

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

CIVIL CASE NO. 23 OF 2019

KARIBU AFRICA SAFARIS LIMITED..... PLAINTIFF

VERSUS

OSCAR GASTON SYBESMA..... DEFENDANTS

EXPARTE JUDGMENT

7/8/2020 & 19/11/2020

GWAE, J

The Plaintiff, Karibu Africa Safaris Limited instituted a suit against the defendant, Oscar Gaston Sybesma, a Netherlands national. Through her plaint, the plaintiff claims that, the defendant who was among her three directors was dealing with marketing and promotion that is looking for European tourist clients in favour of the plaintiff but he had been depositing the money that he received from the clients into his personal accounts (Ac/ES4421039855372003100280) and ES1621003985540700088341 in Spain) without approval and authorization of the Board of Directors making a total of USD 3, 418, 801.

The plaintiff further claims that, the defendant had been a director holding 350 shares since October 2001 with his co-directors namely; Hassani Bakari Msanga ,a Tanzania national who holds 450 shares and Thomas Maliombe Minja holding 200 shares till 16th July 2017 when he voluntarily resigned vide his e-mail. That, despite the plaintiff repeated issued demand letters to the defendant requesting him to remit the money but defendant never remitted as requested. Eventually the defendant was arrested by the Immigration Department at Arusha where his travel documents were withheld but he subsequently moved out of the country in April 2017.

In view of the above claims, the plaintiff is now before this court praying for judgment and decree be entered against the defendant as follows;

- (i) An order of payment of USD 3,418 801 by the defendant
- (ii) An order for issuance of the defendant's personal bank statements of the accounts mentioned
- (iii) Interest on the decretal sum from 23rd March 2015 at the commercial rate of 31 % per year till the date of judgment and interest of court rate to wit 12 % on the whole decretal amount from the date of judgment till payment is made in full
- (iv) General damages to be assessed by the court
- (v) Costs of the suit

- (vi) Any other or further reliefs as may be deemed by the court fit to grant

The defendant has not been able to enter his appearance before this court despite the plaintiff's proof of service by way of substituted service that is by way of publication through "Daily News and Habari Leo" dated 12th day of December 2019 and 12TH February 2020 respectively nor did he file his written statement of defence. Following non-appearance on the part of the defendant, this matter was consequently proceeded ex-parte.

During trial of the suit, the plaintiff was being represented by Mr. Matuba, Mr. Nyirembe and Mr. Julius Kesy, the learned advocates

In proving her case, the plaintiff has been able to bring two witnesses to wit, Thomas Maliombe (PW1) and Hassani Bakari Msanga (PW2) and a total of eight exhibits were tendered and admitted by the court for evidential value, namely; Memorandum and Article of Association (PE1), invoices and operating costs from June 2010 to May 2017 **(PE2)**, an e-mail with attachments from Kras establishing that the defendant had been paid through his personal accounts **(PE3)**, a demand letter dated 5th September 2016 addressed to the defendant **(PE4)**, defendant's resignation letter dated **(PE5)**, another plaintiff's demand letter dated 5th April 2017 **(PE6)**, a letter written by the remaining plaintiff's

director addressed to the Immigration Office at Arusha dated 8th May 2019 (PE7) and special resolution dated 24th April 2019 (PE8).

The plaintiff's witnesses together with the documents aforementioned reiterated what is claimed in the plaint adding that despite demand letters the defendant did not remit the amount of money fraudulently transferred into his accounts instead of the plaintiff's account.

Having briefly explained the substance of the plaintiff's case and oral evidence adduced by her witnesses as well as the documentary evidence in brief, it is now the duty of the court to evaluate the evidence of the plaintiff, if it meets the required standard of proof to justify this court to grant the reliefs sought herein above. Section 110 of Tanzania Evidence Act, Cap 6 Revised Edition, 2002 provides for an obligation on a party who alleges existence of certain facts to prove such facts, for the sake of clarity the same is hereby quoted:

"110 (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist".

In Civil cases a standard of proof is at the balance of probabilities as it has been consistently demonstrated by our courts for instance in the case of

Manager, NBC, Tarime v. Enock m. Chacha (1993) TLR 228, it was judicially demonstrated that;

“It is a cardinal principal of law that in civil cases there must be proof on the balance of the probabilities. In this case, it cannot be said that the scanty evidence adduced in this Court proves in any way what is alleged in the plaint. There must be proof of the case on the standard by law which is on the balance of the probabilities even when a case proceeds ex-parte like in this case. . . .”

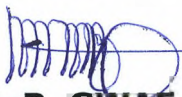
In our suit, it is my considered view that, the plaintiff has increasingly and evidently established through both oral and documentary evidence that, the defendant being the plaintiff’s director was the one who was responsible in marketing and promotion of the plaintiff’s business and that from the invoices tendered and e-mail from one of the plaintiff’s client, Kras (PE3). It is sufficiently established that the defendant had received the plaintiff’s money through his personal accounts and when required to remit the same he did not comply with the plaintiff’s repeated demands

In the light of the evidence on record so far adduced by the plaintiff and taking into account that there is no evidence contrary to that of the plaintiff, I am therefore not justified to decline granting the reliefs sought by the plaintiff. I


therefore enter judgment and decree in favour of the Plaintiff by making the following orders'

1. That, the plaintiff is entitled to payment of USD 3,418 801 by the defendant
2. An order directing issuance of the defendant's personal bank statements of the accounts(Ac/ES4421039855372003100280) and ES1621003985540700088341 in Spain is issued
3. Interest on the decretal sum from 23rd March 2015 at the commercial rate of 15 % per year till the date of this judgment and interest of court rate to wit 7 % on the whole decretal amount from the date of judgment till satisfaction of the decree in full
4. Costs of the suit

It is so ordered


M. R. GWAE
JUDGE
19/11/2020

Court: Remedy for any aggrieved party including, an appeal, right to set aside this ex-parte judgment or any other available remedy are available



M. R. GWAE
JUDGE
19/11/2020