

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL CASE NO. 72 OF 2019

CONNECT INDIA (T) CO. LIMITED.....PLAINTIFF

VERSUS

BANK OF AFRICA TANZANIA LIMITED.....DEFENDANT

JUDGMENT

Date of Last Order: 19/08/2021

Date of Judgment: 31/08/2021

E. B. LUVANDA, J.

Connect India (T) Co. Limited, plaintiff to the main is claiming against Bank of Africa Tanzania Limited the defendant to the main suit, for payment of Tsh. 500,000,000/= as specific damages for loss incurred due to cancelation of orders and the amount claimed by the buyers from the plaintiff; general damages for the loss incurred due to the consequence of the defendant's negligence; interest of 24% from the date of breach of contract to the date of judgment; interest of 12% from the date of judgment to the date of full satisfaction of the decree and costs. By way of counter claim, the plaintiff to the counter claim (defendant to the main suit) claims against the first

defendant to the counter claim (plaintiff to the main suit), Chandrasekaran Venkitaraman (second defendant-counter claim), Gudivada Narasimha Rao (third defendant-counter claim) and Home Fashions INC PVT LTD (fourth defendant-counter claim) jointly and severally to pay USD 308,884.15 being an outstanding loan amount and arrears arising from facility letter issued by the plaintiff to the first defendant and guaranteed by the 2nd, 3rd and fourth defendant-counter claim.

The plaintiff was under the service of Mr. Maiko Olotu learned Counsel & Ms. Theresia Simon learned Advocate and the defendant was represented by Mr. Peter Joseph Swai learned Advocate. The learned Counsels for both parties filed closing submission and I appreciate for their labored efforts.

Agreed issues are: one, whether the defendant has breached and/or acted negligently in executing the terms of facility letter dated 22/1/2018; two, if the first issue is in affirmative, whether the plaintiff suffered any damages; three, whether the plaintiff in counter claim are entitled to payment of the sum of USD 308,884.15 as prayed; finally, to what reliefs are the parties entitled to.

For the first issue, Chandrasekarani Venkitaraman (PW1) complained that the defendant is in breach of the facility term sheet (facility letter dated

22/1/2018 exhibit P1) for the explanation that on their part they fulfilled with all required documents which were asked by the defendant before issuing the term sheet, but after the letter of credit was received by the defendant, the later asked for further documentations on the issue of know your customer (K.Y.C) and made a condition that payment/disbursement will be made only upon submission of the sought new documents. According to PW1, among the documents sought was an affidavit of change of his name. PW1 contended that after submission of his affidavit for change of name, they requested another same affidavit in respect of other two directors who by then were stationed or located at Mtwara region, approximately 600 kilometers from Dar es Salaam, which occasioned another delay. However, the explanation by PW1 betray and defeat his complaint, as it seems there was a discrepancy of name used at the bank in comparison with the names of PW1 reflected in his passport, which bears two names. According to his explanation, PW1 stated that generally they write their name as Chandrasekarani, but his full names which was reflected in the new documents is Chandrasekarani Venkitaraman. To my view this was his own fault and the defendant is blamed for nothing. An argument or query by PW1 that the defendant had asked documents for issues of K.Y.C. after issuance

of facility term sheet exhibit P1, is unmerited. This is because, PW1 was unable to single out any clause in exhibit P1 which preclude the course taken by the defendant. Indeed, exhibit P1 was a mere letter of offer and not an approval of the facility. At page 6 of exhibit P1, third paragraph from the bottom, speak aloud, I quote for appreciation,

'This letter of offer is not intended to act as an approval of the Facility but as an indication subject to the fulfillment of the condition, warranties and submission and perfection of the security documents'

According to exhibit P1, irrevocable letters of credit was the condition precedent (security) for the grant of the loan including each drawdown for financing, as depicted at page 2 second paragraph from the top and second paragraph from the bottom. Unfortunate, the said letters of credit which PW1 said were received by the defendant, were found to be problematic, on account of discrepancy and inconsistencies of naming of PW1 and his colleague's directors as stated above. As such, issues of K.Y.C. were inevitable in the circumstances.

It was the evidence of PW1 that the cargo of 203 tones of cashewnut subject of this facility letter exhibit P1 was exported to Vietnam where it is still laying after the buyer cancelled the order due to delay. However, PW1 did not

tender any tangible evidence be it email or communication whatsoever, to substantiate that indeed the said cargo is still laying at Vietnam as alleged. PW1 did not mention as to where and who is in custody of the said cargo at Vietnam. This makes a story by PW1 to be suspect and unworthy of belief.

