

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL CASE NO. 20 OF 2012

RAMADHAN MBWANA.....PLAINTIFF

VERSUS

1. TANROADS.....1ST DEFENDANT

2. THE HON. ATTORNEY GENERAL.....2ND DEFENDANT

JUDGMENT

21 Dec. 2017 &. 20 Feb. 2018

DYANSOBERA, J:

The Plaintiff's claims against the two defendants are the following:

- a) Immediate and unconditional release of the two motor vehicles with Reg. No. T. 283 AWJ and T.356 AWJ
- b) Payment of a total sum of USD 64,000 as a result of breach of contract with GASHIVA COMPANY LTD
- c) Payment of USD 32,000 per month from date of retain
- d) General damages not less than 200,000,000/=

e) Interests on (b) and (c)

f) Costs of the suit.

According to the pleadings, on 11th day of December, 2010 the plaintiff's drivers/agents, acting within the normal course of their employment with the plaintiff and while driving the plaintiff's trucks Reg. No. T. 283 AWJ and T. 356 AWJ heading for Kigali, Rwanda so as to deliver fertilizers worth USD 64,000 to the plaintiff's client one KASHIVA COMPANY LTD of Rwanda, the said vehicles were stopped and detained by agents of the 1st defendant at Mikese, Morogoro on account that they had absconded the said weighbridge on 5th day of December, 2010.

The defendants jointly deny the claims putting the plaintiff to strict proof. It is their contention in the written statement of defence that they can only release the said trucks upon the plaintiff's payment of USD 2000 and an addition sum of USD 20.00 times the number of days the defendants had stored the motor vehicles until the date of filing this suit. Further, that the impounding and detaining was legally justified as there was "abscondment" of two bridges of Kihonda and Mikese.

The pleadings have raised four issues, namely:

1. Whether the plaintiff absconded the two weigh bridges
2. Whether or not the plaintiff paid the amount required.
3. Whether the said motor vehicle and its trailer were lawfully impounded and retained.
4. To what reliefs are the parties entitled.

At the hearing of this suit, the plaintiff was represented by Messrs Mussa Kiobya and Taslima, learned advocates while the two defendants were represented by Ms Grina Aden, learned State Attorney assisted by Mr. Luca Shishila, the 1st defendant's legal officer.

Two witnesses, namely Ramadhan Mbwana (PW 1) and Hezekia Mwankenja (PW 2) testified in support of the plaintiff's case while Thomas Lawrence Mabondo, was the sole witness who testified for the defendants.

In support of the plaintiff's case, PW 1 testified as follows. He is a business man herein Dar es salaam dealing with transportation of cargoes/goods. He owns a truck with Reg. No. T.283 AWJ and its trailer. He bought it from Ernest Rugaimukamu. As to how the motor vehicle was impounded

and retained, PW 1 said that the journey started at Kurasini and the driver was Ramadhan Said. At Kibaha weigh bridge, it was weighed and found with no problem as evidenced by an extract receipt dated 10.12.2010 (Exh. P. 1). At Mikese Weigh Bridge, the motor vehicle weighed but the driver was told to put it at the yard and he did so but notified PW 1 that the boss at the Weigh bridge one Mabondo was demanding Tshs. 250,000/= as a bribe. PW 1 communicated with him and was told that the motor vehicle had absconded the Mikese Weigh Bridge. PW 1 refused to release the money but was later told that the driver had been fined USD 2000 as evidenced by the Weigh bridge Report Form (Exh. P.2). PW 1 reported to the Headquarters that the said officer was demanding bribe from him and he was referred to the General Manager at Morogoro who advised him to reduce the complaint in writing and he did so vide a request to revisit the issue of Truck No. T. 283/T.356 AWJ (Id. 1). That notwithstanding, PW 1 was advised to pay as as it was a Government Receipt. The Headquarters advised him to pay under protest and he did pay USD 2000 in writing (Exh. P. 3 and 4, respectively). After payment, PW 1 gave the receipt

to the driver to proceed with the journey but the motor vehicle was not released on the ground that it had absconded at Kihonda Weigh Bridge. This was to PW 1's surprise as the motor vehicle had not yet reached the said Weigh bridge station. His further follow up ended up in being told that his motor vehicle had absconded. Consequently, another receipt was issued whereby PW 1 was required to pay USD 2000. As the motor vehicle was not released, the goods were offloaded and put in another truck and this led the Gashiva Company Ltd to rescind the contract (Exh. P.5). As the motor vehicle was not released, PW 1 had either to pay or come to court. He then consulted a lawyer who wrote a 90 days' notice to the 2nd defendant (Exh. P. 7) and then instituted this suit.

