

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

AT DAR ES SALAAM

CIVIL CASE NO. 27 OF 2019

SYKES TRAVEL AGENTS LTD..... PLAINTIFF

VERSUS

NATIONAL IDENTIFICATION AUTHORITY (NIDA)..... 1ST DEFENDANT

THE ATTORNEY GENERAL2ND DEFENDANT

JUDGMENT

25th August, & 25th September 2023

MWANGA, J.

The plaintiff, **SYKES TRAVEL AGENTS LTD**, deals with travel agency business, and he pledged to have about twenty years of experience. On diverse dates, between 2012 and 2015, he provided airline ticket services to the first defendant's employees and non-staff who traveled within and outside the country.

The first Defendant has been enjoying such service on a credit basis. The tickets were economy and business classes extended to her

simultaneously. The alleged tickets were issued through George Edward Mtalima, an employee of the first defendant, by visiting the office of the plaintiff, email, and sometimes through calls. Reciprocally, Plaintiff also issued the 1st Defendant with invoices that allegedly remained unpaid.

Given the above, the plaintiff maintained that as of 2015, the 1st defendant's statement of account maintained by the plaintiff shows that the sum of Tshs. 79,294,257/=, the subject claim in the present case, has not been paid to date. The plaintiff annexed Annexure "A" collectively, which are various invoices and statements of account.

It followed that the plaintiff issued various demand notices to the 1st Defendant and later on 90 days statutory notice of intention to sue. However, the 1st defendant did not heed the demands above. The refusal and failure by the 1st Defendant to settle the sum claimed by the plaintiff is considered to amount to a breach of contract.

In such an alleged breach, the plaintiff claims to have suffered disturbances, embarrassment, unnecessary expenses, and inconveniences. Hence, pursued this matter by instituting the instant suit by way of plaint against the defendants mentioned earlier, praying to this Court for the Judgment and Decree on the following orders: -

- i. Payment of Tshs. 79,294,257/= (*Seventy-nine Million two hundred Ninety-Four Thousand Two Hundred and Fifty-Seven only*) being outstanding debt for unpaid air tickets granted to the 1st Defendant on credit to facilitate its employees' travel within and outside Tanzania.
- ii. Payment of interest at a commercial rate of 30% from January 2012 to March 2015.
- iii. Interest on decretal sum at 10% court rate from the date of judgment till the date of payment in full.
- iv. General damages to be assessed by the court,
- v. costs of the case
- vi. any other reliefs the Court may deem fit and to grant.

On her part, the defendants, through the WSD, disputed the plaintiff's claims and put her to the strict proof, stating that there was no breach of contract. And that all invoices sent and received by the 1st Defendant were wholly settled. Because of the above, the defendants prayed to the court that the plaintiff's suit be dismissed and that she pay the costs of the suit.

During the final PTC, the court framed the following issues for determination:

- i. Whether the defendants are indebted to the Plaintiff to the tune of TZS 79,294,257/= being the value of air tickets issued on credit.*
- ii. What reliefs are the parties entitled to?*

Throughout the hearing, the Plaintiff was represented by Mr. F.A.M Mgare, the learned advocate, whereas the defendant hired the service of Mr. Daniel Nyakiha, the learned State Attorney. The plaintiff summoned one witness and relied on eight (8) exhibits to prove his case, while the defendant paraded two witnesses only.

Before I attempt to proceed with the determination of the raised issues, I find it relevant to go through the evidence of both parties in support and against the plaintiff's claims.

As explained above, the plaintiff called one witness, Mr. Abraham Ally Sykes, who testified as PW1. He was a Director of Sykes traveling Agent manager. He testified under oath that his claims against the Defendants are a debt amounting to Tshs 79,023,000/= arising from contractual terms for issuing the air tickets on a credit basis and remaining unpaid to date. He mentioned one, George Edward Mtalima (DW1), a transport officer of the first defendant, that he used to request tickets, visit his office, and

sometimes through calls to order and collect tickets. He said they issued tickets and invoices to the defendants where the Defendants were obliged to pay the plaintiffs within 14 days. The plaintiff tendered exhibits PE1, PE2, PE3, PE4, and PE5 being invoices raised by the plaintiff in that respect. The Plaintiff also tendered Demand letters, which were admitted in court as Exhibit PE6 (a) (b) and (c), respectively. He also tendered a -90 days' notice of intention to sue; the same was admitted as Exhibit PE7.

