

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

COMM. CASE NO. 71 OF 2006

MLIMANI HOLDINGS LIMITED. 1ST PLAINTIFF
GH GROUP (Pty) LIMITED.....2ND PLAINTIFF
VERSUS
MURRAY & ROBERTS
CONTRACTORS(T)LIMITED.....DEFENDANT

R U L I N G

Date of final submission June 7, 2007

Date of ruling June 25, 2007.

MJASIRI, J.

The Defendant has raised preliminary objections in respect of the suit filed by the Plaintiff on the following grounds:

1. That the plaint is misconceived and bad at law in as much as this Honourable Court is not seized with jurisdiction to determine the same.
2. Misjoinder of causes of action.

I will begin with the issue of jurisdiction as this would determine whether this court should proceed with the matter or not.

Counsel for the defendant strongly argued in support of the preliminary objection.

Jurisdiction of the Commercial Division of the High Court is defined in the High Court Registry Rules as amended. Rule 5A of the rules establishes the Commercial Division of the High Court in which proceedings concerning commercial cases may be instituted. Commercial case means a civil case involving a matter considered to be of a commercial significance.

Upon reviewing the plaint it is obvious that the claim filed in court arises from a contract of works between the Plaintiff and the Defendant.

From the definition it is clear that the list of commercial cases is not exhaustive and therefore not limited to those enumerated in paragraphs (a) to (k) under the definition term. I am of the view that it is open to this court to accept any cases which in its opinion be classified with those shown in the list, the test being it must have a commercial significance. It is my considered view that paragraphs (c) (d) and (e) of the definition of a “commercial case” are wide enough to accommodate any liabilities be they tortious or contractual arising out of a relationship of contract provided that they are of commercial significance. I would also like to mention that the Defendant acknowledged the contractual relationship of the parties when arguing the second preliminary objection.

I am therefore inclined to agree with the submissions made by the Counsel for the Plaintiff. I therefore hold that this court has jurisdiction.

With regards to the second preliminary objection. Misjoinder of causes of action. The main argument raised by Counsel for the Defendant is that joinder of different causes of action is permissible only if the court trying them has jurisdiction in respect of all causes of action.

I am inclined to agree with the Counsel for the Plaintiff that the relief claimed by the Plaintiff are borne out of a series of the same transaction. The dispute arises out of the minor works contract. Therefore there is no misjoinder of causes of action in this suit. The case of **Barclays Bank DCO V C.B Patel and Others** 1959 EA 214 is not applicable under the circumstances.

In view of what has been stated hereinabove the Defendant's preliminary objections are found not to have any basis and are hereby dismissed with costs.

Sauda Mjasiri

Judge

June 25, 2007

DELIVERED in Chambers this 25th day of June, 2007 in the presence of Mr. Majembe advocate for the Plaintiff and in the absence of Mr. Mapande, Advocate for the Defendant.

Sauda Mjasiri

Judge

June 25, 2007

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I Certify that this is a true and correct
of the original document being
Sign [Signature]
Registrar Commercial Court, Dsm.
Date 29/6/07