

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB - REGISTRY OF SHINYANGA

AT SHINYANGA

CIVIL CASE NO. 3 OF 2021

KAL HOLDING COMPANY LIMITEDPLAINTIFF

VERSUS

FRECO EQUIPMENT SUPPLIES LIMITED DEFENDANT

EX-PARTE JUDGMENT

20/03/2023 & 10/08/2023

S.M. KULITA, J.

The plaintiff herein namely **KAL HOLDING COMPANY LIMITED** is a limited liability company with an office at Shinyanga, while the Defendant, **FRECO EQUIPMENT SUPPLIES LIMITED** is also a limited liability company with an office at Dar es Salaam, carrying on the business of selling the civil working equipments/machines.

On 29th July, 2021 the Plaintiff herein lodged this suit against the Defendant claiming for delivery of the original Motor Vehicle Registration Card for the

Low Bed Trailer, Sino Trailer Model with Registration No. T 548 DPS in the name of the Plaintiff and the refund of United States Dollars (USD) 6,100 that the plaintiff had paid to the trailer manufacturer in clearing the deficit that the Defendant had not yet paid. The Plaintiff also claims for interests for the said USD 6,100 at the court rate and commercial rate from the date of judgment to the date that the payment will be fully made, costs and any other relief(s) that this court will find fit and just to grant.

The basis of the claim according to the plaint is that in February, 2019 the Plaintiff entered into an agreement with the Defendant for a sale of the said Low Bed Trailer at a consideration of USD 49,560. That, on 26th February, 2019 the Plaintiff affected the payment to the Defendant by depositing the money into the Defendant's account No. 0250213969200 CRDB and the said trailer was handed to him. However, the defendant has failed to change the Motor Vehicle Registration Card into the name of the Plaintiff.

The plaintiff further alleged in the plaint that, on 9th March, 2019 the Plaintiff deposited USD 70,000. She also deposited USD 60,000 on 21st February, 2019, and USD 81,660 on 25th March, 2019. Thus, the total USD 211,660 were deposited. It was for the purchase of the Motor Grade CAT 140H with registration No. T 427 DGH.

However, the Plaintiff alleged that he had made an overpayment of USD 1,660 for the purchase of the Motor Grade CAT 140H as the last instalment was supposed to be USD 80,000 and not USD 81,660 that was paid. The Plaintiff also alleges that, after he had already affected the payment of USD 49,560 for the purchase of Low Bed Trailer, he paid the said USD 211,660 which also incorporates the said USD 49,560 which she had already paid. Hence, prays for the extra monies that he had paid, which are the said USD 49,660 paid for Low Bed Trailer and the USD 1,660 overpaid in the purchase of the Motor Grade CAT 140H, be remitted back to him.

While the Plaintiff is represented by Mr. Audax Constantine, Advocate, the Defendant is represented by Mr. Yohana Julius Ayall, Advocate. The matter was heard *ex-parte* as the Defendant never filed a Written Statement of Defense nor did her Advocate turned up to court on the date that was scheduled for hearing.

In his testimony, the only witness who appeared for the plaintiff one Alfred Kabagambe Kailembo (PW1) testified to the effect that he is a Director for Kal Holding Company Limited, the Plaintiff herein. He said that in February, 2019 his company entered into an agreement with the Defendant, Freco Equipment Supplies Limited for the supply of the Low Bed Trailer, Sino Trailer

Model at USD 49,560. PW1 stated that on 26th February, 2019 the Defendant issued the Profoma Invoice for that business. He tendered it to court and the same was admitted as Exhibit P1.

The witness further said that before they affected its payment, they also ordered for the Motor Grade CAT 140H. He said that they paid a total sum of USD 211,660, in three instalments of USD 70,000 being the 1st instalment, USD 60,000 being the 2nd instalment and USD 81,660 in the 3rd instalment. He said that all payments were affected through the Defendant's account which was No. 0250213969200 CRDB. The witness averred that the said payments were for the purchase of both, the Motor Grade CAT 140H and the Low Bed Trailer. PW1 tendered to court three Pay-in-slips to that effect. They were received and collectively admitted as Exhibit P2.