During cross-examination, PW1 said that nowhere in the invoices indicate the acknowledgment that NIDA received or requested air tickets from the defendants. Again, He stated that no contracts or agreements were produced in court to substantiate his claims. He retorted further that he did not know if all invoices contained the first defendant's employees. For instance, Exhibit PE3 had the name of Fatuma Karume, who is publicly known as not an employee of the first respondent. According to him, he did not know if Fatuma Karume was not an employee of the first defendant. He told the court he just received instructions to issue a ticket. He repeatedly insisted that the plaintiff used to receive instructions from George Edward Mtalima or one of his staff, and the tickets were collected at her office; others were sent through emails, and others were taken directly to the first

defendant's office. Also, he admitted that Exhibit PE3 tickets do not indicate the destination of the travelers; they only show ticket numbers. The invoice does not show the instructions given. Also, in exhibits P1 to P5, the first defendant has not requested to pay for the ticket.

On further cross-examination, the Plaintiff stated that there were no bank statements to prove that they secured a loan facility from the bank they used to pay the tickets. Also, it was discovered that there was no acknowledgment from the first defendant that they received the tickets.

When he was referred to exhibit P3(a) and P3(b) being notices alleged to be issued to the defendant, PW1 replied that though the said notices had no signature of the first defendant, he was served and received as there was a receipt of the registered mail showing that the first defendant received a notice.

On the other hand, the defendant's witness, George Edward Mtalima, who testified under oath as DW1, stated that he is currently working with the Ministry of Home Affairs and stationed at Dodoma. He was a transport officer of the first defendant before 2010. His duties were to deal with transportation issues as the head of the section. He admitted to knowing the plaintiff that she once provided air ticket services to the first defendant. He

told this court further that when NIDA was established, Sykes Travel Agents introduced their services to her. He said she had a contract with GPSA as an Agent to deliver services to government agencies. Further, he stated that whenever there was a need for services, they sent an email to the agent, and the services were provided timely, but they paid after the delivery of the services. He contended again that there are no such claims against the first defendant since they paid all the claims due to the plaintiff. It was his testimony that the payment procedures were through proforma invoices, and Salumu Malimba, the accountant of the plaintiff, was the one who forwarded the report for acknowledgment of payments. Salumu Malimba was the connection between the first defendant and the plaintiff. He denied having an oral contract with the plaintiff regarding the claims before his court.

The witness contended that the communication was done through emails, and sometimes, they called directly to the director of the agent. Moreover, DW1 stated that sometimes, the NIDA staff requested air tickets on personal arrangements. He gave an example: the Director of NIDA was issued a ticket when he attended a funeral service at Mwanza and paid from his pocket five million to the plaintiff's accountant, Salumu Malimba.

Nevertheless, DW1 agreed that this was the second time this matter had come to his attention. He said they had a meeting with the plaintiff before when he told them that NIDA had to be refunded for about 15 million being canceled tickets of Ms. Mariam and Ms. Makani, whose travel to India was canceled.

During cross-examination, he told the court that the transportation section was not part of the procurement unit, but they had an internal arrangement to deal with the plaintiff. His supervisor instructed him through the minute's file. He used to email the plaintiff, and she sent tickets and invoices. He also acknowledged that a physical visit was done to collect tickets for some time. The list contained staff and non-staffs of NIDA. He agreed that he never supplied evidence to support his claims that the plaintiff has no debt against NIDA. Also, he has no evidence to prove that a few of the plaintiff's invoices were not paid in full.

He said he was the one who was dealing with transport issues at NIDA. He continued servicing the debts until it was completed. At that time, NIDA had no Procurement unit. Further, DW1 told the court that some staff ordered tickets from Salumu Malimba under the personal arrangement. It was asserted that DW1 was the one who sent emails requesting tickets to

Sykes Travel Agent. He never dealt with the director (PW1), and he used to deal with Salum Malimba only.

