

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

AT DAR ES SALAAM

CIVIL CASE NO. 141 OF 2018

BROOKLYN MEDIA (T) LTD.....PLAINTIFF
VERSUS

TANZANIA NATIONAL ROADS AGENCY
(TANROADS) DAR ES SALAAM.....1ST DEFENDANT
THE HONORABLE ATTORNEY GENERAL.....2ND DEFENDANT

JUDGMENT

23/06/2021 & 29/06/2021

E. B. LUVANDA, J.

The plaintiff above mentioned is suing the defendants mentioned above for a declaration that a notice dated 9th February 2018 issued by the first defendant to remove the billboard installed at Sellander Bridge Club Ltd plot is illegal; the first defendant, its agents, workmen, servants, assignee and or whoever is acting on its behalf be permanently restrained from harassing, embarrassing, disturbing and or causing unnecessary inconveniences to the plaintiff while dealing with its advertising business on the billboard located at Sellander Bridge Club Ltd plot; the first defendant be ordered to equally apply, without discrimination the Road Use Regulations to all advertising companies, firms and or individuals; the first defendant be condemned to pay USD 18,000 per month being loss of the expected income from the prospective longtime advertising customers counting from 9/2/2018 to the date of judgment; general damages; cost of the suit and any other relief the court may deem fit to grant.

The plaintiff is represented by Mr. Francis Mgare learned Counsel, Mr Biabato Justinian learned Advocate and Mr. Xzavery Ndalaha learned State Attorney appeared for the defendants.

Issues for determination: one, whether the disputed billboard is installed with a valid permit issued by relevant authority; two, whether there are other billboards installed within hundred meters radius at a place where the disputed billboard is installed; three, whether the disputed billboard was installed outside the radius of hundred meters as required by the law; four, to what reliefs are the parties entitled.

The first issue is whether the disputed billboard is installed with a valid permit issued by relevant authority. It was the evidence of Yusuph Washokela (PW1) that he sought and obtained all permits from Ilala Municipal Council for erecting the digital billboard at Sellander Bridge Club Plot No. 309A and 3010A situated at the junction of Ali Hassan Mwinyi Road and United Nations Roads. PW1 tendered lease agreement for the year 2016 and 2013 exhibit P1 and P2 respectively, notification for change of billboard exhibit P3 and permit to upgrade the billboard to digital billboard exhibit P4. It was the contention of PW1 that after upgrading the billboard from analog to digital as per the permit exhibit P4, they received a letter from TANROADS exhibit P5, to remove the same on explanation that it was installed on the road reserve. According to PW1, Ilala Municipal had power to issue permit to billboards on private areas. PW1 stated that the billboard is installed inside beacons of the plot and not on the road reserve. That in the list of billboards installed on road reserve which was issued by TANROADS via letters exhibit P6(a) and P6(b), the impugned billboard was not included. On defence, Siamtemi Amosi Msafiri (DW1) stated that the billboard on dispute was

installed in 2018, as such could not be reflected in exhibit P6(a) and P6(b). Indeed, an application/notification for change of billboard exhibit P3 is dated 24/1/2018 and a permit from Ilala Municipal Council exhibit P4 is dated 23/2/2018. As such an argument by the plaintiff that the disputed billboard was not among the billboards which the defendant had queried to be on road reserve via exhibit P6(a) and P6(b) is unmerited, because exhibit P6(a) is dated 8/6/2015 and exhibit P6(b) is dated 27/7/2015 which by and large is far from when the cause of action is said to have arisen following installation of the disputed billboard in 2018. There was a counter argument from DW1 that a list attached to exhibit P6(b) was submitted by the plaintiff, but this fact was disputed by the plaintiff. It is true that exhibit P6(b) makes reference to some letters drafted by the plaintiff, but there is no tangible proof to a fact that the source of that list emanated from the plaintiff.

Regarding an argument that the billboard is erected on private plot, DW1 conceded to this fact, but added that the billboard encroaches road reserve. It was further stated by DW1 that, previously half beam of a foundation for the disputed billboard was erected inside an area of Sellander Club and half foundation is on the road reserve, and a pole of the billboard was visible from outside a fence made by corrugated iron sheet, but later after a dispute arose, the fence was adjusted to enclose the beam and pole of the billboard to look like it is inside the plot while it is outside the boundary of a plot. DW1 added that the structure of the billboard itself overhangs the road reserve and a trench by 4.2 meters. DW1 contended that in view of that, the plaintiff ought to have obtained a permit from TANROAD as well. Engineer Justine Peter (PW2), who is a Municipal Civil Engineer at Ilala Municipal, was honest that he cannot say or comment anything as an engineer, as to whether the