On cross-examination, PW 1 told the court that he had a transport licence but which at that time was in his office. According to him, the motor vehicle was impounded only four months after he had bought it. As to how he came to know what had happened between the TANROADS authority and the driver, PW 1 explained that it was through his driver one Ramadhan Said. As to the action he took against the officer who

demanded him the bribe, PW 1 said that he reported the incident to the Prevention and Combating Corruption Bureau but was told that since he had not given him the money, then they could not apprehend him.

As to why PW 1 paid knowing that he was not at fault, he explained that he did so because he was intending to collect the motor vehicle which had the luggage belonging to another person and he paid under protest believing that he would be refunded as he had the documents.

PW 1 maintained that there was no law breached and the motor vehicle did not abscond the Weigh Bridge. He insisted that what was transpiring between the driver and the Weigh Bridge officers, he was communicating with the driver and at the same time making a follow up.

Supporting the evidence of PW 1, PW 2 who was employed by Gashiva Company Limited as operations manager told the court that the company happened to enter into contract with the plaintiff with a view of transporting fertilisers from Dar es Salaam to Kigali, Rwanda. He said that the plaintiff was to carry 400 tonnes for USD 1660 each and that the value of the

contracted amount was USD 64,000. The plaintiff then started loading 33 tonnes of fertilisers and transported it to Kigali but the cargo did not reach the destination as it was impounded and detained at Mikese Weigh Bridge. The company confirmed that the motor vehicle had been impounded and retained at the yard and PW 1 owed the 1st defendant USD 2000 the reason being that the motor vehicle had not been subjected to the weigh bridge. The company therefore paid USD to PW 1 who, by the time, had no money with a view that the motor vehicle be released and the cargo be transported to its destination. As the 1st defendant was reluctant to release the motor vehicle, the company looked for another transport and offloaded the cargo which resulted into nullification of the contract between them and the plaintiff. PW 2 wrote and issued Exh. P.5.

Upon cross-examination, PW 2 said that the tender for transporting fertiliser to Rwanda was issued by the Ministry of Agriculture of Rwanda. He told the court that the company Manager one George Makoye went to the locus in quo and he (PW 2) attended the offloading of the fertiliser. PW 2 could not

tell whether or not the motor vehicle absconded the weigh bridge.

The defence evidence was to the following effect. DW 1 works with TANROADS, Morogoro Region as a weighing bridge supervisor. He told this court that the plaintiff's motor vehicle failed to weigh at Kihonda and Mikese Weighing Bridges on 5th December, 2010. He explained that usually, any motor vehicle weighing 3.5 tonnes or more whether with loads or not must weigh at the Weigh bridges. According to him, they found the driver at Msamvu and asked him to go back to Kihonda to follow the procedure. The driver refused to comply but proceeded with the journey. The officer at Kihonda Weigh bridge communicated with Mikese Weigh bridge and asked DW 1 to impound the motor vehicle. Efforts to communicate with traffic police officers at the check point were made in order to prevent the motor vehicle from escaping. The motor vehicle Reg. No. T. 283 AWJ with its trailer T. 356 was stopped. When DW 1 wanted to obtain the particulars through the card, the driver told him that the card was with the traffic officers at Singida. The driver failed to

provide any proof, instead he drove away speedily. The efforts to run after it proved futile and an RB was opened and a report made to 1st defendant. Regional Managers of all TANROADS were notified so that they impounded the motor vehicle for having absconded the weigh bridges of Kihonda and Mikese. On 11.12.2010 at 1100hrs the motor vehicle was seen coming from Dar es Salaam and had a cargo of fertilisers. It weighed and found with no problem as it had the required weight. It was, however, impounded as it had absconded the weigh bridges of Kihonda and Mikese on 5th day of December, 2010. The driver, when interrogated, denied to have been driving the motor vehicle that day claiming that it was his boss. DW 1 decided to charge the driver USD 4000 that is USD 2000 at Kihonda and USD 2000 at Mikese. The plaintiff paid Tshs. 2, 730,000 plus yarding fees hence making a total of Tshs. 3,320,000/.