The Defendant brought another witness, Stewart Melikiori Swela, who testified under oath as DW2. He has worked with NIDA since 2012. His duties included dealing with payments, preparing accounts, auditing, and storing all finance documents. Again, he said he knew the plaintiff was dealing with issuing air tickets to NIDA. Stated further that the plaintiff has no claims against NIDA since their records do not show if the Plaintiff has debt against NIDA. However, DW2 tendered nothing to prove that.

It was addressed further that the plaintiff delivered services of air tickets to the NIDA staff. His testimony showed that the procedures required the claimant to agree with the institution. DW2 continued that exhibits PE1 to PE5 are the invoices that read with the names of Sykes and NIDA but have no address. The witness denied to have received the said invoices for payments. Also, he told the court that NIDA never received the said invoices as they have no stamp of the institution nor dispatch. In that regard, the claims of the Plaintiff have no basis because the procedures were not followed. The procedures were on a personal or individual basis.

Further, he stressed that the invoices tendered are photocopies, there is no letter requesting payments for services from 2012 to 2015, and the plaintiff needed to tender an engagement contract.

On cross-examination, DW2 stated that the claims of the Plaintiff had never been received in their office and added that he was not involved in payments of invoices from 2012 to 2015. It was stated that GPSA was the one who entered into a contract with the plaintiff.

They admitted that exhibit PE 6(b) was received in their office. After that, DW2 called the plaintiff to clarify the debts. On re-examination, DW2 stated that Exhibit PE 6(a) (b) (c) was not attached to the invoices.

After the parties have closed their case, they also filed their final submissions, which I do not intend to reproduce, but I will use them when needed.

I have seriously considered the evidence on record and fully applied my thoughts to the submission by counsel for the plaintiff and the defendant. I have also fully considered the authorities availed to me in the instrumental submissions, and I am grateful.

The first issue was whether the defendant was indebted to the Plaintiff to Tshs. 79,294,257/=being value of air tickets issued on credit. Before I start addressing the issue, I would like to consider the provision of Section 110 (1) of the Evidence Act, p. 6 R.E 2022, which requires that: -

"Whoever desires any court to give judgment as to legal liability dependent on the existence of facts which he asserts must prove that those facts exist."

Such proof is on the balance of probabilities as stipulated under Section 2(3) of the Evidence Act, Cap. 6 R.E 2022. The Court of Appeal reiterated the above principles in **Paulina Samson Ndawavya Vs. Theresia Thomasi Madaha**, Civil Appeal No. 53 of 2017, when the court observed that -

"It is trite law and indeed elementary that he who alleges has a burden of proof as per section 110 of the Evidence Act, Cap. 6 [R.E 2002]. It is equally elementary that since the dispute was in a civil case, the standard of proof was on a balance of probabilities, which simply means that the Court will sustain such evidence which is more credible than the other..."

Also, in **Berelia Karangirangi Versus Asteria Nyalambwa**, Civil Appeal No. 237 of 2015[2019] TZCA on burden and standard of proof in civil proceedings, the Court of Appeal had this to say:

We think it is pertinent to state the principle governing proof of cases in civil suits. The general rule is that he who alleges must prove....it is similar that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on the balance of probabilities.”

In the present case, there are some issues that the respective parties no longer dispute. It is not disputed that the plaintiff and the first defendant agreed for the plaintiff to provide air tickets to the Defendant’s employees and non-staff on a credit basis. The testimonies of both PW1 and DW1 support this contention.

The dispute is over current claims amounting to Tshs. 79,294,257/= . However, the plaintiff never pointed out how she engaged in business with the first defendant to make their agreement more certain and precise. Throughout the testimonies, PW1 told the court they agreed with the first defendant to provide air tickets through the transport officer, George Edward Mtalima. The agreement was fortified through visits, phone calls, and mail.

It occurred that the plaintiff tenders no evidence to that effect. There is not even a copy of emails produced to show any business relationships with the first defendant. The unanswered question is, what would be the basis of the plaintiff's claims?

As a matter of principle, the onus of proof lies to the party who alleges the existence of specific facts in which he invites the Court to pronounce judgment in his favor, and failure to do so means the alleged fact does not exist or did not happen at all. See the case of **Paulina Samson Ndawavya Theresia Thomasi Madaha** (supra).

