

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
CIVIL CASE NO. 82 OF 2020**

**DAR RAPID TRANSITY**

**AGENCY ..... 1<sup>ST</sup> PLAINTIFF**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> PLAINTIFF**

***VERSUS***

**SPARK VENTURE (T) LIMITED.....DEFENDANT**

***Date of Last Order: 13/10/2021***

***Date of Ruling: 01/04/2022***

**J U D G M E N T**

**MGONYA, J.**

Before this Court is a Civil Case where the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs sued the Defendant for **Tshs. 155,737,677.00/=** an outstanding debt after breaching a contract that both parties had signed. In cause of filing the pleadings before this Court, the Defendant faulted to have file their Written Statement of defense within time despite being duly served. From that situation, on the **04/08/2020** the Plaintiff then prayed for the matter to be heard *Ex parte* under **Order IX Rule 6 of the Civil Procedure Code Cap. 33 [R.E 2019]**.

The Plaintiffs in their Complaint had the following claims against the Defendant:

- (i) That, the 1<sup>st</sup> Plaintiff's claims emanates from the failure of the Defendant to pay rental fees of installation of billboards at one side Morocco station along the pedestrian bridge to a total of 155,737,298.00;***
- (ii) That, out of Tshs. 155,737,298.00, Tsh 67,032,677.00 emanate from the two years Advertisement installation permit No. DART/PMT/2015/2017/01 issued to the Defendant by the 1<sup>st</sup> Plaintiff from 1<sup>st</sup> April 2016 to 30<sup>th</sup> March 2018 of which the Defendant agreed to pay from the invoice raised by the defendant on 31<sup>st</sup> July 2018 to 31<sup>st</sup> October 2019;***
- (iii) That, the remaining Tshs. 88,004,621/= emanates from the contract entered by the parties to this suit immediate after the expiration of the advertisement installation permit, which the Defendant agreed to pay from the invoice raised by 1<sup>st</sup> Defendant on 30/04/2020;***
- (iv) That on 1<sup>st</sup> December 2018 the 1<sup>st</sup> Plaintiff entered into two years Contract with the Defendant for the***

***management of Advertisement at one side Morocco station along the pedestrian bridge, whereas parties to the contract agreed on the contract price to the tune of Tanzanian shillings one hundred two million, four hundred twenty-four thousand (102,424,000/=) payable at a rate of four million two hundred sixty-seven thousand six hundred sixty-five (4,267,665/=) per month (VAT inclusive).***

- (v) That despite the 1<sup>st</sup> Plaintiff's demand notice and invoices to the defendant, the defendant deliberately ignored to make payment within fifteen days upon receipt of the invoices as agreed in the Contract;***
- (vi) That, since the Defendant ignored to make payment despite being issued invoices, the Defendant issued a three-month notice of intention to terminate lease Agreement dated 23<sup>rd</sup> January, 2020 with reference No. HA.204/263/01-B/138 to the Defendant to terminate the contract with Spark Venture as stipulated in the contract, and***
- (vii) That, despite the Defendant being issued notices by the 1<sup>st</sup> Plaintiff specifically to pay the debt and remove the billboards at morocco pedestrian bridge***

***still neglects to honour the issued in the notice of which the Plaintiff on 06/03/2020 removed the billboards at morocco pedestrian bridge at its own cost of Tanzanian shillings 700,000/=.***

The claims above are supported by their supporting documents of which the Plaintiff has attached hereto. When the matter was scheduled for *Ex parte* hearing, the Plaintiff had only one witness that swore and gave Ex parte proof in respect of all the claims emanating from the contracts that were entered between the 1<sup>st</sup> Plaintiff and the Defendant.

**PW1 Hamidu Hussein Mfinanga** before this Court testifying for the Plaintiffs stated to have been working the 1<sup>st</sup> Plaintiff (Dar Rapid Transit Agency) for three years and knows the Defendant very well since the Defendant was one of their clients that was given a tender for placing posters or billboards at the Agency's location at Morroco, Kawawa Road and Ally Hassan Mwinyi Road. In support of his assertion, PW 1 prayed an Advertisement Installation Permit dated **26/10/2015** be admitted and form part of his evidence to support this case. The same was admitted as **Exhibit P1**.

PW 1 further avers that the said permit was for two years and worth **Tshs. 43,000,000/=** per year making the total sum of **Tshs. 86,000,000/=** for the period of two years of the

permit. The Witness informed the Court that, their Client, the Defendant herein was required to pay but not in full and receipts to acknowledge these payments was issued to the Defendant each time of payment.

The receipts referred to by the Plaintiff herein were with the Plaintiff who sought this Court's prayer that the same be admitted as exhibits to form part of his evidence. These receipts were receipts signed by one John Joseph Mworio. These were receipts of 1<sup>st</sup> and 3<sup>rd</sup> of August 2017, 2<sup>nd</sup> and 20<sup>th</sup> November 2018 and 3<sup>rd</sup> and 26<sup>th</sup> March 2018, this Court collectively admitted the above as **Exhibit P2**.

