

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR-ES-SALAAM SUB-REGISTRY)  
AT DAR ES SALAAM**

**CIVIL CASE NO. 149 OF 2020**

**SYKES TRAVEL AGENTS LTD ..... PLAINTIFF**

**VERSUS**

**1. THE INSPECTOR GENERAL OF POLICE (IGP) .....1<sup>ST</sup> DEFENDANT**

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

**JUDGMENT**

**S.M. MAGHIMBI, J:**

In this suit, the plaintiff claims against the 1<sup>st</sup> defendant a total sum of Tshs. 502,696,700/= (Shillings Five Hundred and Two Million Six Hundred Ninety-Six Thousand Seven Hundred Only), alleged to be a long outstanding debt for the unpaid air tickets which the 1<sup>st</sup> defendant requested and/or ordered on credit from the plaintiff for purposes of facilitating its employees travel within and outside Tanzania. On that claim, the plaintiff is moving the court for judgment and decree against the 1<sup>st</sup> defendant as follows:-

- (a) That the 1<sup>st</sup> defendant be ordered to pay Tshs. 502,696,700/= per paragraphs 4 and 7 above.
- (b) Interest be paid at a commercial rate of 30% from 30<sup>th</sup> January, 2013 to the date of judgment.

- (c) Interest on the decretal sum at 10% court rate from the date of judgment till the date of payment in full.
- (d) General damages to be assessed by the court.
- (e) Costs of the case.
- (f) Any other relief(s) which the court may deem fit and just to grant.

The 2<sup>nd</sup> defendant was sued as a necessary party under the provisions of Section 6(3) of the Government Proceedings Act, Cap. 5 [R.E 2019]. Before this court, the defendants. Who denied the claim, were represented by Ms. Jacqueline Kinyasi, learned State Attorney while plaintiff was represented by Mr. Francis Mgare, learned Advocate.

As per the records, brief background of the matter is that on diverse dates between 2013 and 2015, the 1<sup>st</sup> defendant, through one Evarist Makala (a police officer) by either physically visiting the plaintiff's office or through phone calls, and on credit terms, requested for several air tickets on behalf of the 1<sup>st</sup> defendant. The requests were allegedly granted by the plaintiff on both economy and business class air tickets meant for facilitation of the employees of the 1<sup>st</sup> defendant to travel within and outside Tanzania. Along with the issuance of the requested of the tickets, the plaintiff also alleged to have issued the 1<sup>st</sup> defendant with invoices which, as of the date of filing this suit, had never been paid for.

According to the plaintiff, as at 2015, the 1<sup>st</sup> defendant's statement of account maintained by the plaintiff showed that the sum of Tshs. 502,696,700/= as an outstanding amount which is the subject of the claim in the present case. The outstanding amount that was supported by Collective EXP2-4. As a result, the plaintiff lodged the current claim founded on breach of contract following the 1<sup>st</sup> defendant's failure to settle the outstanding amount. The plaintiff further claimed for disturbances, embarrassments, unnecessary expenses and inconveniences caused by the 1<sup>st</sup> defendant. He also claimed for general damages to be assessed by the court and the costs of this suit.

On her part, the first defendant denied the claim on the ground that the plaintiff's alleged claims are baseless and unfounded and that the issues regarding payment of issued tickets was paid by the 1<sup>st</sup> defendant. It was the 1<sup>st</sup> defendant's averment that the plaintiff does not have any outstanding debt against the defendants. Their prayer was for the dismissal of the suit.

When mediation proved futile, when parties came for final pre-trial conference under the provisions of Order VIIID Rule 40(1) of the Civil Procedure Code, Cap. 33 [R.E 2019] ("the CPC"), the following issues were deliberated and agreed to be framed for determination:

1. Whether the 1<sup>st</sup> defendant breached the contract for supply of air tickets on credit between her and the plaintiff.
2. Whether the 1<sup>st</sup> defendant is indebted to the plaintiff a sum of Tshs. 502,696,700/= being a value of air tickets issued on credit.
3. To what relief(s) are the parties entitled to.

In order to prove her case, the plaintiff had one witness, Abraham Ally Sykes, the Managing Director of the plaintiff who testified as PW1 and tendered 12 exhibits. On their part, the defendants called one witness, one F2546 Sergeant Orchestra Raynold Mlay who testified as DW1 and tendered 4 exhibits.