In the case, it is revealed that the plaintiff alleges that the first defendant approached and engaged her for air tickets on a credit basis, which were to be paid within 14 days. The plaintiff is dealing with the government institution, which is established and governed by law; throughout the testimonies and the submission by parties, there is nowhere the plaintiff produced in court evidence on how he was sourced as the supplier of the plaintiff, so to say, no evidence that the supplier was engaged for the services, to prove that there was such engagement for unpaid airlines tickets.

Given the above, I am inclined to hold that, if there were such arrangements, it was a personal agreement between the plaintiff and the transport officer of the first defendant, George Mbalima, and persons allegedly receiving the plaintiff's service.

Considering the arguments above, I am of the profound view that the plaintiff's arguments lack legs to stand against the defendants since there is no proof to the court to say there was a business transaction between the parties herein.

Furthermore, the tendered exhibits PE1 up to PE5 are invoices claimed to have been issued to the first defendant; still, there is no linkage between the plaintiff's claims and the first defendant. Also, since the defendant is a government authority established and governed by the law, there are statutory means to engage agencies in a particular procurement. For instance, it was expected for the plaintiff to bring to the court's attention, at least, the agreement entered between the respective parties. The same is not seen throughout the evidence of the plaintiff nor from DW1. Had it been an oral agreement, we would expect the same to have a linkage between the plaintiff and the institution, so to speak, the accounting officer. And that would be establishing an agreement.

The plaintiff, to justify his claims, cited section 2(1)(a) and (b) of the law Contract Act, Cap 345 RE 2019, which I find that it is irrelevant as far as this issue is concerned. During the trial, the plaintiff admitted that there was no agreement tendered in court or any letter, emails, or the said calls to show an agreement between them. The plaintiff contends that their agreement was orally made. Still, such arguments would only fit in a social contract where a father, wife, and children decide to enter into such an arrangement instead of an agreement with the government entities where the law stipulates the process and procedures unless the law states otherwise.

Considering the explanation above, the one who brought the claims against the defendants is duty-bound to clear all uncertainties on her claims, to succeed in the matter at hand. The Court of Appeal in the case of **Abdul Karim Haji Vs. Raymond Nchimbi Alois and Another, Civil Appeal No. 99 of 2004 (CAT-unreported)**, when applying the provision of section 110 of the Evidence Act, where it was stated that: -

"...it is an elementary principle that he who alleges is the one responsible to prove his allegations."

On top of that, in exercising the duty mentioned earlier, the plaintiff ought to tender in court the agreement, dispatch book, or invoices with the stamp of the first defendant to prove that the invoices reached the first defendant and the same has any link with the agreement entered. It is revealed that DW1 used to work with some of the staff from the Plaintiff's offices, like Salumu Malimba. Unfortunately, the plaintiff never dared to bring those staff members to court to clarify contentions. See the court of appeal cases of **Mashimba Dotto @ Lukubanija vs Republic**, Criminal Appeal No.317 of 2013, and **CRDB PLC vs. Africhick Hatchers Ltd & Another**, High Court Commercial Case No. 97 of 2017(All reported).

In the two cases above, it was held that where a party fails to call a material witness without any justification, the court should draw an adverse inference against the party who could not do so. In this matter, the plaintiff failed to bring the agent's accountant in court, who is alleged to be the business connection between first defendant and the Sykes Travel Agent, and there is no explanation for why he was not called for. Such failure gives less weight to the plaintiff's case and creates doubt in the plaintiff's claim.

Therefore, from the above discussion and the authorities cited, I believe the plaintiff failed to discharge the noble duty to prove her claims

against the defendants to the required standard. The first issue is answered negatively in light of what has been transpired above.

On the second issue, considering that the first issue is answered negatively, it is immaterial to discuss the reliefs to that effect. Since the claims against the defendant's lapse, no reliefs will be granted to the parties. This Court is satisfied that the plaintiffs have failed to prove their claims against the defendants to the standard required by the law, which is the balance of probabilities.

In the upshot, the plaintiff's suit crumbles and is entirely dismissed. Each party is to bear its costs.

It is so ordered.



H.R. MWANGA

JUDGE

25/09/2023

COURT: Judgement delivered this 25th September 2023, in the presence of the Plaintiff in person and the Defendants' absence.



H. R. MWANGA

JUDGE

25/09/2023