This court was told that the grace period is three days and after which there must be paid USD 20 per day. It was DW 1's further evidence that PW 1 wanted the motor vehicle to be released and offered Tshs. 1,000,000/= which amount DW 1 was requested to accept otherwise, PW 1 could contact, Dr.

Magufuli, the then Minister for Works and Infrastructure. PW 1 was advised to pay. A report was made to the police but no follow up was made as PW 1 complained to the Inspector General of Police and a decision was made. It is said that PW 1 was required to pay USD 4000 but the cheque bounced. The plaintiff had to pay USD 4000 following a demand letter dated 24.12.2010 (Exh. D. 1). He did not pay and the motor vehicle was not released. There were measures taken to inquire into the ownership of the motor vehicle as evidenced by Exh. D.2.

It is the defendants' further evidence that according to the laws, the retention subsists for ninety days only after which the item is auctioned. This court was told that the motor vehicle in question has not been auctioned as there was intervention by the police, PCCB and the court which after an order for the release upon payment, there was no release and the payments by way of cheque bounced.

In his being cross-examined, DW 1 told the court that absconding means using the same zone/route but failing to weigh while bypassing is evading to weigh using another route. DW 1 admitted that he did not report to the PCCB on the PW

1's attempt to offer Tshs. 1,000,000 as a bribe arguing that he did not see any reason for so doing. He also admitted to have not seen that bounced cheque. DW 1 maintained that though the wrong was committed on 5th December, 2010, the documents indicate the date of 11.12.2010 when the motor vehicle was impounded.

In their final submissions, learned counsel for the plaintiff and learned State Attorney almost reiterated what the witnesses on either sides had testified. I have given deserving consideration to those submissions. I now consider the issues framed vis-a-vis the evidence unfurled before me.

As far as the first issue is concerned, that is, whether the plaintiff absconded the two weigh bridges, the evidence is clear that the plaintiff was required to pay absconding fees in respect of Mikese Weigh Bridge and actually paid it as evidenced by Exhibits P 2 and P 3. This evidence was supported by the defence witness one Thomas Lawrence Mabondo, a weigh bridge supervisor who impounded the motor vehicle at Mikese. PW 2 was also clear on this when he stated that the company decided to nullify the contract because the motor vehicle which was

transporting the fertiliser to Rwanda was impounded and retained at Mikese on account that it had failed to subject itself to the way bridge at Mikese. Indeed his evidence was supported by Exhibit P. 5 which is to the effect that "...tunakujulisha kuwa kwa ajili ya matatizo uliyokumbana nayo kuhusu Ndugu wa MIZANI MIKESE..."

As to the absconding the second weigh bridge, that is Kihonda, there is no cogent evidence to establish, leave alone, prove that the plaintiff absconded that weigh bridge station, that he was required to pay the absconding fees and failed to do so. The evidence is silent on who was in charge of the Kihonda weigh bridge station on that material day, i.e.5.12.2010. He was not called in court to testify and no reasons were given for the failure to call him. Besides, there was no documentary evidence such as weigh bridge report form to establish that the plaintiff by-passed or absconded the Kihonda weighbridge, that he was required to pay absconding fees and failed. The allegations that the plaintiff absconded the Kihonda Weigh Bridge is, to say the least, an afterthought. Furthermore, the statement under subparagraph (a) of paragraph 9 of the joint written statement of

defence that That on 05th December, 2010 the vehicle under dispute, while *being driven by the plaintiff, speedy by-passed the Kihonda weigh station and the plaintiff threatened to hit a **weigh bridge officer** with an iron bar* when the latter attempted to stop him at Msamvu area, Morogoro region was an empty statement aimed at embellishing the defence case, otherwise such weigh bridge officer who was allegedly threatened by the plaintiff with an iron bar would have been called to testify in support of the allegations.

The first issue is answered in the affirmative to the effect that the plaintiff is proved to have absconded only one weighbridge that is at Mikese.

