

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

COMMERCIAL CASE NO. 41 OF 2007

**TANZANIA STEEL PIPES LTD.....PLAINTIFF
VERSUS
Y.K. WONG.....DEFENDANT**

EX - PARTE JUDGMENT

1. Date of Exparte proof – 21/8/2007
2. Date of Final Submission – 21/8/2007
3. Date of Judgment – 21/8/2007

MASSATI, J:

The Plaintiff **TANZANIA STEEL PIPES LTD** has filed a case in this court against the Defendant on 19/6/2007.

It is alleged by the Plaintiff that the Defendant was employed by the Plaintiff as its Technical Director, up to 23rd November 2005, when his services were terminated. As a technical director, the Defendant was instrumental to the establishment of the Plaintiff Company and in the process became privy to confidential and intellectual property of the Plaintiff. It is further alleged that the Defendant abused that position by engaging into secret business dealings with companies in South Africa and Botswana, purported to be on

behalf of the Plaintiff, but which was in fact for his own benefit. It was further contended that the Defendant was in the process of forming partnership with some other persons in South Africa for the purpose of establishing factories in Tanzania for the supply of products similar to those manufactured by the Plaintiff. It is this apprehension that has forced the Plaintiff to file the present suit to prevent immeasurable economic loss.

The Plaintiff therefore prays for perpetual injunctions to restrain the Defendant from setting up any factories in Tanzania similar to those of the Plaintiff, and for tendering for any work in Tanzania in relation to the supply of products manufactured by the Plaintiff. The Plaintiff also prays for general damages and costs.

The Defendant was served by substituted service by publication in one issue each, of the Kenya Times and The African of July 14, 2007. These dailies are believed to have a wide circulation in Kenya, where the Defendant is said to have had his last address. After being satisfied that the Defendant was duly served, and has neither appeared nor filed any statement of defence, I allowed the Plaintiff to prove its case *ex parte* by oral evidence.

The Plaintiff was to prove its case orally on 21/8/2007. However, when Dr. Nguluma learned Counsel, appeared before me on this date, he informed the court that the witness who was to testify had travelled abroad, but had left a signed affidavit of his testimony. At his request and in the circumstance, I allowed the Plaintiff to file the witness's affidavit as his sworn evidence. This was done.

After filing the affidavit of one TERENCE LOH, which essentially contained the contents of the plaint, Dr. Nguluma, briefly submitted that the Plaintiff had proved its case, and was entitled to judgment as prayed.

Although there is no statement of defence, I feel that the decision of the case calls for determination of three issues; namely: -

- (1) Whether the Defendant did what it is alleged he did?
- (2) Whether in law, the Defendant's acts infringed any intellectual property of the Plaintiff?
- (3) To what reliefs are the parties entitled?

The first issue is one of fact: Whether the Defendant did what it is alleged he did?

Since the averments of the affidavits have not been contested, I have no difficulty in making the following findings of facts: -

- (a) That the Defendant was employed by the Plaintiff as its technical director.
- (b) That in the course of his employment he acquired confidential information relating to the Plaintiff's business.
- (c) That in the course of employment the Defendant entered into business deals with other persons outside the country by using the Plaintiff's business secrets, for his own benefit.
- (d) That the Defendant is now in the process of setting up factories in Tanzania for the manufacturing of products similar to those produced by the Plaintiff.
- (e) The Defendant's services were terminated on account of abuse of office and breach of trust and the same has not been challenged by the Defendant.

The above facts having been determined I now position myself to consider the remaining issues.

On the second issue, it is not clear whether the rights alleged to have been breached by the Defendant are registered in Tanzania and capable of being protected in law. According to the Plaintiff, the Defendant had breached their right by revealing confidential information to unauthorized persons.

Although generally, all registered intellectual property receive protection of the law, not all intellectual properties are required to be registered. According to **LADDIE, PRESCOTT AND VICTORIA'S THE MODERN LAW OF COPYRIGHT AND DESIGNS** – 3rd ed. Vol. 1, at pp 1, 2, the term **“intellectual property”** is defined to mean **“a right to stop others from doing something, not a positive right to do it oneself”** and includes **confidential information**. According to the learned authors “confidential information” is one type of intellectual property which need not be registered. **LADDIE PRESCOTT AND VICTORIA** further elaborate that: -

“If secret information is imparted in confidence for a limited purpose, it cannot, as a rule be used for a different purpose without the consent of the confider”

The Plaintiff's case here is that the defendant had acquired confidential information in the course of his employment for use for the benefit of the Plaintiff but has used that information and is about to use it without the consent of the Plaintiff, and for his interests. This is illustrated by Exh.P1 collectively and the contents of paragraphs 6 of the affidavit. I am therefore satisfied that the Defendant violated the Plaintiff's intellectual right to that extent.

The last issue is, to what reliefs are the parties entitled? After considering all the evidence on record, I am satisfied that the Plaintiff is entitled to the two injunctive orders prayed and costs. As to general damages, I think the Plaintiff is entitled to some damages to further restrain the Defendant from embarking on what he intends to do. However, I have also considered that there is no evidence that the Defendant has gained anything economically by trading off these secrets. I think an award of only nominal damages would meet the justice of the case. I would assess those damages to the tune of USD.5,000 only.

So, in the event, judgment is entered for the Plaintiff as prayed with costs and USD 5000 as general damages with interest thereon at 7% p.a. at court rate from the date of judgment to that of payment in full.

Order accordingly.

SGD
S.A. MASSATI
JUDGE
21/8/2007

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