My determination of the issues will merge the first and second issues and they will be determined together. The two issues are whether the 1<sup>st</sup> defendant breached the contract for supply of air tickets on credit between her and the plaintiff and whether the 1<sup>st</sup> defendant is indebted to the plaintiff a sum of Tshs. 502,696,700/= being a value of air tickets issued on credit. The issues will be determined together because one; there is no dispute that the plaintiff and the 1<sup>st</sup> defendant had a contract for supply of air tickets. Two is that proof of whether the defendant is indebted or owes the plaintiff a sum of Tshs 502,696,700/= being a value

of air tickets issued on credit will answer whether the defendant breached the terms of contract for supply of air tickets.

It is a common understanding that in civil cases, the burden of proving a case is on balance of probabilities. In the case of **Godfrey Sayi Vs Anna Siame (Civil Appeal 114 of 2012) [2017] TZCA 213 (21 February 2017)**, the Court of Appeal held at page 10:

*"It is similarly common knowledge that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on a balance of probabilities. In addressing a similar scenario on who bears the evidential burden in civil cases, the Court in **Anthony M. Masanga vs Penina (Mama Ngesi) and another, Civil Appeal No. 118 of 2014** (unreported), cited with approval the case of **In Re B [2008] UKHL 35**, where Lord Hoffman in defining the term balance of probabilities states that:*

*" If a legal rule requires a fact to be proved (a fact in issue), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates in a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the*

*burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it a value of 1 is returned to and the fact is treated as having happened."*

Going to the matter at hand, the court is tasked to see whether the plaintiff has proved to have issued the unpaid tickets so as to prove the existence of any outstanding amount against the plaintiff. Being a civil case, the defendant is duty bound to prove that the said debt was cleared. As per the records, the two parties entered into a contract for provision of air tickets way back in the year 2013. A further contract for provision of air travel and hotel reservation services No. 0000817 dated 20/04/2015 from Government Procurement Services Agent (GPSA) as an accredited service provider in the provision of air travel and hotel reservation services was tendered as EXP1. The tickets were to be paid within two weeks of their issuance. The centre of controversy is on whether the tickets were actually issued by the plaintiff and if any payments were made by the defendant.

In his evidence, the PW1 testified that they used to liaise with police officer called Makala who was responsible for procurement. He used to come physically at their offices to bring a request for the tickets which included the names and the destination of the travellers and the plaintiff issued the tickets and provide the invoices for those tickets and submit them to him.

He also testified that if Makala fails to come he will call the office and make the request and the request came through PW1. The staff who receive the calls, the ticketing officers have to get authorization from PW1 for any ticket issued because he had to authenticate the bookings and the value of the tickets. Before issuing the ticket PW1 usually call Makala himself to confirm if the request originated from him and thereafter the tickets were delivered to Makala.

PW1 also testified that after supplying the tickets, the defendants were making payments, but the payments did not cover all the tickets that were issued to them. He tendered EXP2 which were 40 invoices for the claim of the tickets issued in the year 2013; EXP3 which were 25 invoices for the year 2015 which we issued tickets and are unpaid and EXP4 which were 25 invoices for the claim of unpaid tickets issued in the year 2015.

On the exhibits, he testified that in collective EXP2, the total value of the invoices was 53,726,430/- Tshs and in collective EXP3, which were invoices for the year 2014, the value is 350,155,160/-. For collective EXP4, it was 25 invoices for the year 2015 with a total value of 134,094,930/-. It was PW1's testimony that for all of the invoices, no amount was paid hence the suit.

PW1 also testified to have reminded the first defendant of the outstanding amount for several times and even used to physically go to the 1<sup>st</sup> defendant's headquarters to claim the outstanding amount. Apart from physical visits, he testified that the 1<sup>st</sup> defendant also wrote to the plaintiff explaining that there were delays in paying them because of funds coming from Treasury. That they were waiting for money from treasury so that they could make payment. To prove this testimony, he tendered EXP5.

In their para 3 of the amended WSD, the defendants have denied the allegation counter pleading that the request for service of air ticket is done through a letter requestion for the service mentioning the names of persons who need the tickets, the fate of travelling and the price. Furthet that after receiving the letter the plaintiff will attach acceptance letter along with the requested tickets and invoices. In his testimony, PW1 denied the allegation alleging that during the time they were supplying the IGP with the ticket there were no letters written to them requesting for tickets, neither did they write to the police submitting to them tickets on the invoices. He dined to have ever seen such a letter.

According to PW1, the procedure they followed was that Mr. Makala would come physically to their offices with the names of the travellers with the destination where they were travelling to and dates to which the plaintiff would then do the booking for acknowledgement and thereafter we issue tickets and the invoices. In his testimony, DW1 also established the fact that the tickets were requested by a letter, invoice and then payment receipts. He tendered EXD1, EXD2 and EXD3 and testified that the service provider was not issuing the tickets by word of mouth. It was issued by a letter and the original ticket is given to the person who travelled. That the EXD2 is clear that the service provider is required to bring a copy of the ticket and the invoice (EXD1) demanding the payment for the tickets that was issued to their officer. He also testified that all payments for services that were provided by the first defendant office are demanded and paid according to the documents EXD1, 2 and 3.



