

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR-ES-SALAAM.  
COMMERCIAL CASE NO. 54 OF 2016**

**MICHAEL NGALEKU SHIRIMA ..... PLAINTIFF**

**VERSUS**

**AFRICAN BANKING CORPORATION**

**TANZANIA LIMITED ..... DEFENDANT**

**RULING**

**MRUMA, J.:**

The plaintiff Michael Ngaleku Shirima borrowed a loan from the defendant African Banking Corporation (T) Limited and as a security for that loan he mortgaged in favour of the defendant's bank 75,609 shares which he owned in Tanzania Breweries Limited and 108,721 shares which he owned in Swiss Port.

It is the plaintiff's pleading that the loan was fully repaid and the bank duly released the mortgaged shares certificates under cover of a Mortgage Release Form. However, according to the pleadings (ie paragraph 5 of the plaint), the Mortgage Release Form was subsequently altered without the plaintiff's knowledge to cancel out reference to the TBL Shares and leave the Swiss Port shares only.

It is further stated in the plaint that in a transaction which is completely different from the loan extended to the plaintiff the defendant's

bank extended USD 2,500,000.00 to a Company known as Rombo Milles Company Ltd (RMC). That loan was secured by a deed of security by Michael Ngaleku Shirima, Vicent Ngaleku Shirima and Mrs. Triza Victoria Shirima.

It is the plaintiff's averment that the defendant wrote two letters to the Chief Executive Officer of the Dar es Salaam Stock Exchange and misrepresented that the loan advanced to Rombo Millers Limited was partly secured by a mortgage in favour of the Bank ABC of 75,609 Tanzania Breweries Shares held by the plaintiff and advised the Dar es Salaam Stock Exchange that the bank ABC had never released the shares certificates and that its interests are still registered on the shares and that the shares certificate (if any) held by the plaintiff were fraudulently obtained from Bank ABC. The plaintiff avers that this claims were defamatory to him.

In December 2013 the defendant sent an email to the plaintiff's brokers Tanzania Securities Limited, confirming that indeed the plaintiff's TBL shares were not mortgaged with the defendant's bank. However on 22<sup>nd</sup> December 2015, two years after confirmation the defendant reported to the Central Police Station in Dar es Salaam that on 21<sup>st</sup> December 2015 the certificate for TBL shares held by the plaintiff had been lost/stolen.

That in January 2016, the defendant misrepresented to TBL by submitting to it an application for replacement, lost, misplaced and or destroyed share certificates, and in February 2016, through its brokers Solomon Stockbrokers Ltd, the Defendant submitted to Dar es Salaam Stock Exchange documents purportedly signed by the plaintiff seeking

amendment of the depository records to permit transfer of shares to the defendants.

The plaintiff complains that the false allegations communicated to third parties was careless and defamatory since it directly impute criminal and fraudulent conduct on him. That the defendants demand upon the Dar es Salaam Stock Exchange to freeze any dealings on the plaintiff's /TBL shares has paralyzed the Plaintiff right to freely trade in shares and this will result in loss of expected income.

Mr. Kibatala, Advocate for the defendant has raised a preliminary objection to the effect that since no monitory jurisdiction has been pleaded in the plaint this court lacks necessary jurisdiction to entertain the matter. Accordingly it is Mr. Kibatala's submissions that the plaint in this suit ought to have been filed in the lower court with competent jurisdiction. He invited this court to follow the decision of the Court of Appeal in the case **Tanzania China Friendship Textile Ltd vs our Lady of Usambara Sisters [2006] TLR 70 Court of Appeal**. For those reasons he prayed this court to struck out the plaint with costs.

Responding to Mr. Kibatala's submissions Mr. Pesha, counsel for the Plaintiff contended that in terms of Rule 5(2) of the High Court (Commercial Division) Procedure Rules, 2012 this court has jurisdiction to hear and determine a Commercial Case in which the value of the claim is at least one hundred Million shillings in case of proceedings for recovery of possession of immovable property and at least seventy Million on Shillings in case of proceedings for recovery of possession of immovable property

and at least seventy Million shillings in proceedings where the subject matter is capable of being estimated at a money value.

Mr. Pesha conceded that it is true that his client is praying for declaratory orders but he insisted that the value of the shares the subject of the suit is over T.shs One billion.

The learned counsel contended that it is wrong to submit or think that Commercial Court deals with monetary claims only. He said that there are two processes in which one can institute a case in commercial court. He mentioned the two methods as by plaint and/or by originating summons. He said that claims initiated by originating summons do not have monetary value/reliefs.

I beg to start with a definition of what is a Commercial Case.

The term Commercial Case is defined under Rule 3 of the High Court (Commercial Division) Procedure Rules 2012 as;

*"a Civil Case involving a matter considered by the court to be of commercial significance. Including any claim or application arising out of transaction of trade or commerce"*

In the present case the Plaintiff's cause of action arose from a loan which he borrowed from the Defendant's bank which loan he alleged was secured by his shares in Tanzania Breweries Limited. He alleges that the loan was fully repaid and the security (i.e. his shares in TBL), were discharged. It is the Plaintiff's averment in the plaint despite the discharge,

the Defendant's bank wrote to the Chief Executive of Dar Es Salaam Stock Exchange and advised him that the bank had never discharged the shares and its interest are still registered on the shares. The Plaintiff is complaining that this act was defamatory and has paralyzed his rights to freely trade in shares.

The question that this court has to answer is whether the acts complained of arose out of transactions of trade or commerce nature. The term trade is defined in **Black's Law Dictionary Seventh Edition Page 1500** as *the business of buying and selling or battering goods or services* and the term commerce is defined in same dictionary at page 263 as "*the exchange of goods and services especially in big scale*". From these two definition of trade and commerce there can be no doubt that acquisition of loans, mortgaging and securing a loan and or selling of shares are all of trade or commerce in nature. Under paragraph 6 of the plaint it is stated that the defendant's bank extended to Rombo Millers Company Limited a facility (Global Facility) worth U\$D 2, 500,000.00. Under paragraph 7, it is stated that the defendant wrote two letters with Ref. No. ABCT/LDE/110 & ABC/LD/0217/2016 dated 6<sup>th</sup> March 2016 both addressed to the Chief Executive Officer of the Dar es Salaam Stock Exchange misrepresenting that the loan to Rombo Millers Company Limited (ie U&2,500,000.00) was partly secured by a mortgage in favour of the Defendant's bank of the Plaintiff's 75,609 Tanzania Breweries Limited (TBL) shares the allegations which the Plaintiff says to be untrue. The Plaintiff's complaints are founded on the two letters addressed to the Chief Executive Officer of Dar es

Salaam Stock Exchange the subject of which is U&D 2,500,000.00. This is the monetary implication of the case and this being a Commercial transaction this court is clothed with jurisdiction to entertain. Accordingly the preliminary objection is dismissed. Costs will be in the cause.



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**A. R. Mruma**

**JUDGE**

**30/1/2016**