

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

COMMERCIAL CASE NO 188 OF 2017

BETWEEN

ZTE CORPORATION -----PLAINTIFF

VERSUS

BENSON INFORMATICS LIMITED T/A SMART -----DEFENDANT

RULING

SONGORO, J

This is a ruling on three preliminary objections which were raised by the plaintiff and defendant in the suit. The Defendant in his preliminary objection raised that a preliminary objection on point of law that the Plaintiff contravenes the Provision of Order VI Rule 15(3) of the Civil Procedure Code Cap 33. Whereas the Plaintiff also raised two preliminary objection points of law.

The first one being that the Written Statement of defence contravenes Order VI Rule 15(1) (2) and (3) of the Civil Procedure Code Cap 33 [R.E 2002]. The second one being that the written statement of defence is defective for contravening Rule 19(1) of the High Court Commercial Division Procedural Rules GN 250 of 2012.

In the light of the three preliminary objections on points of law raised the court invited the parties to pursue the objection raised. So Mr. Michael Kasungu and Ms Careen Masondo appeared for the plaintiff; whereas Mr. Clement Kihoko Learned Advocate appeared for the defendant and pursue the objection of the defendant.

Since there was an objection on the plaint and the suit, the court allowed Mr Clement Kihoko to first address it. To start with the defence counsel very briefly told the court that a plaint must comply with the provisions of Order VI Rule 15(3) of the Civil Procedure Code that it must contain verification clause which **bears the signature, date and place of verification.**

He then submitted that upon perusing the plaintiff's plea he found that in the verification clause it is not stated date and place where verification was done. The counsel then indicated since the verification in the plea does not bear date and place of verification then, entirely plea and verification clause is defective and ought to be struck out.

In reply to the defendant's objection Mr. Michael Kasungu Learned Advocate of the plaintiff easily admitted that the verification clause in the plea does not bear a date and place of verification. However, the counsel quickly submitted that the defects in it are not fatal and are curable by a way of amendment, under the provision of Order VI Rule 17 of the Civil Procedure Code where the law allows the amendment of pleadings.

To strengthen his point, Mr. Kasungu then relying on the statement from Mulla Code of Civil Procedure Code 15th Edition at page 1175 stated that if the pleadings are not properly verified properly then the verification may be done at a later stage and defects in the verification clause are not fatal.

Further, Mr. Kasungu relying on decision in the case of JV Tanjan Construction Co versus TPA he submitted that this very court has previously decided that a defect in the verification clause like lack of date and place of verification is not fatal errors which attract drastic measures. Subsequently, Mr. Kasungu prayed that the plaintiff be given a chance to amend the plea with no order as to costs.

In his rejoinder Mr. Kihoko Learned Advocate of the defendant replied that any non-compliance of the law has legal consequences and if the plaintiff's counsel was diligent enough he would after detecting the error apply to amend the plea as quick as possible and not wait until such the preliminary objection is argued and apply for amendment. So the defence counsel prayed for rejection of the plea. Also he prayed for the costs.

Other preliminary objection on points of law which were raised by the plaintiff against written statement of defence were that the Written Statement of defence contravenes Order VI Rule 15(1) (2) and (3) of the Civil Procedure Code Cap 33 [R.E 2002] in the sense that it was verified by

Naveed Abid who claim to be duly authorised officer of the defendant but is not known to the Plaintiff. The Counsel argued that in the defendant's company such officer is unknown.

In the Second plaintiff objection the plaintiff counsel argued that the format of the written statement of defence is not in 1.5 line space so it contravenes Rule 19(1) of the High Court Commercial Division Procedural Rules GN 250 of 2012. So pursuant to Rule 19(2) of GN 250 of 2012 the written statement of defence is supposed to be rejected.

On his part Mr Kihoko, Learned Advocate of the defendant he maintained that the written statement of defence is proper and complies with Rule 19(1) of the High Court Commercial Division Procedural Rules GN 250 of 2012 in the sense the line space format is 1.5.

Secondly he argued that an objection that the written statement of defence was verified by Naveed Abid who is not known the counsel submitted that the objection raised involves issues of facts which need to be ascertain by evidence. Finally, Mr Kihoko prayed the two objection raised by the plaintiff be dismissed for lack of merit.

The court considered all objections raised by both parties and find it is ideal to address the defendant preliminary objection on point of law on the verification clause. Upon hearing properly both parties they tend to agree that the verification clause in the plaint does not bear date and place of verification. I have taken time perused the Verification Clause of the plaint which appears at page 10 and like both counsel find it has no date and place of verification

Next I perused the provision of Order VI Rule 15 (3) of the CPC and find it states that the verification shall be signed by the person making it and **shall** state the date on which and place at which it was signed

So reading between the lines of Order VI Rule 15 (3) of the CPC the words shall use in the cited order shows it mandatory for verification to contain the place and date where it was signed.

Courts of law in several decision including decision in the case of Kiganga and Associates Gold Mining Company Limited Versus Universal Gold NL [2002] TLR p 129 has repeatedly stated that the function of “ verification clause” is aimed to counter possible abuse of court process and fixing responsibility of the suit involving the companies to its authorized officials

Bearing in mind the date and place where the verification took place was not stated in the court find the defendant has proved his objection that the verification clause and the plaint are defective for failure to comply with the provision of Order VI Rule 15 (3) of the CPC

Mr. Kasungu for the plaintiff has appealed to the court to give him chance to amend the verification clause and plaint. I have consider it but I find this Court in Case of Ernest Nduta Nyororo Versus NBC and another Civil Case No 1 of 2015 Hon Mwambegele J (as then was) had an opportunity of considering the similar prayer for the amendment of the Plaint if is not compliant. . The prayer for the amendment of the Plaint was rejected on several grounds including a point that, as a matter of principle Courts are required to promote compliance and not otherwise.

Next the court find any order which may tend to defeat an objection which was raised and pursued may not be desirable at this stage. If at all the plaintiff counsel knew the error in advance he would have applied to amend the plaint before the hearing of the preliminary objection. For that reason I also reject the prayer of amendment. Consequently I hereby strike the plaint with costs in favour of the defendant. I find there is plausible reason to consider other remaining objection. The plaint is hereby struck out with costs

Dated and Delivered at Dar es Salaam this 2nd day of May 2018


H.T, SONGORO
JUDGE

The Ruling was delivered in the presence of Mr. Michael Kasungu, Learned Advocate of the Plaintiff and Mr Clement Kihoko Learned Advocate of the defendant