In a further cross examination by Ms. Kinyasi, PW1 denied the defendant's allegation that the police would only order tickets by writing a letter. His contention was that if that was the procedure, then there would be a letter from them and a letter from the plaintiff. According to him, the mode that they were using was that Everest Makala used to come to their office and place his demand and the plaintiff will issue him a ticket. He was also firm that there was no one apart from Makala who used to come to the plaintiff's office, it was Makala who used to bring names of the travellers, destination and dates. In return, the plaintiff will present to him the routes which is acceptable and thereafter issue the tickets and the invoices. He also testified that the mode of operation was used many times and the plaintiff was paid accordingly.

On his part, the DW1, admitted that the defendant had been enjoying the plaintiff's services. He also testified it was agreed between the parties that the plaintiff will provide services and thereafter he will bring the claims for payments with necessary documentation as per the procedures. The time mentioned by him was three years. He insisted that all Government communications are in writing DW1 did not deny the fact that a police officer by name of Makala had gone to Sykes travel agents

seeking to procure services and they had agreed to provide services to the defendant in terms of provisions of air tickets only.

In an attempt to deny the claim, DW1 brought an exhibit D1, an invoice and Exhibit D2 a letter requesting for air ticket that was sent to the plaintiff. There is also EXD3, the ticket that was issued. His testimony was that it was that procedure that was used by the plaintiff. On my part however, I have asked myself as to why first, if this was the procedure that was followed by the parties, why did the defendant bring only one document proving that the ticket was issued? He could have brought several letters demanding air tickets from the plaintiff, the invoices along with a proof of payment thereto. One may ask, for the three years that the plaintiff had provided services to the defendant, only ticket was issued? Which is the amount of claim that is admitted by the defendant.

At this point, much as I have appreciated the EXD1, EXD2 and EXD3, the defendants were supposed to go further and produce proof of payment of all the outstanding amount since the existence of contract for provisions of air tickets between the plaintiff and the defendant was not in dispute. It cannot be established that at all the material time that is in dispute, only one ticket was issued by the plaintiff to the defendant. If the defendant's intention was to prove the procedure was to be followed, then

they were duty bound to bring proof of all payments done to the plaintiff. As it has not been disputed whether the people in favour of whom the tickets (EXP2-4) were issued to were not employees of the 1<sup>st</sup> defendant, then proof of payment was crucial.

In cross examination of the PW1, Ms. Kinyasi's focus was to establish that the plaintiff did not bring copies of tickets that were allegedly issued to the defendant and not paid. It was the PW1's reply that the service provider did not remain with the air ticket as the original copy remained with the traveller and the other copy is sent to the International Regulator. The fact that there were no tickets alone could not be the sole reason to defeat the plaintiff's allegations.

Having made the above findings on the evidence adduced, I am satisfied that on balance of probabilities, the plaintiff's evidence leading to non-payment of the debt by the defendant is more probable than the defendant's evidence that the debts were paid because there was no proof that the outstanding amount was paid. The first and second issues are therefore answered in favour of the plaintiff, the 1<sup>st</sup> defendant breached the contract for supply of air tickets on credit between her and the plaintiff and therefore the 1<sup>st</sup> defendant is indebted to the plaintiff.

As to what is the total amount of the outstanding balance, the plaintiff did not prove the total claimed amount of Tshs. 502,696,700/=. My addition of the invoices that were produced in court as exhibits, the total outstanding amount is Tshs 299,772,160/- and USD 1,834. Under Section 110(1) of the Evidence Act, the person who claims the existence of certain facts is under an obligation to prove it. Since the submitted invoices amount to Tshs 299,772,160/- and USD 1,834, that is the amount proved hence it is what the plaintiff is entitled to be paid by the 1<sup>st</sup> defendant as the value of air tickets issued on credit.

The last issue is on the reliefs that each party is entitled to. Having so made the findings above, the suit is partly decided in favour of the plaintiff. The defendant shall pay the plaintiff a sum of Tshs 299,772,160/- and USD 1,834/- as total outstanding amount of unpaid debt. The plaintiff shall also have her costs for this suit.



Dated at Dar-es-salaam this 27<sup>th</sup> day of October, 2023

A handwritten signature in black ink, appearing to be "S.M. Maghimbi", is written over a horizontal dotted line.

**S.M. MAGHIMBI**

**JUDGE**