Other reasons adduced by PW1 which were attached to the cancellation of order were because of market and fluctuation of price, that is sudden price down as stated by PW1. It is not known if sudden price down was also attributed by delay in shipment or else other underlying cause surrounding world market.

Again on cross examination, PW1 stated that he signed the facility letter exhibit P1 on 26/1/2018, a letter of credit exhibit P2 was issued on 7/2/2018 and the deadline for shipment was 15/2/2018. When PW1 was put to task during cross examination, said it was possible to ship the goods within one week. This create doubts, because the cargo and consignment of cashewnut was to be transported from Tandahimba Mtwara to Dar es Salaam Harbour, where it could entail to undergo other procedures of clearing. PW1 stated that some truck gets stuck on the way along Mtwara Dar es Salaam highway. As such it will be unfair to condemn the defendant wholly for alleged negligence, delay and unprofessionalism. As the delay seems to have been

attributed by a chain of events, some were out of control of the defendant. This can be evidenced by the testimony of PW2 (Adrian Haidari Machagi) that from the date when the defendant told them that the cargo was already paid to the date the bank restrained them, was after elapse of almost two months. Meaning that some events happened in between. So far other delays were not accounted for, the defendant cannot be held liable solo.

On defence, Joseph Bakari Mkunje (DW1) stated that on 5/2/2018 the defendant received letter of credit from Ms. Tan AN Food Processing JSC (LAFOOCO) USD 379,260. On 7/2/2018 the plaintiff submitted an invoice from Tanecu-Tandahimba Cooperative Union. On 12/2/2018 the defendant paid USD 303,408 which was paid direct to TANECU. On the same date, the defendant issued a release order to the collateral manager for movement of the stock from CBT warehouse to the shipping line, which was complete on 24/2/2018, but the plaintiff did not submit shipping documents, until when the letter of credit expired on 15/3/2018. DW1 stated that the third disbursement was done on 23/2/2028. They received a letter of credit on 8/2/2018 from Tan AN Food Processing Expo. CO for USD 363,265. On 24/2/2018 they issued a release order to the collateral manager and on 26/2/2018 movement of stock from CBT warehouse to the shipping line of

the plaintiff started, for cashewnuts to be exported to the customer Tan AN Food Processing Expo. Co. On cross examination, DW1 stated that there was delay of seven days, but the said delay was occasioned by the plaintiff who failed to submit documents on time and also emerged issues of K.Y.C.

There was also explanation that the plaintiff was not licenced to buy and export cashewnuts. To his (PW1) explanation, it was deliberated and resolved for them to use licence from the third party, that is Mtandao wa Kijani Kibichi who is a licenced purchaser and exporter of crops. PW1 stated that later it was documented in email to that effect. But the alleged email communication was not tendered for court appraisal.

That said, the first issue is resolved in the negative, that is there is no proof that the defendant breached and/or acted negligently in executing the terms of facility letter dated 22/1/2018. Therefore, the second issue melt away.

Issue number three, it cannot detain me much, DW1 stated that they claim against Ms. Connect India a sum of USD 328,780.78 as reflected at the front page of exhibit D3. PW1 had admitted to be indebted by the defendant. Therefore a plea by PW1 that they were blocked to sell a cargo laying at the CID Port Dar es Salaam is untenable. I am saying so, because PW1 explained that the loan for the cargo alleging laying at the Port of Dar es

Salaam, was fully repaid. Indeed, DW1 explained that even the bank failed to sell that cargo because owner of the warehouse, MS. AL Huaoshum told them that they never received cashewnuts from the plaintiff, rather belong to someone whom did not disclose. An argument that when they tried to sell a cargo at Vietnam, they were blocked by buyers and asked to settle sales loss, is unmerited. As PW1 was merely alleging without any proof.

Having adumbrated as above, I rule that the defendant to a counter claim is indebted a sum of USD 328,780.78. Therefore, the plaintiff to the counter claim is entitled to recover the same.

The main suit is dismissed and a counter claim succeeds to the extent depicted above with costs.



E.B. Luvanda
Judge
31/8/2021

Date: 31.08.2021

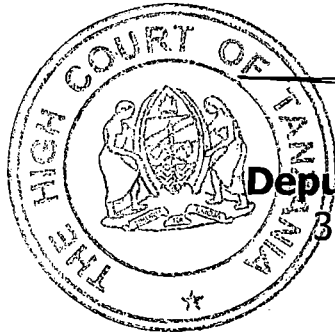
Coram: Hon. J. Fovo, DR

For the plaintiff: Mr. Mayenje Advocate holding brief for Mr. Olotu Advocate

For the defendant: Mr. Mayenje Advocate

B/C: Swalehe

Court: The verdict pronounced by the court.



J. Fovo

Deputy Registrar

31.08.2021