

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

**AT DAR ES SALAAM**

**CIVIL CASE NO. 64 OF 2019**

**TANSINO LOGISTICS LIMITED .....PLAINTIFF**

**VERSUS**

**STRADA INTERNATIONAL .....DEFENDANT**

**EX-PARTE JUDGMENT**

*Date of last order: 26/08/2021*

*Date of Judgment: 16/06/2022*

**S.M. KULITA, J.**

The plaintiff herein namely **TANSINO LOGISTICS LIMITED** is a limited liability company carrying on the business of contractors and logistics in Dar es Salaam and beyond while the Defendant namely **STRADA INTERNATIONAL**, according to the Plaintiff, is an international corporate entity carrying on the business of civil works in different jurisdictions.

The said Plaintiff lodged this matter against the Defendant claiming that on the 5<sup>th</sup> July, 2013 they entered into the Hire Agreement, whereas the Defendant hired from the Plaintiff two units of Motor Graders typed PY190H and PY165H with Registration No. T 375 CZB and T 383 CZB respectively for the period of 9 (nine) months at consideration of Tsh. 362,496,000/= . However, the Defendant failed/refused to pay the rental charges nor to hand over the said construction machines to the Plaintiff. According to the Plaintiff the said act of the Defendant amounted to fundamental and serious breach of contract.

The Plaintiff therefore, lodged this suit claiming for the following reliefs against the Defendant;

- a) Payment of outstanding sum of Tsh. 429,345,000/= being the principal amount as per the agreement.
- b) Payment of the outstanding rental fees accrued from 2014 to 2019 inclusive to the date of judgment.
- c) Declaratory order that the two Motor Graders pleaded herein and registered as T 375 CZB and T 383 CZB belongs to the Plaintiff.
- d) An immediate release of the two graders with registration No. T 375 CZB and T 383 CZB to the Plaintiff.

- e) Payment of interest on the decretal sum at the Court's rate from the date of filing the suit to the date of full payment.
- f) Costs of the suit.
- g) Any other relief(s) this court may deem just to grant.

The service to summon the Defendant, **STRADA INTERNATIONAL** through the ordinary means proved failure. Hence she was to be served through alternative service, which was publication in the local newspaper with great circulation. The Defendant was therefore summoned through that said mode via Daily News and Majira newspapers, but she never turned up. The matter was therefore scheduled for *ex-parte* hearing as per Order VIII, Rule 14(1) of the Civil Procedure Code [Cap 33 RE 2019].

The Plaintiff who had only one witness to call is represented by Mr. Mulamuzi Patrick Byabusha, Advocate from Eagle Law Chambers Advocate (ELCA).

The Plaintiff's witness namely ABDUL ISMAIL BIDA (PW1) testified that he is a Treasurer for Tansino Company Limited since 2011. He said that he is responsible for financial matters in the company. The witness said that the company in which he is working deals with assembling and hiring mechanical equipment, Road construction and building construction since 2008.

The witness (PW1) further said that he knows the Defendant, Strada International as a company that she ever hired two Motor Graders from their company (Tansino) on the 5<sup>th</sup> day of July, 2013. He said that according to the contract/agreement the Defendant ought to have paid them Tsh. 362,496,000/= within one year period from the said date of contract.

PW1 continued to state that the said contract was signed by the Directors from both companies. He was shown the said contract and identified it. He then tendered it to court and the same was admitted as Exhibit P1. The said document with the heading "EQUIPMENT HIRE AGREEMENT" was then read over before the court by PW1.

It is the testimony of PW1 that the said Motor Graders are still in possession of the Defendant whose whereabouts is unknown. He said that fortunately the registration cards (Exh. P2 collectively) which are in the name of the Plaintiff were available in their office.

The witness concluded by praying for the court to order the Defendant to release the said two Motor Graders to the Plaintiff whose total value by that time was Tsh. 570,000,000/=. He insisted that if the Defendant will manage to release those Motor Graders, they should be in the same status as they were before they were

hired to her. He added that, otherwise the depreciation should be considered. PW1 also prayed for damages for breach of contract and costs of the suit.

That was the end of the plaintiff's case.

