

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 176 OF 2020

YONO AUCTION MART AND COMPANY LIMITED PLAINTIFF

VERSUS

JUST RENT CAR LIMITED DEFENDANT

JUDGMENT

03 & 17/10/2022

NKWABI, J.:

The development that led to this suit in this Court is that the defendant company approached the plaintiff for sale on auction of its motor vehicles.

The defendant, on 17th June 2019 handed over to the plaintiff 63 motor vehicle to sell. Eighteen motor vehicles were sold in an auction conducted by the plaintiff in Dar-es-Salaam but the purchasers were unable to transfer the ownership of the motor vehicles from the defendant to themselves because the TIN of the defendant had been suspended by the Tanzania Revenue Authority.

The purchasers raised the concern with the plaintiff. The plaintiff wrote to the defendant so that the defendant addresses the problem in vain. At that

time even the motor vehicles which were not sold had been taken away by the defendant.

Because of the transaction, the plaintiff is claiming in this Court against the defendant the following reliefs:

1. Payment of T.shs 272,764,000/= being refund amount.
2. An order compelling the defendant to facilitate name transfers.
3. Costs of the suit.
4. Any other relief(s) this Court deems just to grant.

It was the evidence of PW1 Deaogratius Dionis Hugo that he supervised the contract between the parties to this suit as he is the supervisor of auctions done by the plaintiff. He is also an accountant of the plaintiff and supervises collection of debts. He said the defendant was giving the plaintiff properties and the plaintiff was selling them. They had a contract of selling her motor vehicles entered into on 04/10/2019 (Exhibit P1.). The plaintiff received 63 motor vehicles make Nissan Civilian and Toyota Hiace from the defendant and the plaintiff was able to sell by public auction 18 motor vehicles. Then the plaintiff disbursed the purchase money to the defendant at T. shs 270,000,000/= and so, for the sold motor vehicles through the fund transfer request form, exhibit. P.3 PW1 where T.shs 177,000,000/= was deposited.

He handed over the rest of the amount, at USD 30,000/= in cash. The defendant signed receipt of the USDs received by one Asif. Also, the unsold motor vehicles were taken away by the defendant.

It is further the testimony of the sole witness of the plaintiff that later, buyers of the sold motor vehicles complained that transfers of ownership failed because the TIN number of Just Rent Car Limited had been suspended by Tanzania Revenue Authority. Follow-up at Tanzania Revenue Authority by the plaintiff confirmed that the TIN Number of Just Rent Car had been suspended.

The plaintiff wrote a letter (Exhibit P.5) to Asif to make follow of his TIN number so that transfer of motor vehicle is done. The plaintiff was unable to get Asif because even at the yard of the company was not there. All the cars which were not sold were taken by the company. The plaintiff's witness gave testimony that they were communicating with the company via emails (exhibit P.6). He also testified that the persons who purchased the motor vehicles have not been able to use the motor vehicles. He prayed the Court to order that the defendant refunds the T.shs 272,764,000/= or compels the defendant to facilitate the transfer of the motor vehicles to the purchasers.

He also asked costs of the suit or any other reliefs this Court deems fit to grant.

Having seen the evidence on the plaintiff's side, it is opportune to indicate at this stage that during the final pre-trial conference, the Court framed the following issues:

- (1) Whether the parties had an agreement for sale of the 63 motor vehicles by public auction.
- (2) If so, whether the Defendant is in breach of the agreement and to what extent.
- (3) What reliefs are the parties entitled to.

Now, I embark on determining the listed issues starting with the 1st one which is whether the parties had an agreement for sale of the 63 motor vehicles by public auction.

On this issue, the plaintiff had not annexed to the plaint the copy of the contract (agreement) but listed it in a list to rely on secondary evidence filed in Court on 29th July 2022 under the provisions of Order XIII rule 1 of the Civil Procedure Code Act, Cap 33 R.E. 2019 and section 67 (1) (c) and section 68 of the Evidence Act, Cap. 6 R.E. 2019. Several documents show that the

plaintiff conducted an auction to sell several motor vehicles the property of the defendant. For instance, exhibit P2 which is the copy of a newspaper namely Habari Leo that published the auction of the motor vehicles on 11/11/2019. Also exhibit P3 the fund transfer request form transacted on 24/12/2019 and the beneficiary being Asif Ally Riasat, the Director of the defendant. The purpose of the remittance was Auction proceeds remittance. With the evidence that is available in the Court record, I am satisfied that there was a contract (an agreement) between the plaintiff and the defendant that the plaintiff sells on public auction the motor vehicles of the plaintiff. In the circumstances, I answer the 1st issue in the affirmative.

The next issue for my consideration and determination is whether the Defendant is in breach of the agreement and to what extent. Indeed, one of the terms of the contract was that the transfer of the rights of ownership is upon the principal who according to the contract the principal is the defendant. In the premises, as the transfer of the motor vehicles to the buyers was not done due to the reason owed to the defendant, the defendant was in breach of the contract. The 2nd issue too is answered in the affirmative.

Lastly, I turn next to consider the 3rd issue which is to what reliefs are the parties entitled to. The plaintiff is praying for the following reliefs, payment of T.shs 272,764,000/= being refund amount, an order compelling the defendant to facilitate name transfers, costs of the suit and any other relief(s) this Court deems just to grant.



The question is, has the plaintiff managed to prove that indeed, she paid the T.shs 272,764,000/= to the defendant? Understandably, the defendant was nowhere to be seen to be to be served with the plaint and be able to file her defence (WSD). But that does not absolve the plaintiff from proof of the claim.

So far, the plaintiff has been able to tender only one transfer form of money which shows that the plaintiff transferred T.shs 177,000,000/= to the director of the defendant as money obtained from the auction transactions. The claim by PW1 that the other amount was paid in terms of USD is proved by the acknowledgement receipt of the same which is exhibit P. 4 which indicates that USD 30,900 which is equivalent to T.shs 71,000,000/= was received by Hadi Issa Mohamed on 15/02/2020 on behalf of the defendant.

Thus, I make an order compelling the defendant to facilitate name transfers of the motor vehicles sold on auction to the relevant purchasers, in default the defendant has to refund T.shs 248,000,000/= to the plaintiff who in turn shall have to refund the money over to the persons who purchased the motor vehicles upon them handing back the motor vehicles they bought on the public auction to the plaintiff. The defendant is condemned to bear the costs of the plaintiff in this suit.

It is so ordered.

DATED at DAR-ES-SALAAM this 17th day of October 2022.

 
J. F. NKWABI
JUDGE