After the Defendant had reduced his Debt the 1<sup>st</sup> Plaintiff entered into a second Contract with the Defendant on December 2018. With an agreement that he pays the sum of **Tshs. 102,424,000/=** which was an outstanding debt from the first agreement to the current which required him to pay **Tshs. 4,267,665/=** per month. PW1 prayed that the Lease Agreement containing the above stated facts be admitted as part of his testimony. This Court then admitted the Lease Agreement between the 1<sup>st</sup> Plaintiff and the Defendant as **Exhibit P3**.

It is from the above Agreements that the Defendant without any revealed reasons decided to breach the agreement between entered by the 1<sup>st</sup> Plaintiff and the Defendant. Several demand

notices were issued to the Defendant but all efforts turned out futile. An invoice that showed his outstanding debt was also issued and the Plaintiff prayed to tender the same as an exhibit and this Court admitted the invoice to form part of the Plaintiff's testimony as **Exhibit P 4.**

In the cause of this *ex parte* hearing, it was further submitted that, the invoice involved the debt of the permit issued earlier to the Lease Agreement and the penalties thereto which amounted to **Tshs. 155,737,298.00/=** was issued to the Defendant. Having not being satisfied with the manner and the position of how the Defendant honored the Agreement the 1<sup>st</sup> Plaintiff issued a notice to terminate the Lease Agreement and the same was tendered and admitted as **Exhibit P 5.**

Moreover, that was not all. A letter from DART was written and served upon the Defendant's Managing Director duly signed by Engineer Ronald M. Lwakatare, titled "**INTENTION TO TERMINATE LEASE AGREEMENT**". This letter was tendered and admitted as **Exhibit P 6.**

It was further PW 1's testimony that afterwards the Agency decided to pull down the billboards for the Defendant after breach of agreement of which costed the Plaintiff the sum of **Tshs. 700,000/=** for paying casual workers. And this was done three months later after being served with a notice with regards

to the breach of Agreement. It is from here that the Plaintiff prayed to close their *Ex parte* proof.

After having gone through the testimony of PW 1 who was the sole witness to this *Ex parte* proof two issues arise from the same.

***1. Whether, the Plaintiff and the Defendant had an Agreement between them?;***

***2. Whether, the Plaintiffs have proved their claims against the Defendant; and***

***3. What reliefs are the Parties entitled to.***

To begin with the **first issue**, I have examined exhibit P1 from the records which is an Advertisement Installation Permit whereas DART (the Plaintiff herein) granted the same to Spark Ventures Limited (the Defendant herein) and I am convinced that there was an Agreement between the Plaintiff and the Defendant. The said Agreement is also supported by Exhibit P3 that is the Lease Agreement between the parties to this suit that also proves contractual relationship between the 1<sup>st</sup> Plaintiff and the Defendant herein. It is from the exhibits admitted and its contents that am satisfied that the parties to this suit had a Legal Agreement.

With respect to the **second issue** as to whether the Plaintiff has proved their claim, it is stated that, from the

Agreement that was between the mentioned parties above as answered in the affirmative from the first issue; the Defendant breached the same. The Defendant was required to pay **Tshs. 43,000,000/-** per year as agreed in the Advertisement Installation Permit and since the same was for two years, the amount of **Tshs. 86,000,000/=** was to be paid to the Plaintiff which was not the case in the long run of the Agreement. It is the Plaintiff's testimony that the Defendant paid their dues but not as required. The same is indicated in exhibit P2 which is the amounts the Defendant paid for the two years' period. This literally shows that there was a breach of the Agreement.

However, the volume and amount worth of the debt the Defendant owes the Plaintiff is stated in Exhibit P4 which is the invoice to the Defendant from the Plaintiff. The invoice illustrates the debt as it appears in the Plaintiff and breaks down the same by item of which when added up arises to what is claimed by the Plaintiff from the Defendant. In the absence of any evidence to the contrary, I take it that the Plaintiff claims the above stated amount from the Defendant which is **Tshs. 155,737,298.00/=**

It follows therefore that, the terms and conditions to the Agreement between the 1<sup>st</sup> Plaintiff and the Defendant were breached and the amount claimed is due to the 1<sup>st</sup> Plaintiff. In the event therefore, the Plaintiffs have succeeded in proving the



amount claimed. It goes without saying that the Plaintiff is entitled to be paid the amount claimed in this suit respectively.

In determining the **3<sup>rd</sup> issue** on reliefs, I proceed to declare that the, Judgement is entered in favours the Plaintiffs and entitled to the following reliefs:

- 1. That the 1<sup>st</sup> Plaintiff to be paid sum of Tshs. 155,737,298.00/= being the outstanding sum claimed from the Defendant;***
- 2. That, the 1<sup>st</sup> Plaintiff be paid interest rate of 7% per annum from the date of receiving the judgement and decree to the date of fully satisfying the same.***
- 3. Costs of this suit to the plaintiffs, be borne by the Defendant.***

It is so ordered.

Right of Appeal is Explained.



**L. E. MGONYA**

**J U D G E**

**23/04/2022**

**Court:**

Judgment delivered before Honorable **F.H. Kiwonde**  
**Deputy Registrar** in the presence of Ms. Chevawe  
Mbeleselo, learned Counsel for the 1<sup>st</sup> Plaintiff, in the  
absence of the 2<sup>nd</sup> Plaintiff, the Defendant and Mr. Richard  
the bench clerk this 22<sup>nd</sup> April 2022.



  
**L. E. MGONYA**

**JUDGE**

**22/04/2022**