

**IN THE HIGH COURT OF TANZANIA**

**(DAR ES SALAAM SUB-REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 141 OF 2022**

**EDSON HAMILTON ..... PLAINTIFF**

**VERSUS**

**ZIMTAC VENTURES (EAST AFRICA) LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**PETROS MAJINYORI ..... 2<sup>ND</sup> DEFENDANT**

**EXPARTE JUDGMENT**

*7<sup>th</sup> December, 2023 & 28<sup>th</sup> March, 2024.*

**MWANGA, J.**

The plaintiff, **MR. EDSON HAMILTON** claims against the defendants jointly and severally a sum of Tshs. 264,500,000/= owed with interest being the amount accrued due to a breach of contract validly entered between them, plus general damages and costs of the suit.

The brief facts can be stated. The plaintiff and 2<sup>nd</sup> defendant met in Fort McMurray Alberta, Canada, and eventually became friends. The second defendant expressed interest in doing business in Africa and he was seeking serious investors to work with. The plaintiff showed interest in the business, so the 2<sup>nd</sup> defendant amended his registered business in

Canada to make him a partner. As a partner in business, In 2018 the plaintiff purchased equipment needed to operate the company business in Tanzania, that is machines for testing of industrial gas meters, meters, and testing equipment, all valued at 280,000 USD.

Then they entered an equipment agreement dated 13<sup>th</sup> December, 2018 for the transfer of leases of custody of equipment to ZIMTAC Ventures East Africa (1<sup>st</sup> defendant). The terms and conditions for the lease of equipment are that, the plaintiff would be paid USD 5000 each month until the completion of the term from 13<sup>th</sup> December 2018, and lapsed on 13<sup>th</sup> December, 2020.

Based on the calculated facts, as of November, 15<sup>th</sup> November, 2020, the amount due is USD 115,000.00 for 23 monthly installments defaulted (approximately Tshs. 264,500,000/=).

The plaintiff alleged that despite consistent demands, the defendant refused to heed the demands and avoided the plaintiff. The plaintiff asserts that the 2<sup>nd</sup> defendant has been acting under the 1<sup>st</sup> defendant's corporate veil to perpetrate his breaches. To him, the breach of contract has led him to suffer financially and loss of income as he could not meet his business expectations.

Based on the aforementioned facts the court came up with the following issues;

- 1. Whether there was an agreement on equipment between the plaintiff and the defendants.***
- 2. Whether the defendants breached the agreement.***
- 3. Whether the plaintiff suffered any financial loss(damages) on his business expectation.***
- 4. To what relief the parties are entitled?***

During the hearing, the plaintiff was represented by Ms. Agness Ndusyepo, learned counsel. The defendants, on the other hand, failed to enter appearance hence the matter proceeded ex parte against them under order VIII A Rule 14 (1) of the CPC.

In resolving the first issue of ***whether there was an agreement on equipment between the plaintiff and the defendants***, one would consider the basic principles under Section 110 of the Evidence Act, Cap 6 [R.E 2002] that he who alleges must prove and the standard is one on a balance of probabilities. Section 110(1) of the Act singled out that, whoever desires any court to give judgment as to legal, legal liability dependent on the existence of facts which he asserts must prove that facts exist.

In the present case, this issue need not detain me in any how. The fact speaks for itself through PW1 that he entered into an equipment agreement with the defendants on 13<sup>th</sup> December, 2018. Under the plaintiff's witness statement, the equipment transferred by the plaintiff to the 1<sup>st</sup> defendant is the machine for testing industrial gas meters. Meters, and testing equipment, all valued at USD 280,000.00. The equipment listed are gas prover valued at USD 200,000.00. Testing equipment to wit; FLUKE 700 P03, FL; UKE 700P08, FLUKE 7000 P29, FLUKE P00P06, Hart 475 FLUE 771, Uei CD 100A, DRUCK UPS 111, FLUKE 289, FLUKE za mini, FLUKE 725, TAYLOR, (2), DRUCK DPI 104 – 15, WIKA TYPE 312.20 and FLUKE 322, with total value of 77,500.00 USD; Computer-Dell and HP Laptop valued USD 2,500.00.

This equipment agreement was tendered and admitted in court as exhibit PE1, meaning that it is evidence and no further proof is required. The consideration provided for the lease of equipment was USD 5000 each month until the completion of the term from 13<sup>th</sup> December, 2018 which lapsed on 13<sup>th</sup> December, 2020 giving the sum due is USD 115,000.00 for 23 monthly installments defaulted (approximately Tshs. 264,500,000/=). Given the scenario above, the first issue is answered in the affirmative.

Issue No.2 is whether the defendant breached the agreement. The plaintiff in his evidence indicated that the defendants have not honoured the terms of the agreement. In his testimony in the witness statement on page 2 items 15 and 16, he had this to tell the court

***"We agreed that I would be paid USD 5000.00 each month, until the completion of the term, which commenced on 13<sup>th</sup> December 2018 and lapsed on 13<sup>th</sup> December 2020. However, I have not been paid even a single instalment from the start of that agreement through to its demise"***

As narrated by the plaintiff above, since there was an equipment agreement between the plaintiff and the defendants as shown in Exhibit PE1, and the fact that the defendants were obliged to pay the plaintiff a consideration for the lease of equipment to the tune of USD 5000 each month until the completion of the term on 13<sup>th</sup> December, 2020 and there is no evidence that the defendants have paid the agreed amount, which is a total of USD 115,000.00 equivalent to Tshs. 264,500,000/= at that particular time, I am confident that, such failure to honor the agreement is an act of the breach of the agreement. Section 37(1) of the Law of Contract Act, Cap. 345 provides:

***"The parties to a contract must perform their respective promises unless such performance is***

***dispensed with or excused under the provisions of this Act or any other law."***

Given the above, the second issue is also answered in the affirmative.

The third issue is whether the plaintiff is entitled to USD 115,500.00 equivalent to Tshs. 264,500,000/=. At first, sight, when an agreement is broken, the injured party has the right to sue the wrongdoer for any loss occasioned by the breach and also to claim some payment for as much of the contract as he has so far performed. PW1 testified that he has not been paid even a single installment of the amount agreed upon for the transfer of equipment to the defendants.

Because of the above, the third issue is answered in the affirmative, hence the plaintiff is entitled to the claimed amount of Tshs. 264,500,000/=. On further perusal of the testimonies of PW1, I have found no other loss of business expectation suffered by the plaintiff. But for the inconvenience caused by the defendants and the delay of payment of the claimed amount, I award the plaintiff Tshs. 30,000,000/= as general damages.

For the foregoing, therefore, it is hereby ordered as follows;

- i. 1. The defendants are ordered to pay the plaintiff Tshs. 264,500,000/= being the amount owed with interest at the court rate.
- ii. 2. The defendants are to pay Tshs. 30,000,000/= as general damages.
- iii. 3. Defendant pays the costs of the suit.

Order accordingly.



**H. R. MWANGA**

**JUDGE**

**28/3/2024**