

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

**COMMERCIAL CASE NO. 133 OF 2014**

**DIAMOND TRUST BANK (T) LIMITED ..... PLAINTIFF**

**VERSUS**

**KAHELA TRADERS LIMITED**

**DORIS MARTINE AND DAALGREEN GASPER**

**AS ADMINISTRATORS OF THE ESTATE OF**

**THE GASPER JOHN MINJA(DECEASED) .... DEFENDANTS**

**ALEX YAKOBO KAHELA**

**ASTERIA SUGWESO KAHELA**

29<sup>th</sup> April & 1<sup>st</sup> June, 2015

**RULING**

**MWAMBEGELE, J.:**

The defendants stand sued by the plaintiff jointly and severally for a principal sum of Tshs. 82,335,332/66, interest thereon at the rate of 20%, interest on the decretal sum and the court rate as well as general damages and costs of the suit. The claim arises out of a credit facility which was issued by the plaintiff to the first defendant and guaranteed by the second, third and fourth defendants who had undertook to be jointly and severally responsible for repayment of the loan in case of

default. Unfortunately, one John Gasper Minja passed away and the second defendants were appointed administrators of his estate.

On 22.04.2015 this matter was tabled before me for necessary orders. The second defendant, one Doris Martine - wife of the deceased John Gasper Minja, made a prayer to have the case transferred from Dar es Salaam to Arusha mainly on grounds that her employer is becoming tired of the regular permissions sought to attend to this case in Dar es Salaam, that the said employer has advised her to seek for unpaid leave until the case is finalized. She said that being a single parent, her children need support and she cannot afford to lose her salary. She added that she was diabetic the medication she was used to taking did not encourage regular travel. It was her prayer that since there is a commercial court in Arusha and since other defendants have never entered appearance from the date the suit commenced, the case should be transferred to Arusha where is ordinarily resides.

Mr. Vedasto, the learned counsel who had appeared for the plaintiff, resisted the prayer for the reasons that the cause of action arose in Dar es Salaam and that fact is not contested by the defendant, that the plaintiff has engaged an advocate knowing that the case will be heard in Dar es Salaam, that it is only the second defendant among five parties involved in the suit who is seeking transfer, that there is no permanent commercial court in Arusha and finally that commercial cases are normally finalized within a short time. To him, if the court is to grant

this prayer, it will even be more costful to the defendants and therefore insists that the prayer should be denied.

Ms. Doris rejoined that the cause of action arose in Dar es Salaam, and that it was not certain that the case could be finalized early and further that the rest of the defendants have never attended court. I reserved a ruling on this prayer so that I could have ample time to grasp the intent, purport and effect of the prayer made by the second defendant. This is the ruling.

In this ruling, the point on which to ponder is whether the circumstances obtaining in this case warrant its transfer from Dar es Salaam to Arusha. To answer this question, I have had ample time to consider each and every argument fronted for and against the prayer. Without much ado and on the basis of the evaluation of the reasons fronted for the prayer, I deem the said grounds to be not as grave to the interest of justice as to certify the transfer.

Thus, as said by the counsel for the plaintiff, despite the dispute by the second defendant as to the place of the cause of action, going through the credit facility, I find the cause of action to have arose in Dar es Salaam. That apart, upon perusal of the file, I find the said Doris - second defendant, to have appeared in this court only twice and therefore negating the fact that she had to seek regular permissions from her employer. I am prepared to accept the second defendant's

contention that she is employed and needs to maintain her salary to make ends meet. However, that alone cannot be a ground to warrant transfer of the suit at the costs of the plaintiff. That apart, as rightly put by the plaintiff's counsel, the cause of action arose in Dar es salaam, and as such, on the basis of the section 18 (c) of the Civil Procedure Code, Cap.33 R.E 2002 the plaintiff has an option to have the suit instituted where the cause of action arose.

The above notwithstanding, in as much as the court was told of the sickness of the second defendant, nothing tangible, say a medical report or physician's recommendations as to the health of the second defendant, was tendered. Over and above, nothing was tendered to support her allegations of being employed or having sought and refused permission from her purported employer. It is for these reasons I find and hold that the prayer cannot stand.

It is on the above reasons I reject the prayer for transfer of the suit from Dar es Salaam to Arusha. However, before I pen off, I wish to draw the attention of the learned counsel or the plaintiff to the High Court Registries Rules (Establishment of a Commercial Division of the High Court Sub-registry) Notice, 2004 - GN No. 283 of 2004 which established a sub-registry of this court at Arusha. This, in my considered opinion, will enlighten the learned counsel and erase his belief that there is no permanent commercial court in Arusha. However,

admittedly, there is no resident judge at the Arusha Commercial Court Sub-registry.

All the above said and done, the prayer is hereby rejected. The circumstances dictate that each party shall bear its own costs in this oral application.

Order accordingly.

DATED at DAR ES SALAAM this 1<sup>st</sup> day of June, 2015.

**J. C. M. MWAMBEGELE**

**JUDGE**