PW1 further stated that the Low Bed Trailer was handled to them from the Defendant on 27th May, 2019. He said that the Defendant also supplied to them with the Delivery Note and the Motor Vehicle Registration Card (exhibit P3 collectively). However, PW1 complained that the said card had the name of the Defendant who never taken trouble to change it into the Plaintiff's name as they had agreed.

It is also the testimony of PW1 that on the date that he had gone to take the said Low Bed Trailer from the Manufacturer, Simba Trailers Builder in Dar es Salaam they found the Defendant still indebted the money amounting USD 5,660. They thus refused to release it until the deficit is paid. PW1 said that he agreed with the Defendant's Director, Mr. Frederick Malima that the Plaintiff could pay the said deficit and she could later on be refunded by the Defendant. PW1 alleged that the Plaintiff paid the said USD 5,660 to the Manufacturer but she has never been refunded by the Defendant. The plaintiff therefore claims for it as well.

The witness also testified on the payment of USD 211,660 though overpaid at USD 1660, that, it was for the purchase of all products, Motor Grade CAT 140H and the Low Bed Trailer. He clarified that, as the payment for the Low Bed Trailer had already been affected and that the payment of USD 211,660 covers not only the Motor Grade CAT 140H but also the said Low Bed Trailer, the USD 49,560 paid for the Low Bed Trailer should therefore be refunded to the plaintiff.

In addition to that the witness stated that in affecting the payment for the said USD 211,660 he had overpaid the sum of USD 1,660. He clarified it by stating that in the instalment payments he paid USD 70,000 being the 1st

instalment, USD 60,000 as the 2nd instalment and USD 81,660 in the 3rd instalment, which gives a total sum of USD 211,660, while the total price he was required to pay was USD 210,000. He alleged that he mistakenly overpaid USD 1,660 in the last instalment where he paid USD 81,660 instead of USD 80,000.

PW1 said that on 14th June, 2021 the Plaintiff, through its Advocate issued a Demand Note (exhibit P4) to the Defendant in respect of this matter but there was no reply.

The witness concluded by praying for the refund of his USD 49,560 paid for the Low Bed Trailer while the said sum had already been included in the USD 211,660 that the plaintiff had paid for the Motor Grade CAT 140H. He also pray for the refund of the overpayment of USD 1,660 that he had done while depositing the instalment of USD 81,660 while in real sense it was supposed to be USD 80,000. The witness also claims for delivery of the original Motor Vehicle Registration Card for the Low Bed Trailer, Sino Trailer Model with Registration No. T 548 DPS in the name of the Plaintiff and the refund of USD 6,100 that the plaintiff had paid to the trailer manufacturer in clearing the deficit that the Defendant had not yet paid. Further, the Plaintiff claims for interests for the said USD 6,100 at the court's rate and commercial rate

from the date of judgment to the date that the payment will be fully made, costs and any other relief(s) that this court will find fit and just to grant

That was the end of the Plaintiff's case which comprises the testimony of one witness, PW1. As narrated herein before that the matter has been entertained *ex-parte*, hence there is no defense case.

The Plaintiff alleged that in making payments for the equipments/machines that he had purchased from the Defendant he had made two overpayments. This is according to the plaint and the testimony of PW1 who is the Director for the Plaintiff's company. According to the plaint and the testimony of PW1 the price for the Motor Grade CAT 140H with registration No. T 427 DGH was USD 210,000 in the breakdown of USD 70,000 in the 1st instalment, USD 60,000 in the 2nd instalment and USD 80,000 in the 3rd instalment. The plaintiff alleged that in affecting the payments he paid a total sum of USD 211,660 instead of USD 210,000. He thus prays for the said extra sum of USD 1,660 be remitted back to him by the Defendant.

Upon going through the Deposit Slips which were collectively admitted to court as Exhibit P2, there is no doubt that the payments which the Plaintiff had affected by depositing money into the Defendant's Account

(0250213969200 CRDB Shinyanga) were the said USD 70,000 and USD 60,000 being the 1st and the 2nd instalments. As for the 3rd instalment the deposit slip shows that the deposited amount was USD 81,660 while the Plaintiff alleges that he was supposed to deposit USD 80,000 instead. It means that in affecting the payments he paid a total sum of USD 211,660 instead of USD 210,000. According to his testimony, in doing so, he had just overlooked.

