

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL CASE NO. 161 OF 2004

ROBA GENERAL MERCHANTS.....PLAINTIFF

VERSUS

1)THE DIRECTOR GENERAL TANZANIA HARBOURS AUTHORITY	}	DEFENDANTS
2)THE DIRECTOR GENERAL TANZANIA RAILWAYS CORPORATION		
3)THE MANAGING DIRECTOR T.I.C.T. SERVICES LTD.		

R U L I N G

A.Shangwa, J.

In this case, the 2nd and 3rd defendants have raised points of preliminary objection against the plaintiff's suit.

The 2nd defendant's points of objection are as follows:-

1. That there was no notice of claim by the plaintiff to the 2nd defendant contrary to S. 86(1) and (2) of Tanzania Railways Act No. 11 of 1997.
2. That the 2nd defendant has wrongly been sued as no prior leave of this Court to sue it was sought and granted.

The 3rd defendant's points of objection are as follows:-

1. That the plaint is incurably defective, incompetent ab initio as the plaintiff has no cause of action against the 3rd defendant.
2. That the pleadings are not properly verified.
3. That the claim is frivolous, vexatious and an abuse of the Court's process.

It appears from paragraph 16 of the plaint that the plaintiff is suing the three defendants for general damages and

special damages as a result of the loss of its goods namely 2,200 Battery cells imported from China which are alleged to have been stolen at Dar es Salaam port while on transit to Rwanda . However, the general and special damages claimed by the plaintiff against the defendants are not clearly indicated . The items in respect of the damages which are claimed are vague and jammed up.

At paragraph 15 of the plaint, the plaintiff states that there is circumstantial evidence to show that the 1st, 2nd and 3rd defendant's staff did collude to break into the container and stole the plaintiff's goods.

Whereas in law an employer can be held liable for the Civil wrongs of his employee committed in the course of employment, he cannot be held liable for the Criminal acts of his employee Committed in the course of employment.

Therefore, in this case, the 1st, 2nd and 3rd defendants cannot be held liable for the Criminal acts of their employees who are suspected to have colluded and stole the plaintiff's goods alleged to have been stolen by their employees at Dar es Salaam Port.

In my view, I think that instead of claiming for general damages and special damages due to the theft of its goods, it would have been proper for the plaintiff Company to claim for compensation for the loss of its goods while in the hands of the three defendants or any of them.

It is true as submitted by learned counsel for the 2nd defendant that the plaintiff did not give any notice of claim to the 2nd defendant's Director General and did not notify him of the missing goods in a manner which is specified under S.86 (1) and (2) of the Tanzania Railways Corporation

Act, 1977. Had such notices been given, the copies of those notices would have been annexed to the plaint. It is true also that no leave of the Court was sought by the plaintiff and granted before suing the 2nd defendant Corporation which is under the official receivership of the Presidential Parastatal Sector Reform Commission. A failure to do so contravenes the provisions of S.9(1) of the Bankruptcy Ordinance, Cap . 25. Again had such leave been sought and granted, its copy would have been annexed to the plaint.

Also, it is true as submitted by learned counsel for the 3rd defendant that the pleadings are not properly verified . Whereas the verification clause is signed, it does not state the date on which and the place at which it was signed. This is contrary to the mandatory provisions of O.VI,r.15 (3) of the Civil Procedure Code, 1966.

I totally agree with learned counsel for the 3rd defendant that the plaint does not disclose a cause of action against the 3rd defendant and that the plaintiff's claim for general damages and special damages against the 3rd defendant is Vexatious.

Generally speaking, the plaintiff's suit against the defendants is not properly before this Court. It is too vague to be sustained.

Learned counsel for the plaintiff Stated that after reading the written submissions which were filed by learned counsel for the 2nd and 3rd defendants in respect of their preliminary objections, he was not in a position to reply to them, instead, he prayed for the amendment of the pleadings.

I regret to say that under the surrounding circumstances of this case, it is not appropriate to order for the amendment of the pleadings. The appropriate thing to do is to dismiss it. Without further ado, I hereby dismiss it with costs.



A. Shangwa

JUDGE

21/10/2005.

Delivered in Court this 21st day of October, 2005.



A. Shangwa

JUDGE

21/10/2005.

ADVOCATES.

1. Bwahama & Company, Advocates for the plaintiff.
2. Mchome, Advocate for the 1st defendant
3. S.A. Msuya & Company, Advocate for the 2nd defendant.
4. Law Associates, Advocates for the 3rd defendant.