

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL CASE NO.90 OF 2011**

**GEORGE WILLIAMSON TANZANIA LTD . . . . .PLAINTIFF**

**V**

**AFRICAN BANKING**

**CORPORATION LTD ..... 1<sup>ST</sup> RESPONDENT**

**MOHAMED ENTERPRISES (T) LTD....2<sup>ND</sup> RESPONDENT**

**BARCLAYS BANK (T) LTD..... 3<sup>RD</sup> RESPONDENT**

**SADOCK DOTTO MAGAI..... 4<sup>TH</sup> RESPONDENT**

**RULING**

**Shangwa, J.**

On 7<sup>th</sup> June, 2012, Mr. Mtanga for the plaintiff filed an application for contempt of Court and breach of contract.

On 23<sup>rd</sup> July, 2013, I ordered that a copy of the application for contempt of Court and breach of contract be

served by counsel for the plaintiff to the opposite parties within a week.

On 2<sup>nd</sup> September, 2013 when the suit came for mention Dr. Lamwai for 2<sup>nd</sup> defendant complained that Mr. Mtanga had not yet served him with a copy of the application for contempt of Court and breach of contract as ordered by the Court on 23<sup>rd</sup> July, 2013 so that he may file a counter – affidavit. He submitted that Mr. Mtanga's failure to do so was an abuse of the process of the Court. He prayed the Court to strike out the application. His prayer was granted and the application was struck out.

On 13<sup>th</sup> September, 2013, Mr. Mtanga informed this Court that he had filed a chamber application for restoration of his application which was struck out but that after making consultations with his client, he had decided to withdraw it. The Court marked it to have been

withdrawn and held a First pre – trial conference, in which it was agreed that the case should come for mediation on 8<sup>th</sup> November, 2013.

On the above date fixed for mediation, Mr. Mtanga prayed for adjournment until another date to be fixed for mention saying that he intended to move the Court by formal application to depart from the scheduling order and set aside the order of withdrawal of his application. His prayer was granted. The suit was fixed for mention on 25<sup>th</sup> November, 2013 and I ordered that a formal application to do so should be filed on 22<sup>nd</sup> November, 2013.

On 25<sup>th</sup> November, 2013, Mr. Mtanga informed this Court that although he was granted leave to file an application to depart from the scheduling order and set aside the order of withdrawal of his application, he had

decided not to pursue the same and prayed to withdraw the Pleading Pertaining to it and sought for an order allowing him to further amend the plaint in order to incorporate specific damages.

Dr Lanwai for 2<sup>nd</sup> defendant was rather surprised by Mr. Mtanga's prayer to withdraw the pleading Pertaining to the application that he wanted to pursue, and argued that his prayer to amend the plaint once again is an abuse of the process of the Court as it is intended to introduce new matters in this case.

The main issue to be determined by this Court is whether or not Mr. Mtanga's prayer to further amend the plaint is an abuse of the process of court. As already stated, the Plaintiff's prayer to further amend the plaint is to incorporate specific damages. I have examined the


amended Plaintiff which was filed on 28<sup>th</sup> June, 2013 and the prayers therein, I have seen that these prayers do not include specific damages.

In my opinion, the Plaintiff's prayer to further amend the Plaintiff by incorporating specific damages is not an abuse of the process of the Court because the amendment sought will not change the cause of action or take the opposite party by surprise. In other words, the amendment sought will not altogether introduce a new case or matter.

In my research, I have come across two reported Indian cases which are similar to this one in which an amendment of the plaintiff was allowed by the court and said it can be allowed. First, is the case of **RAJENDRA V SARAS WATTI PRESS A 1952 C 78** in which amendment of the suit for specific Performance into one for damages for

breach of contract was allowed. Second, is the case of **JAGDISH SINGH V. NATHU SINGH (1992) I SCC 647 (654)** in which it was held that in a suit for specific performance of contract when contract for no fault of the plaintiff can not be enforced, amendment seeking damages for breach of contract can be allowed.

Likewise in this case, I do allow further amendment of the plaint as prayed by Mr. Mtanga and order that the amended plaint should be filed within fourteen days from today. Mention on 19.13.2013.

  
A. Shangwa

**JUDGE**

**4/12/2013**

Delivered in open Court this 4<sup>th</sup> day of December 2013 in the presence of Mr. Derek for plaintiff and Mr. Obed Didas for 1<sup>st</sup> defendant and for Mr. Mwarabu for Dr. Lamwai for 2<sup>nd</sup> defendant.

  
A. Shangwa

**JUDGE**

**4/12/2013**