

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 107 OF 2003

SUNSHINE TRAVEL AND TOURS LTD.....}APPELLANT

VERSUS

1.HEYNS HELICOPTERS TANZANIA LTD

}.....RESPONDENTS

2.AFFRITEL EQUITY GROUP LTD

JUDGMENT

ORIYO,J.

In a suit for payment of USD 8, 341, the defendant /respondents filed a Notice of preliminary objection as follows:-

- (a) The Honourable, court does not have jurisdiction to entertain the suit
- (b) In the alternative, the plaintiff has no cause of action against the Defendants
- (c) In the further, alternative, the plaintiff is an agent for a Company incorporated outside the United Republic of Tanzania and therefore security for costs should be deposited.

The defendants / respondents prayed for the dismissal of the suit with costs on that account, The preliminary points of objection were presented in the alternative but parties argued all the three points of objection in their written submissions. On 17/12/02, the trial court (Karua RM) struck out Civil Case No. 111 of 2002 at the Kisutu RMS Court. The reason as to why the court decided to strike out the suit is not clear from the Ruling of the Court. Most probably the court's decision is based on the first preliminary point of objection that the trial court had no jurisdiction over a suit where the claim is denominated in foreign currency. I say so because that was the only objection considered by the court in its decision. The court's decision was given in its last paragraph of the said ruling which stated as follows:-

“ I am satisfied that the plaintiffs workmanship is indeed, wanting. The amount claimed ought to have been in Tanzanian currency or at least both currencies ought to have been mentioned in equivalency (sic!)”.

The appellant, was aggrieved by the decision and has appealed against it; on one ground, that is:-

That the court below erred in law in striking out the Appellants' plaint for want of court jurisdiction.

The respondents were served with notice of the appeal on 8/6/04; but they defaulted appearance and the appellant was granted leave to proceed ex parte to argue the appeal.

The appellant was represented by Mr Mashiku, learned counsel who had also advocated for the party at the trial.

The issue here is whether the courts in Tanzania have jurisdiction or not to determine suits where the claim is denominated in foreign currency. The appellant submitted that Tanzanian courts have such jurisdiction since 1992 when Cap 294, the Foreign Exchange Ordinance was repealed by the foreign Exchange Act 1 of 1992. The old statute prohibited dealings and/or payments within Tanzania to/or for the credit of persons resident, outside Tanzania except with the, permission of the Treasury. The appellant referred the court to the Court of Appeal decision in the case of TRANSPORT EQUIPMENT LTD VS D.P VALAMBHIA [1993] TLR 91 at PP 99- 100. Similar submissions were made by the appellant at the trial but were overruled without giving any reasons.

Indeed I am in agreement with the appellant that Tanzanian courts today have jurisdiction over claims denominated in foreign currency; for 3 main reasons. First because the Foreign Exchange Act No 1 of 1992 repealed the old law which prohibited dealings in foreign currency. Under the new law, the exchange control regime was liberalized and residents and non residents in Tanzania are free to hold any amount of

foreign currency (See Section 5 (b) thereof). Second is the decision of the Court of Appeal of Tanzania in the case of VALAMBHIA (Supra) which is binding on this court. In this connection the Court of Appeal stated at page 100 paragraph E as follows:-

“ In our opinion if the basis of the case law of Tanzania has changed then there is absolutely no reason why the case law should not follow suit. That would have been different if there is a statute to the contrary ”.

Third is that the contract forming the basis of the claim was in USD. Fourth is that the appellant specifically prayed for relief in USD. In a similar vein and for the reasons stated, the trial court in this case had jurisdiction to determine the suit. Even if the old cap 294 was still operative the remedy was not to strike out the suit but to amend and reflect the claim in Tanzanian Shilings.

In the upshot, the trial court erred to strike out the suit because of lack of jurisdiction.

Accordingly the appeal is allowed, the decision of the trial court is quashed and set aside. The appellant is to have the costs of the appeal.

Consequently Civil Case No 111 of 2002 is to be restored and determined on merits. It will be in the interest of justice if the matter proceeds before another magistrate of competent jurisdiction

It is so ordered.

K.K.Oriyo

JUDGE

6/12/05