

IN THE HIGH COURT OF TANZANIA
AT DODOMA

DC CIVIL APPEAL NO. 14 OF 2004
(ORIGINAL CIVIL CASE NO. 47 OF 1999 OF DODOMA
DISTRICT COURT AT DODOMA -
BEFORE A.M. FUNGO, ESQ; DISTRICT MAGISTRATE)

JOHN DAVID KASHEKYA APPELLANT

Versus

CONSOLIDATED HOLDING
CORPORATION.....RESPONDENT

15.06.2006 & 18.07.2006

JUDGMENT

MASANCHE. J.

This is an appeal by a person called **JOHN DAVID KASHEKYA** against the decision of the District Court of Dodoma (A.M. Fungo, D.M.), dismissing his suit on the ground that he had sued the wrong person. The appellant had sought to sue N.B.C. Holding Corporation for what he called "*anguish and heart break*" for not releasing to him the letter of offer of right of occupancy for which he had wanted to obtain a loan.

The facts of this case are rather peculiar, and, I am afraid to say, quite troublesome. I see that the plaint was drafted by an advocate Mr. Njulumi. However, I have had some trouble in comprehending the same. The plaint has 14 paragraphs. I have done the best to comprehend what the problem was. This is what I gather:

The plaintiff, Mr. Kashekya, is a businessman.

In 1986, he went to N.B.C. Bank, Dar es Salaam, and obtained a loan of Shs.820,000/=, mortgaging a house on a plot with only an offer of occupancy. I see that even in court he had trouble in answering questions as to why he had to obtain a loan on just an offer and not the title itself. He answered that "*both have the same meaning.*"

Anyhow, after obtaining the loan, the servicing of the loan did not become impressive. He was sent to court in Civil Case No. 4/92. In that case he lost, and there was a time when the house he mortgaged almost got sold.

Then, somehow, the appellant approached C.R.D.B. for another loan. Actually, it was to be a loan to pay to N.B.C. In other words, it was like borrowing from Paul in order to pay

Peter. He could not obtain the loan. CRDB demanded a title deed, and the appellant argued that N.B.C. was holding his offer of occupancy. When he approached N.B.C, they told him that the offer was somewhere in Dar es Salaam. He then went to Dar to find out what the problem was. Eventually, after some years, he got his offer of right of occupancy. So, he got angry at N.B.C. and sued them for *“failure to give back to the plaintiff his certificate of title in time.”* In dismissing his case the District Court has said:

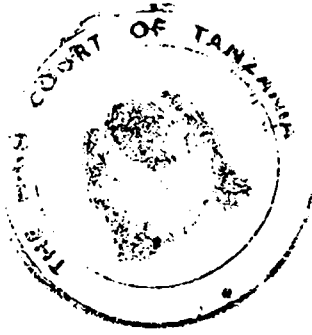
“Indeed this suit seems to show that, the plaintiff sued a wrong person (entity). According to what has been revealed in this case, it would appear, and all documents and exhibits show that, the plaintiff was all the time corresponding with the NBC (1997) LTD, and not the defendant. It was for the plaintiff to prove more and convince this court why we should believe that the defendant was the right entity to sue. Nothing was so done or proved. I think even the issues (among) them could be framed to see whether the defendant was the right person to be sued. Should this court believe that when the National Bank of Commerce was closed, its duties and all obligations were shifted to the defendant? If it could be so, it was the duty of the plaintiff to


prove so. Nothing was proved to that effect. This court was to be led by the evidence of the parties. I can't believe what the Recovery Loan Officer (DW1) told Ernest Nyenyembe that, the plaintiff sued a wrong entity. He said, the plaintiff was supposed to sue the NBC LTD who were the entire plaintiff contracted with and where the title deed in dispute was kept. Now, how could this court know that, the obligations of the NBC shifted to the defendant? It was the duty of the plaintiff to so prove. As usual, it is not for the court to find the evidence, it is the duty of the parties in the suit.

In this suit, I can venture that, the defendant was wrongly sued. In these circumstances I enter judgment for the defendant with costs."

After reading the entire record, I agreed with the passage I have just reproduced. In fact, I could even go further to say that he had no cause of action against any of the two – NBC and N.B.C. Holding Company. N.B.C., the Bank that he said kept his offer of right of occupancy, were right to keep it because the appellant was not a good paymaster.

The appeal is dismissed with costs.




J.E.C. MASANCHE
JUDGE

DODOMA

18TH JULY, 2006

Mr. Njulumi - For Appellant.

Mr. Nyabiri - For Respondent.

Appellant - Present also in person.