

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT MWANZA**

MISCELLANEOUS COMMERCIAL CAUSE NO. 13 OF 2015

**LWEMPISI GENERAL COMPNAY LIMITED
CHARLES KAHATANO LWEMPISI
JOSEPH ISHENGOMA BYEKWASO
RICHARD KWEYAMBA
JOSEPH RUGARABAMU
GETRUDE CHARLES
MBELWA MGANGA CHARLES**

..... **APPLICANTS**

VERSUS

THE NATIONAL BANK OF COMMERCE LIMITED RESPONDENT

20th & 23rd October, 2015

RULING

MWAMBEGELE, J.:

When this application for leave to defend a summary suit was called on for hearing on 20.10.2015, Mr. Aaron Kabunga, the learned counsel who appeared for the applicants made an oral application to amend the application. The anchor of Mr. Kabunga's prayer was that the present application does not unveil the real question for determination.

The prayer was objected by Mr. Jonathan Wangubo, learned counsel for the respondent. Mr. Wangubo, learned counsel, had two main reasons for the objection. First, the learned counsel felt that the prayer was uncalled for because the applicants have room to argue what they think is a real question for determination under item (iii) of the prayer in the chamber summons which is couched "any other or further orders as this Honourable court may deem necessary to grant." Secondly, the learned counsel argued that the real question in controversy in this matter is not whether there was fraud and collusion in the management of the applicants' company as stated by the learned counsel for the applicants but, rather, whether the applicants took the loan and defaulted in its repayment. However, the learned counsel prayed that if the court is minded to grant the prayer, then the same should be with costs pursuant to rule 24 (1) of the High Court (Commercial Division) Procedure Rules, 2012 – GN No. 250 of 2012 (henceforth "the Rules").

In a short rejoinder, Mr. Kabunga, learned counsel for the applicants, stuck to his guns. He still sought the indulgence of the court to allow the applicants amend the application so that the real question in controversy can be determined.

I have heard the contending learned arguments by the two counsel for the parties. I should state at the outset that the provisions of rule 24 of the Rules empower the court to order an amendment of pleadings for the purpose of, *inter alia*, determining the real question in controversy or to achieve justice between the parties. This is the tenor and import of sub-rule (3) (b) of rule 24 of the Rules. And these provisions, in terms of rule 24 (6), "apply *mutatis mutandis* to other pleadings and applications".

I have perused the application complained of by Mr. Kabunga; the learned counsel for the applicants who intimated to the court that he had been recently engaged by the applicants to represent them. Indeed, it does not come out clearly from the application why should the applicants be given leave to defend the summary suit. Mr. Kabunga, learned counsel, has felt, and it seems to me rightly so, that he should not take a gamble by relying on the blanket prayer falling under item (iii) of the chamber summons to unveil what the really question in controversy is. His apprehension of fear is, I think, justified. He wants to cast his net too wide so that he would not blame himself once leave to defend the summary suit is refused.

In view of the foregoing, I find merit in Mr. Kabunga's prayer to amend the application for leave to defend the summary suit and grant it. The amended application should be filed within a fortnight from the date of this order. Costs shall be in the cause.

Order accordingly.

DATED at MWANZA this 23rd day of October, 2015.

J. C. M. MWAMBEGELE
JUDGE