is a cause of action. It is Mr. Meira's submission that the claim against the defendant is the defendant's

interference with contract entered between the plaintiff and the third party ie Jean de Dien Madilu. He cited a passage from a book titled: The Law of Torts, Horn Book Series, West Group 2000 at p. 1257. He also cited John N. Byombalirwa V Agency Maritime Internationale (T) Ltd (1983) TLR 1 as to what is a cause of action. As to ^{joining} Mr. Madilu, Mr. Maira said that doesnot arise as the claim is based on the law of tort.

Last but not least he said in case the objection is upheld, then the proper order to make is to reject the plaint and not to dismiss it. He cited Byombalirwa case quoted supra.

The issue in respect of the first preliminary objection is whether the plaint discloses any cause of action.

I have carefully read the plaint as well as the written submissions, I have but to uphold the objection.

Going by the contents of the plaint, it ^{clearly} indicates that it lacked necessary facts showing the defendant to have violated the plaintiff's rights. The only para which is the basis of the claim is para 6.

The para reads:

6. That the 2nd defendant well knew of the said agreement and of the said intended sale of Audio Cassette but wrongfully induced and procured Mr. Jean De Dien Madilu between the dates of 28th and 29th March, 2002 in breach of agreement to record the Audio and video cassettes with them which are now being released before those which he recorded with the plaintiff.

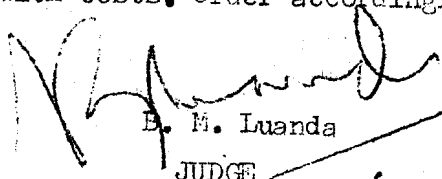
First, the 2nd defendant referred above is not stated who is he. Whatever, the position, if it was a slip of a pen yet the facts lacked necessary information to base a claim against the defendant. For instance, it is not disclosed how the defendant knew the existence of the agreement and the intended sale of audio cassettes? How did the defendant induced Mr. Madilu to record audio and video cassettes with him?

These are crucial facts which they ought to be disclosed in the plaint. Failure to do so, .. offends O. VII, V.1 (e) of the Civil Procedure Code, 1966. This alone is enough to dispose of this case.

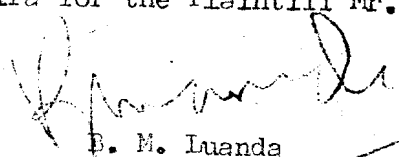
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- 2 -
All in all I quite agree with Mr. Jundu in that the plaint doesnot
disclose any cause of action against the defendant.

The same is rejected with costs. Order accordingly.


D. M. Luanda
JUDGE
18/06/2003

Ruling delivered Mr. Maira for the Flaintiff Mr. Jundu for the
defendant.


D. M. Luanda
JUDGE