billboard protruded on road reserve until when the Municipal Surveyor establish if at all has encroached road reserve and to what extent. PW2 stated that if a billboard is installed partly on road reserve and partly on private road, one must obtain permit from both Municipal Council and TANROAD. On cross examination by the learned State Attorney, PW2 stated that he did not conduct an official inspection on the disputed billboard, neither participated in erecting it as Municipal Council is not concerned and he don't know its dimension and there is no report of Municipal Surveyor regarding the disputed billboard. According to PW2 he saw it when he was merely passing. At a certain point during cross examination, PW2 stated that the bill board is on the road reserve. PW2 stated that he is responsible for inspecting permits for construction of buildings and not billboards. Frankly speaking, the evidence of PW2 was not much useful or helpful to the plaintiff's case. As per recap above, PW2 know nothing about the disputed billboard apart from seeing by eyes the said billboard and without much concentration as it appears he used to see it when passing over there. PW2 did not conduct an inspection let alone to visit officially at the locus in quo. The only useful hint which I will take, is his (PW2) advice that the proper person to explain if the billboard protrude on road reserve is the Municipal Surveyor. The duty to summon the Municipal Surveyor lies on the plaintiff who alleged that the billboard is inside a private plot. An argument by PW1 that a lease agreement suffices to establish that the billboard is installed within the private plot of Sellander Club Bridge, is wanting. I understand that DW1 is not a professional Surveyor or Engineer rather Anthropologist, but still he explained that when a team of four Engineers from TANROADS measured the billboard, he participated and observed clearly for purpose of

keeping proper records. I therefore take the testimony by DW1 as a correct position, that the impugned billboard encroach and overhang the road reserve and trench by 4.2 meters; two, an animated billboard is within hundred meters radius which is prohibited and finally that the foundation and pole is outside beacons of plot No. 309A and 310A. My undertaking is premised on the ground that those facts depicted above, to wit dimension of encroachment and overhang by 4.2 meters, adjustment of the fence (made by iron sheet) to enclose the beam and pole of the billboard to look like is inside the plot while is outside the boundary of a plot, including a fact that a trench is outside beacons of plot No. 309A and 310A, were not cross examined neither discredited. Actually, I wonder as to why the plaintiff did not indulge or call for a joint verification of the disputed billboard, prior dashing to court for redress.

The plaintiff also made reference to other billboards elsewhere owned by other companies, that they are installed on road reserve but the defendant is pestering the plaintiff alone because of biasness. But on cross examination, DW1 demonstrated on how he comprehends with the mentioned billboards: that at the junction of Sellander Bridge there is only one company of Brooklyn Media; at the junction of Nyerere Road and Chang'ombe a digital billboard is owned by Ms A 1 Outdoor and is situated hundred meters from the center line of Chang'ombe junction; at Kamata road apart from Brooklyn there was a billboard of Ashton Media which was removed in 2018/2019 because of a project of BRT; a billboard of JC Decaux Tanzania at traffic lights at the junction of Morogoro Road and Bibi Titi road was erected within a radius of 50 meters, the owner asked for verification by TANROADS although had a permit from Ilala Municipal Council, they measured and found it is inside a

plot of the owner of Shopping Mall; a billboard of A 1 Outdoor at Bibi Titi and Uhuru Mnazi Mmoja traffic is outside 50 meters and is erected on the plot of Mnazi Mmoja which is owned by the government. As such reference to those billboard was unnecessary and without base. Actually the imputed biasness on the part of the defendant, was unjustifiable and unwarranted. It was expected for the plaintiff to come out with empirical data or exhibit a report by the professional surveyor indicating how those mentioned billboards by other companies have protruded or encroached road reserve. Instead the plaintiff was merely alleging.

The findings above, take into board the second and third issues as well. That the disputed animated billboard is installed within hundred meters without a valid permit issued by relevant authority; there is no any other animated billboard owned by other company which is installed within hundred meters radius at a place where the disputed billboard is installed.....

That said, a suit by the plaintiff against the defehdants succumb for want of proof. However, given the circumstances of this matter and a statement by DW1 that the government did not incur any costs, I will not award any costs. On similar vein, a claim of USD 2,973.6 including VAT of 18% stated by DW1, cannot be entertained, as there was no counter claim in respect of it.

A suit is dismissed with no order as to costs.



E.B/ Luvanda
Judge
29/6/2021