**Kiganga and Associates Gold Mining Co Ltd v**

**Universal Gold NL**

[2000] 1 EA 134 (HCT)

**Division:** High Court of Tanzania at Dar-es-Salaam

**Date of Ruling:** 7 August 2000

**Case Number:** 24/00

**Before:** Kalegeya J

**Sourced by:** L K Masha

**Summarised by:** H K Mutai

*[1] Practice – Suit filed by corporation – Pleadings – Verification clause – Verification by principal*

*officer – Whether principal officer required to specify his exact title – Costs – Withdrawal of suit from*

*general division and re-filing in commercial division – Plaintiff ordered to pay costs in prior suit –*

*Whether payment of costs was a condition precedent to the re-filing of the suit – Section 97 – Civil*

*Procedure Code – Order VI, Rule 15 and Order XXVIII, Rule 1 – Civil Pricedure Rules.*

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**Editor’s Summary**

The Plaintiff initially filed suit against the Defendant in the general division of the High Court but later

applied for leave to withdraw the same and re-file it in the commercial division. The application was

granted on terms that the Plaintiff pay the costs of the suit to the Defendant. The Plaintiff thereafter

re-filed the suit before the commercial division. The Defendant raised two preliminary objections to the

filing of the suit. First, it claimed that the Plaintiff had failed to pay the costs ordered before the general

division. Secondly, it alleged that the plaint was defective as its verification clause did not mention the

particular principal officer who had verified it, contrary to Order XXVIII Rule 1 of the Civil Procedure

Code, and that the word “belief” had been used without stating the grounds of that belief, contrary to

Order VI Rule 15. In reply, the Plaintiff argued that the words “on terms” in the ruling did not mean

“subject to” and that, in any case, it had not yet been served with a bill of costs. It also claimed that Order

VI permitted either the party to the suit himself or a person familiar with the facts to verify the pleadings.

The Plaintiff conceded that it had made an error in using the words “and belief” and called upon the court

to expunge the offending words under section 97 of the Civil Procedure Code.

**Held** – The use of the words “on terms” simply meant that the Plaintiff had been condemned to pay costs

before the general division. It was not the setting up of a condition precedent by the court which would

be a blatant violation of the Rules governing the filing of suits in the commercial division.

Order XXVIII, Rule 1 provided that the secretary or any director or other principal officer of a

corporation could sign and verify a pleading on behalf of the corporation. Order VI, Rule 15 on the other

hand, provided that pleadings had to be signed by either the party himself or some other person

acquainted with the facts of the suit. When read together, there was nothing in the Code that required a

principal officer to specify who he was and, in this instance, the requirements of the Rules had been

complied with; *Lissu v Gulf Air Co* HCCC No 279 of 1999 doubted. Section 97 of the Civil Procedure

Code provided that a court could amend any defect or error in any proceeding in a suit. As both parties

were agreed that there were no grounds to support the use of “and belief” in the plaint and its use had

been no more than a procedural error, the court was entitled to use its powers to order that the words be

struck out. The Defendant’s argument that the section was not applicable, as proceedings had not

commenced, was untenable since proceedings in a matter commenced as soon as the suit was filed. The

objections would therefore be dismissed.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Lissu v Gulf Air Co* HCCC number 279 of 1999 – **D**

*Mutungi v University of Dar-es-Salaam and others* civil application number 17 of 1994

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