

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

AT DAR ES SALAAM

CIVIL CASE NO. 184 OF 2015

SPLENDORS CONTROL LTD.....PLAINTIFF

VERSUS

BUCO INVESTMENT HOLDINGS Co. LTD.....DEFENDANT

JUDGMENT

Splendors Control LTD (plaintiff) is suing BUCO Investment Holdings Co. LTD (defendant) for a claim of breach of lease agreement in respect of warehouse at Lindi for storage of cashewnuts. The plaintiff pleaded a sum of Tsh 180,000,000/= as general damages; Tsh 310,000,000 as special damages; interest of 7% on the decretal sum; costs and any other relief this Court deems just and equitable to grant. In opposition to the plaintiff's claim, the defendant made a counter claim citing breach of a lease agreement on the part of the plaintiff. The defendant pleaded payment of 329,163,921.91 being special damages with interest of 18% from the date of expiration of lease agreement; general damages a sum of Tsh 200,000,000; interest of 7% on the decretal sum; costs and any other relief the Court may deem just to grant.

Issues framed at the commencement of hearing: one, whether there was an extension of a lease agreement; two, if the first issue is answered in either way, whether there was breach of that lease agreement by either party; three, what reliefs are the parties entitled.

This matter was staged for judgment after the defendant had failed to tender their defence and prosecute their counter claim to its finality.

Mr. Japhet Muro learned advocate appeared for the plaintiff. The defendant was represented by Mr. Emmanuel Msengezi learned Counsel.

Regarding the first issue, it cannot detain me much. It was the testimony of the plaintiff that after they had executed a lease agreement exhibit P1 or exhibit D1, which was for a period of six months for cashewnuts season 2014/2015 and before expiry of that lease agreement, he wrote a letter dated 18/8/2014 exhibit P2 or exhibit D2, for extension of a lease agreement for a further period of three consecutive seasons to wit 2015/16 up to 2017/18. That the defendant had accepted the said extension via a letter dated 25/8/2014 exhibit P3 or exhibit D3. On defence DW1 explained that a request by the plaintiff for extension of a lease agreement for three seasons, principally was accepted. It was the contention of the defendant (DW1) that acceptance was subject to the plaintiff's committed to change

the weighing scale balance from old model of manual to a digital scale; two, if the defendant resume operation of processing raw cashew nut the ware house will be converted to a godown.

It is true that according to a letter exhibit P3 or exhibit D3, a condition precedent for an acceptance of an extension of warehouse lease agreement for a further period of three consecutive seasons was subject to change of use from warehouse to godown when the defendant resume operation of processing raw cashewnut. That is to say if that change would had occurred the same could be an automatic termination in respect of an extension. Two, the plaintiff ought to change the weighing bridge from old system of manual (dally) to a modern digital one. Actually this condition formed the bases of this dispute. This is because the defendant complained that the plaintiff snubbed contractor proposed by the defendant, styled Modern Weighing Equipments Installation and Services, instead the plaintiff contracted a contractor of his own choice, who installed substandard weighing bridge as a result arose complaint from customers, lamenting to have been swindled by the plaintiff through cheating on the weighing scale,, causing them to sustain loss, including Ms. Export Trading Co. Ltd (exhibit D4). The alleged Ms. Export Trading Co. Ltd was alleged to had sustained a loss of Tsh. 22,742,429.00 being an amount which was

approved by Tanzania Warehouse Licensing Board, reflected in exhibit P6). Seemingly the plaintiff had acknowledged that query and deposited an advance of Tsh 5,000,000.00 with Export Trading Co. Ltd, on which he was allowed by Tanzania Warehouse Licensing Board to proceed with warehouse licensing processes, via a letter exhibit. P6. As such the act of the defendant to refusal or decline to renew the lease agreement after had accepted an extension of three consecutive seasons, for reason that the weighing bridge was not functioning, mounted to a breach of contract, as was based on invalid reasons. This is because a ban imposed by the Regional Administrative Secretary, prohibiting Tanzania Warehouse Licensing Board issuing licence for warehouse services to the plaintiff, was uplifted by the said Tanzania Warehouse Licensing Board as aforestated.

It suffices to say that indeed there was an extension of warehouse lease agreement to a further period of three consecutive seasons which was later breached by the defendant.

With reference to reliefs parties entitled. The plaintiff had pleaded a sum of Tsh 310,000,000 as specific damages. In evidence, the plaintiff stated that he purchased a weighing bridge from Ms. Sahel Trading Co. Limited as per proforma invoice part of exhibit P4 collective, where he paid a sum of Tsh

4,500,000 as per receipts part of exhibit P4 collective. The plaintiff also stated to had paid a sum of Tsh 3,500,000 for hiring a truck from Ndago General Enterprises Ltd to transport weighing bridge and stone scales from Dar es Salaam to Lindi and Lindi to Mtwara, as per receipt exhibit P5. The plaintiff also stated that from the lease agreement he received an income more than 120,000,000/= and for operating three seasons consecutively profit could be Tsh 150,000,000. However, these figures were not strictly proved as required by law. PW1 was merely alleging. Apart from oral assertion by PW1 there was no tangible evidence, or plausible explanation on how the alleged receiving or the would be prospective profit could be generated. In absence of persuasive argument presented to establish a claim, mere anecdote tale by PW1 that he is experienced in this area (business) or that it is easy to project profit, as put during cross examination, cannot be entertained. More important in business there is no such kind of an animal called receiving a token amount of money, an alarming sum of Tsh 120,000,000 without justification or tenable explanation. In this regard, a sum of Tsh 120,000,000 and 150,000,000 succumb for want of strict proof.

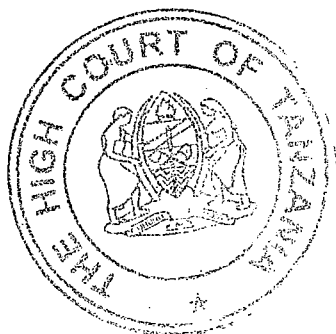
The plaintiff had also pleaded a sum of Tsh 180,000,000/= as general damages. It is elementary knowledge that general damages are discretion

of the court, a party to a suit pleading general damages need not to estimate a specific figure of an amount payable as per his/her whim. As the award ultimately depend solely on the discretion of the court. The situation herein where the defendant has been held liable for breach of a lease agreement, the plaintiff could be entitled to general damages. However, an amount chosen by the plaintiff is on the higher side. Given that the plaintiff was contributory to this fracas, as evidenced by his confession to mitigate the loss incurred by Ms. Export Trading Co. Ltd which was said to have been attributed by the weighing scale, where the plaintiff remedied by paying an advance of Tsh 5,000,000. I therefore award an amount of Tsh 30,000,000/= which suffice to meet the end of justice in this matter. My undertaking is grounded on the universal principle that no one can be permitted to take advantage or benefit of his own wrong.

Therefore, the plaintiff is entitled to a specific damages a sum of Tsh. 8,000,000/= and general damages Tsh 30,000,000/=.

The defendant having being condemned to be an author of the breach of the warehouse lease agreement, in law is not entitled to any redress. Therefore, her counter claim is dismissed.

A main suit is granted to the extent explained above, with costs.




E.B. Luvanda
Judge
11/12/2020