

*IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM.*

COMM. CASE NO. 32 OF 2000

*AUTO SOKONI LTD.....PLAINTIFF
VERSUS
NBC (1997) LTD.....DEFENDANT*

*Counsel: M. Massawe for plaintiff
L. T. Kalunga for Defendant*

R U L I N G

BWANA, J.

On 26 July 2000 the plaintiff filed this suit praying for several reliefs arising from a banking transaction that took place at the NBC, Foreign Branch, on 12 September 1997.

Together with denying liability, the defendant has raised a preliminary objection thus –

“The defendant avers that it has been wrongly impleaded. Under section 10 (1) (e) of the National Bank of Commerce (Reorganisation and vesting of Assets and Liabilities) Act 23 of 1997, the proper party should have been the NBC Holding Corporation....”

Therefore the defendant prays to be struck out of the case with costs. The defendant goes on to cite the provisions of the said section 10 (1) (e) of Act 23 of 1997,, to which I will return later on in this Ruling.

In his written submission in reply, the plaintiff relies on the provisions of section 10(1) (a) (but not (e)) of the said Act as being relevant since that issue concerns banking transaction of his Account at the Foreign Branch of the NBC. In the alternative, the plaintiff submits that this court's attention be brought to the following provisions of the CPC namely.-

Order I, R9; Order IR- 10(1); Order I R.10(2) and Order 1.R. 10 (4). The plaintiff asks, if necessary, to be allowed to amend the plaint by adding a new party to wit: NBC Holding Corporation.

Section 10 (1)(e) of the said Act states:-

“Consequent upon the split of the former bank into the company, the NMB and the corporation, all assets and liabilities relating to banking business, to which the former bank was entitled or subject, immediately before the vesting date shall, with effect from the 1st day of October 1997, by virtue of this section and without further assurance –

(a).....

(e) in respect of non-banking assets and liabilities and businesses of the former bank not transferred and vested by paragraph (a), (b) (c) or (d) of this subsection, be transferred to and vest in the corporation.....” (emphasis mine)

Under Section 3 of the Act, Company means the NBC (1997) limited as established by the NBC (1997) Ltd. Incorporation Act, 1997. Corporation, on the other hand, means the NBC Holding Corporation established by section 4 of Act 23/97.

On the part of the plaintiff, he relies on Section 10(1) (a) of the Act which states –

“(1).....

(a) in respect of the banking business in the specified

branches constituting the Company, be transferred to and vest in the company. (emphasis mine)

In the instant case, the plaintiff's account was, as stated earlier, with the Foreign Branch of the NBC in Dar es Salaam as specified in the First Schedule to the Act. The subject matter of this case is, to me, a banking transaction since it involved the issuing and processing of two cheques issued by the plaintiff payable to the Internal Revenue Officer, Dar es Salaam. What are non banking assets and liabilities as used under S.10 (1) (e) then? Section 3(1) of the Act defines what assets are. They include:-

“ property , real and personal of every kind including-
(a) rights under contract and agreement.
(b) money, books, books of accounts; records and goodwill.
(c) all other rights, interest and claims in or to real or
personal property whether liquidated or unliquidated.... ”

Liabilities means –

“debts, charges, duties and all obligations
of every description under contract or agreement..”

To me, therefore non banking assets and liabilities are those which are not covered under paras (a) to (d) of s.10 (1). However, the issue at hand is, as stated earlier, covered under S.10 (1) (a) of the Act, it having been a banking transaction in a specified branch. It was therefore transferred to and vest in the Company.

It is equally important to note that the NBC Holding Corporation does not deal with banking transactions as such. Its functions are provided for under S.6 of the Act as follows:-

“S.6(1).

As from the effective date, it shall be the duty of the Corporation-

- a) to carry on, in relation to the company and NMB, the business of a holding company and the business of an investment company;
- b) to acquire and hold, on behalf of the Treasury Registrar, controlling and other interests in the share or loan capital in the company and in the NMB and in the Bureau;
- c) to take over the assets and liabilities and continue the business of the former bank which are not vested in the company or the NMB or the Bureau;
- d) to receive and discharge all claims against the former bank which are not vested in the company or the NMB;
- e) to do any other act or thing which the Minister may, upon advice by the Committee, by notice in the Gazette determine as being a function of the Corporation.

All the foregoing (s.6(1)(a)-(e)) are not, in my view, relevant to the issue at hand. As such, the corporation cannot be sued. Instead, the Company (i.e. NBC (1997) Ltd. is properly sued. Accordingly, the preliminary objection is dismissed.

Sgd: S. J. Bwana

JUDGE

20/9/2000

I Certify that this is a true and correct
of the original order judge entered by
.....*[Signature]*.....
Registrar
Commercial Court
Dar es Salaam
Dated 20/9/ of 2000