The second issue for consideration is whether or not the plaintiff paid the amount required. It was amply proved that the plaintiff was required to pay Tshs. 2,930,000/= as absconding fees. This is clear from the plaintiff's evidence supported by the evidence of PW 2 and evidenced by the Weigh Bridge Report Form (Exh. P 2). There is no dispute that the plaintiff paid Tshs. 3,232,000/= as absconding fees and parking charges vide Official Receipt No. 29329 dated 24.12.2010 (Exh. P. 4). This

payment was, I think, in compliance with the provisions of Regulation 13 (3) of the Road Traffic (Maximum Weight of Vehicles) Regulations, GN. No. 30 of 2001 published on 9.2.2001. It was the plaintiff's case that the amount was paid under protest so that the retained motor vehicle was released. There is no any other document showing that the plaintiff had other outstanding amount to pay. The second issue is affirmatively answered.

Regarding the third issue, it is true that the plaintiff was under the said Regulations duty bound to abide by the law, particularly regulation 3 (1) and the defendants had to employ regulation 13 (3) and (4) of the said Regulations. However, the application of such law was subject to plaintiff having committed an offence proved in law by evidence. The plaintiff, it is clear, discharged his obligation. Likewise, it is true that the said motor vehicle and its trailer were lawfully impounded and retained at the time it was stopped at Mikese on 11th day of December, 2010 but since the plaintiff had paid the required fees and charges as the 1st defendant demanded and the law required, the further retention of the motor vehicle was, in the

circumstances, unlawful commencing as from 25th day of December, 2010.

Lastly, there is the fourth issue that is reliefs to which parties are entitled. In view of the findings I have made hereinabove when discussing the first three issues, the following is the fourth issue is resolve as follows. As to the claim for payment of USD 64,000 arising from breach of contract with GASHIVA COMPANY LTD and the plaintiff, it was amply proved in evidence that there was a contract between the plaintiff and GASHIVA COMPANY LTD for transportation of fertiliser from Tanzania to Kigali, Rwanda. The existence of the contract between these two contracting parties was proved by PW 1 and PW 2. Although no written contract was produced in evidence, there was no dispute that the motor vehicle in question was impounded and retained by the 1st defendant while carrying the said fertiliser. There is no dispute that the said fertiliser did not reach its destination by using contracted plaintiff's motor vehicles as it was offloaded at Mikese. The fact that the contract between the plaintiff and GASHIVA COMPANY LTD was rescinded after the plaintiff's failure to discharge his obligation

was proved not only by the evidence of PW 1 and PW 2 but also evidenced by Exhibit P 5. It was amply proved in evidence that neither the fertiliser cargo nor the motor vehicle carrying the fertiliser nor even the driver was at fault on 10th December, 2010 when the motor vehicle together with fertiliser cargo were impounded and retained by the 1st defendant at Mikese. I find no nexus between the offence allegedly committed on 5th December, 2010 and the fertiliser cargo which was impounded and retained on 10th December, 2010. The 1st defendant was, therefore, in all respects and for no any legal justification, the author of the rescission of the contract between the two contracting parties. She is liable in damages.

As to the loss of USD16, 000 per truck per month, there was no proof of that claim. This is so because, such claim being specific damages was not specifically pleaded and strictly proved.

Coming to the claim for general damages, having considered the circumstances of the case, I am satisfied that a claim of Tshs. 100, 000,000/= only as general damages can be sustained. The court has a discretion to make such an award.

In the final analysis, judgment is entered for the plaintiff against the defendants as follows:

1. Immediate and unconditional release of the plaintiff's motor vehicle Reg. Nos. T. 283 AWJ and T.356 AWJ.
2. Payment of USD 64,000 or its equivalent in Tanzanian shillings being damages for breach of the contract that existed between the plaintiff and GASHIVA COMPANY LTD.
3. Payment of Tshs. 100,000,000/= as general damages
4. Interest at 7% court's rate from the time of judgment till final payment.
5. Costs of the suit


W. P. Dyansobera

JUDGE

20.2.2018

Delivered this 20th day of February, 2018 in the presence of Mr. Mussa Kioby, learned counsel for the plaintiff and Mr. Charles Mtae, learned State Attorney for the defendants.


W. P. Dyansobera

JUDGE