From the evidence that have been adduced and according to the pleading (plaint), I find the following issues needs to be determined by the court;

1. Whether there was an ***equipment hire agreement*** between the parties.
2. Whether there was a ***breach*** of contract/agreement.
3. To what ***relief(s)*** are the parties entitled.

In my analysis on the 1<sup>st</sup> issue, I have to refer Exhibit P1 which is the equipment hire agreement. The said document which was tendered to court by PW1 has all requirements of the valid contract as per **section 10 of the Law of Contract Act [Cap 345 RE 2002]** which includes lawful parties, lawful object (subject matter), lawful consideration and free will (consent). The said section provides;

*"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful*

*consideration and with a lawful object, and are not hereby expressly declared to be void.....”*

In determining the **competency of parties** to the agreement in dispute, I have noticed that the contract in issue (Exhibit P1) involved lawful parties who were capable to enter the contract. The said parties are Tansino Logistics Limited which is a limited liability company and Strada International which is the international corporate entity. This is according to the plaint, Exhibit P1 and the testimony of PW1.

As for the issue of the **subject matter** to the contract, it is the business for hire of equipment (Motor Graders) which are **lawful objects**, for the purposes of conducting the civil construction works. Generally, the agreement involves the **lawful business**.

**Consideration is also lawful** whereby the Defendant was required to pay the Plaintiff a total sum of Tsh. 362,496,000/= for the whole contractual period of 9 (nine) months upon being supplied with two graders by the Plaintiff. The agreed rate per day was Tsh. 960,000/=. That is a consideration as it can be observed at item 1.1 of the terms of agreement in Exhibit P1.

As for the issue of **consent**, there is no evidence on lack of it when the contract was entered. According to section 19(1) of the Law of

Contract Act [Cap 345 RE 2002] the consent to an agreement is said to be unlawful if it is made under the influence of coercion, undue influence, fraud, or misrepresentation. The fact that neither of these has been proved, it means the consent from both parties was there and the same was lawful.

Analysing the 2<sup>nd</sup> issue which states, whether there was a breach of contract/agreement, the evidence of PW1 which have never been disputed is very clear that the Defendant was hired by the Plaintiff two units of Motor Graders typed PY190H and PY165H with Registration No. T 375 CZB and T 383 CZB respectively, for the period of 9 (nine) months at consideration of Tsh. 362,496,000/= . To prove the ownership PW1 tendered those vehicles' Registration Cards (Exh. P2 collectively) which transpire the said particulars and names of the holder being Tarsino Logistics Limited, the Plaintiff herein.

The fact that the Defendant never paid the Plaintiff her consideration of Tsh. 362,496,000/=, inspite of being supplied with those said machines (Motor Graders), that is nothing but a breach of contract by the said Defendant, particularly item 1.1 of the agreement (Exhibit P1).

The breach of contract having been proved, the issue to be determined now is, "to what relief(s) are the parties entitled".

Generally, the Plaintiff's claims have not been disputed as the matter was entertained *ex-parte*. Upon scrutinizing the reliefs sought by the Plaintiff, I find them genuine and I hereby grant them as follows;

1. The Defendant to pay the Plaintiff the outstanding sum of Tsh. 362,496,000/= being the Principal amount, which is the accumulated fees of Tsh. 650,000/= per day for the whole contractual period, from 18/07/2013 to 17/04/2014 as per the agreement.
2. As the vehicles (Motor Graders) are still in possession of the Defendant, he (Defendant) should also pay the said rental fees of Tsh. 650,000/= per day from 18/04/2014 to the date of full settlement.
3. It is declared that the Motor Graders typed PY190H and PY165H with Registration No. T 375 CZB and T 383 CZB respectively belongs to the Plaintiff, Tarsino Logistics Limited.
4. The Defendant is ordered to immediate release the two Motor Graders to the Plaintiff in a condition that they had while hired, or in addition with compensation in case of depreciation.



5. The Defendant is ordered to pay the Plaintiff the Interest at the Court's Rate from the date of filing the suit to the date of full settlement.
6. The Defendant to pay the Plaintiff Damages for Breach of Contract at the tune of Tsh. 10,000,000/=.
7. The Defendant to bear costs of the suit.

It is so ordered.



**S.M. KULITA**

**JUDGE**

**16/06/2022**