My observation on this is that, the total sum of money deposited by the Plaintiff for the purchase of the Motor Grade CAT 140H was USD 211,660, done in three instalments. This is according to the deposit slips. The allegation raised by the plaintiff that he had made overpayment of USD 1,660 by paying USD 81,660 instead of USD 80,000 has no legal weight for having no proof that he was supposed to pay USD 210,000 and not USD 211,660.

The evidence transpires that the Plaintiff have not tendered to court the Profoma Invoice to prove that the selling price for the commodity(s) was USD 210,000 as alleged by PW1. In the absence of the evidence to the contrary, the fact that the Plaintiff paid USD 211,660, impliedly that is the amount he was supposed to pay.

The Plaintiff alleged further that he had also made an overpayment of USD 49,560 as in the above said payment of USD 211,660 the said sum was inclusive. It means he had also overlooked on that. On that ground, the Plaintiff is of the views that the price for the Motor Grade CAT 140H was USD 161,000, and not USD 211,000 which was also overpaid with an extra sum of USD 1660.

That argument also doesn't make sense, as apart from the mere oral words of PW1, the Plaintiff has not given any evidence to prove that the price for the Motor Grade CAT 140H was USD 161,000. On this, I can notice the same weakness on the Plaintiff's case that, nothing, like a Profoma Invoice has been tendered to court to prove that the selling price for the Motor Grade CAT 140H was USD 161,000. I therefore find this issue has no legal weight.

The Plaintiff further claims for delivery of the original Motor Vehicle Registration Card for the Low Bed Trailer, Sino Trailer Model with Registration No. T 548 DPS in the name of the Plaintiff. He alleged that the same is still in the name of the Defendant, Freco Equipment Supplies Limited since they had purchased it from her a long time ago. He said that the Defendant has not taken action to change the same while they are through with the payments since then.

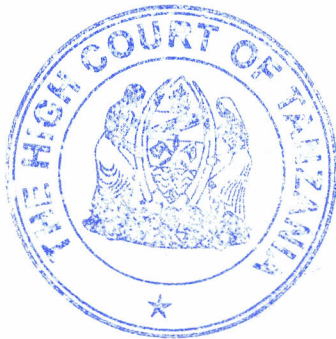
I went through the Motor Vehicle Registration Card in question (Exhibit P3) and noticed it read the name of the Defendant, Freco Equipment Supplies Limited as the holder. I can agree with the argument that, if the Plaintiff is through with the payment for the purchase of the said vehicle, as alleged, name of the holder of the Motor Vehicle in the card should be changed into the name of the current owner/holder, Kal Holding Company Limited, the Plaintiff. If that is a position, why the Plaintiff does not show to have faced the Defendant for that? This gives me a doubt that there might be a reason for that which has not been exposed to court.

Further, in the testimony that have been adduced by the PW1, I don't see the evidential proof that the Plaintiff actually affected the said payment of USD 49,560 to the Defendant. The profoma invoice (Exhibit P1) which was tendered to court by the Plaintiff's witness (PW1) is not a proof of payment. Thus, I cannot rely on it to declare that the Plaintiff affected the said payment in full, hence name of the holder in the Motor Vehicle's Registration card be changed into the name of the plaintiff.

This issue as well looks to have no merit, hence regarded not proved in affirmative.

The Plaintiff herein also claimed for the refund of United States Dollars (USD) 6,100 that he had paid to Simba Trailer manufacturer, the manufacturer/builder for the Low Bed Trailer in question, being the deficit that the Defendant had not yet paid to the manufacturer. He said that the said sum was paid regarding oral agreement entered between the parties herein that the same could be refunded by the Defendant, but he didn't do so. However, this allegation by the Plaintiff is not supported with any evidence from the Plaintiff's side. Hence, cannot be granted.

In upshot, I find this suit with no merit, hence **dismissed**. I grant no order as to costs as the same was determined *ex-parte*.



A handwritten signature in blue ink, consisting of stylized initials and a surname.

S.M. KULITA
JUDGE
10/08/2023

