

Hon. Mr. Justice Tsekoko

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 737 OF 1989

AFROFAM (U) LTD. :::::::::::::::::::: PLAINTIFF

V E R S U S

BINAISA & CO. ADVOCATES :::::::::::::::::::: DEFENDANT

Before: The Hon. Mr. Justice J.P.M. Tabaro

Ruling:

Before hearing commenced counsel for the defendant/ applicant raised an objection and prayed for dismissal of the Suit on the ground that the plaint discloses no cause of action and is frivolous and vexatious.

The suit has some unusual features but on the whole the issues can be sharply defined. In High Court Civil Suit No. 1231 of 1988 Lenzi Giancoma sued Afrofam (U) Ltd under O.33 CPR, that is, in summary Procedure. Judgment was entered in favour of the plaintiff Lenzi Giancomo, against Afrofam (U) Ltd, the defendant, in that suit (1231 of 1988). It was not in dispute that Afrofam (U) Ltd was indebted to Lenzi Giancomo in the sum of shs. 1,100,000/=, the subject matter of the summary Suit. A decree was issued and subsequently, a warrant of attachment in execution was also issued. So far we do not know why Afrofam (U) Ltd. did not appeal against the orders made in favour of Lenzi Giancomo. Nor is it clear why Afrofam (U) Ltd did not apply for leave to appear and defend the summary suit.

In the present action Afrofam (U) Ltd seeks to recover against Binaisa & Co. Advocates the sum of shs. 1,252,300/= on the ground that the advocates sued for the

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1 Cause of action *examined*
2 Previous suit *overdeclared*
3.

whole amount of 1,100,000/= knowing that 900,000/= thereof had been repaid. So the present plaintiff, Afrofam (U) Ltd seeks to recover 900,000/= plus the sum of money incurred consequent upon execution proceedings.

Counsel for the present defendant, Mr. Kasirye brought to the attention of the court the definition of what is frivolous and vexatious. In Norman v. Mathews (1916) 85 L.J.K.B. 857 as in Ordgers' Principles of Pleading and Practice 21st Edn, at P. 142 it was observed that in order to bring a case within the description it is not sufficient merely to say that the plaintiff has no cause of action. It must appear that his alleged cause of action is one which on the face of it is clearly one which no reasonable person could properly treat as bona fide; and contend that he had a grievance which he was entitled to bring before the court.

I would have no difficulty in upholding Mr. Kasirye's submission but for the fact that the summary suit was filed for the sum of shs. 1,100,000/= and an accompanying affidavit sworn on 13th December, 1988 to the effect that Afrofam (U) Ltd was indebted to Lenzi Giancomo in sum of shs. 1,100,000/= whereas receipts acknowledging payment to Giancomo and Binaisa & Co, Advocates, indicate that moneys were paid on 9th December, 1988 and 30th August, 1988 totaling to 500,000/= at least. Of course evidence can be adduced, if there is, to establish the exact amount of money owing or paid by the time the summary plaint in C.S. No. 1231 of 1988, was filed.

Counsel for the plaintiff/respondent Mr. Ayigihugu cited Clissold v. Cratchley /1910 / 2 K B 244 for the proposition that it is immaterial whether or not the present defendants had malice or fraud when the suit in C.S. No. 1231 of 1988 was filed so long as in fact the suit was filed after money to discharge the debt sued for had been paid. I have perused the authority and I am of the opinion the principle, with much respect, is beyond centetion.

It is not seriously convassed or denied that when the suit, in C.S. No. 1231 of 1988 was registered the defendant therein had substantially discharged his obligation. Of course that means the present plaintiff did in fact doubly pay to discharge the same obligation. Whether the overpaid money can be claimed against the defendants now is an issue which can be resolved after hearing evidence. But that is far from suggesting that the present proceedings are frivolous and vexatious or that no cause of action is disclosed. It might as well be Mr. Ayigihugu is **pre-empting** the difficulty of being beset by the doctrine of res judicate but in my humble opinion he is entitled to file the present suit so that the court can rule on who has the obligation to reimburse the money the present plaintiff overpaid to Lenzi Giancomo. I overrule the objection. Costs are awarded to the plaintiff/respondents.

J.P.M. Tabaro

J U D G E.

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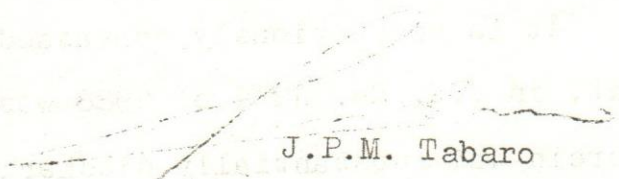
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Parties not present.

Mr. Razida for the plaintiff.

Mr. Kasirye for the defendants.

Ruling delivered.



J.P.M. Tabaro

J U D G E.

6/7/1991