

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

**COMMERCIAL CASE NO. 217 OF 2007**

**NATIONAL BANK OF COMMERCIAL LIMITED.....PLAINTIFF**

**VERSUS**

**CYPRIAN TWEVE.....1<sup>ST</sup> DEFENDANT**

**CYPRIAN BUSTAN TWEVE.....2<sup>ND</sup> DEFENDANT**

**CYPRIAN VANYAMILE.....3<sup>RD</sup> DEFENDANT**

- 1. Date of last submission 5/11/2002**
- 2. Date of Ruling 19/2/2007**

**RULING**

This suit was instituted by the National Bank of Commerce Limited in August 2002. On 19/9/2002, Dr. Bwana, J delivered a ruling barring the Defendant's brother in law from representing the Defendant on the strength of a power of attorney. The Defendant applied for revision of that ruling in the Court of Appeal. On 4<sup>th</sup> December 2006, the court of Appeal struck out the application for being incompetent. The case file was returned to this Court for continuation of the proceedings.

However, before the matter was taken to the Court of Appeal, the Defendant who was described under various aliases, filed a Written Statement of Defence in which he pleaded two points of law as preliminary objections. These objections were to be argued in writing and ruling was to be delivered on 26/11/2002. Unfortunately the case file was called by the Appellate Court as indicated in the foregoing paragraph, before that second ruling was delivered. The present ruling is therefore on those preliminary objections.

According to the Written Statement of Defence to the Amended Plaintiff, the Defendant has raised two objections to which:-

- A: That the suit is bad in law as it offends the ruling and the order of his lordship Honourable Dr. S.J. Bwana dated 19/9/2002.
- B: FRAUD. The suit is manipulated to mislead the Court and the Defendant.

As indicated above, these objections were argued in writing.

It was argued by the Defendant on the first objection that since the order of this Court dated 19/9/2002 ordered the Plaintiff to amend the Plaintiff so that only one name of the Defendant should appear, it was not proper for the Plaintiff to amend the plaintiff by inserting aliases, and by describing the Defendant scandalously, and contrary to the amendment order. He said, the context of the Plaintiff also differed from that of the original plaintiff.

This argument somehow extended to his second preliminary objection on the question of fraud. He submitted that by describing the defendant under scandalous aliases, the Plaintiff intended to mispresent and mislead the Court and bias it against the Defendant. So in the premises, the defendant impressed upon the court to dismiss the suit.

Responding to the first preliminary objection, Mr. Kabakama, learned counsel for the Plaintiff, submitted that the amendments made are in conformity with O VI r. 17 of the Civil Procedure Code Act 1966; and the Court had ordered the Plaintiff to make necessary amendments in respect of the Defendant's name. He submitted that the amendments were made following the different names used by the Defendant in different mortgage deeds. He submitted in short, that the amended plaintiff was not in any way distorted, and amendments were done under O VI r 17 and not O VI r. 16 of the Civil Procedure Code Act as submitted by the Defendant.

On the second preliminary objection Mr. Kabakama submitted that it was not a pure point of law, as it is based on facts which needed proof by evidence. Citing a decision of this court in *NATIONAL BUREAU DE CHANGE LIMITED VERSUS THE NBC LIMITED (Commercial Case to 167 of 2001 (Unreported))* the learned counsel submitted that this objection was misconceived and can not form the basis of a preliminary objection. He therefore prayed that both objections be dismissed with costs.

The Defendant did not file any rejoinder.

I am equally of the considered view that the preliminary objections are misconceived. Beginning with the second one, the Defendant had quoted several passages from the amended plaint to show that the Plaintiff intended to mislead the Court. On the other hand, the Plaintiff submits that the description of the Defendant's name arose from the fact that the Defendant executed different mortgages under different names. This is a question of fact that has to be determined in a trial. Whether the effects of these amendments would be to mislead the court or not, would also be determined upon a full trial. It is not therefore easy to dispose or determine the question of fraud at this stage. I would thus disallow this objection.

I now come to the first objection. According to the order of this Court dated 19/9/2002.

***“ It is therefore ordered that the Plaintiff should make the necessary amendments required in respect of the Defendant.”***

I think the catchphrase here is ***“necessary amendments” and it is broad enough.*** Nowhere does the order require the Plaintiff to put only one name. It is also common knowledge that aliases are used in respect of one name. The amended plaint describes the Defendant in his aliases. In order to justify that description the body of the plaint had also to be changed to explain the aliases. I would describe these as ***“necessary amendments”***. After all the purpose of pleadings is to offer as much information to the court and the

opposite party as possible, so as to prevent surprise. Therefore I see nothing wrong with these amendments, and if there are any errors, they are curable.

In the event I find no merit in those preliminary objections. They are accordingly dismissed with costs.

Order accordingly.

A handwritten signature in black ink, appearing to be 'S.A. Massati', written over a horizontal line.

S.A Massati

**Judge**

19/2/2004