

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

AT MWANZA

CIVIL CASE NO. 39/2022

TANZANIA FISH PROCESSORS LTD.....PLAINTIFF

VERSUS

CHARLES KONDOLO SUGWA.....DEFENDANT

JUDGMENT

10/5/2024 & 31/5/2024

ROBERT, J

The Plaintiff, Tanzania Fish Processors Ltd, initiated this lawsuit seeking a judgment against the Defendant, Charles Kondolo Sugwa, for the sum of TZS 641,434,973/=, which allegedly represents advances made by the Plaintiff to the Defendant under their business relationship. The Plaintiff also seeks general damages for breach of contract, interest, and costs of the suit.

The Plaintiff contends that for several years, the Defendant, who operates in the fish business, had been supplying fish to the Plaintiff for processing and export. Their business relationship involved the Plaintiff advancing funds to the Defendant for purchasing various supplies necessary for his fishing operations. In March 2021, the Defendant allegedly signed a

loan agreement for an additional loan of TZS 72,800,000/= for purchase of fishnets to support his fish business and acknowledged an existing debt of TZS 568,634,973.96. This loan was granted, bringing the total amount owed to TZS 641,434,973/=. The Plaintiff asserts that this amount was to be repaid through deductions of TZS 5,000,000/= from each fish supply made by the Defendant to the Plaintiff. Despite the agreement, the Defendant ceased to supply fish and left the total sum unpaid.

The Defendant, in his defense, denied the alleged debt of TZS 641,434,973, stating that he never requested a cash loan but acknowledged that he received the fishnets worth TZS 72,800,000/= and signed documents under the belief they pertained to this transaction. He contends that he did not understand the documents he signed due to his illiteracy and claims that the Plaintiff misrepresented the agreement.

The issues raised for the determination of this matter are two: First, Whether the Defendant is indebted to the Plaintiff to the tune of TZS 641,434,973/=being the sum advanced by the Plaintiff to the Defendant in business relationship; and secondly, what reliefs are the parties entitled.

Starting with the first issue, the Plaintiff summoned one witness, Rajaram Prakash (PW1) who presented several pieces of evidence, including a letter allegedly written by the Defendant requesting a loan of TZS 72,000,000/= and acknowledging previous debt of TZS 568,634,973.96 (Exhibit P1(a)); a proforma invoice indicating request for fishnets worth TZS 72,800,000/= from a supplier called Majani M. Masagati (Exhibit P1(b)), a loan agreement (Exhibit P2), and a demand note (Exhibit P3). Mr. Prakash testified that the Defendant had a longstanding business relationship with the Plaintiff and regularly took loans for his fishing operations from the Plaintiff. He confirmed the Defendant's request for a loan of TZS 72,800,000 in January 2021 and the subsequent agreement signed in March 2021, which provided for that loan and acknowledged the total debt of TZS 641,434,973. PW1 confirmed that the loan agreement (Exhibit P2) was signed by both parties, witnessed by the Plaintiff's Commercial Manager and a lawyer. Mr. Prakash explained that despite repeated demand notes (Exhibit P3), the Defendant did not respond or fulfill his obligations.

On his part, the Defendant, Charles Sugwa Kondolo, testified as DW1 and admitted to a longstanding business relationship with the Plaintiff but denied owing the full amount claimed. He stated that, he received fishnets

worth TZS 72,800,000/= but no cash loans. He claimed that the loan agreement was misrepresented to him, as he is illiterate and believed he was only acknowledging the fishnets loan. He contested the validity of the documents presented by the Plaintiff, alleging they were not properly explained to him.

In his final closing submissions, counsel for the Plaintiff submitted that, PW1's testimony, supported by exhibits P1(a) and P1(b) and a loan agreement executed by the Defendant in March, 2021 collectively demonstrate that the Defendant requested and received a total sum of Tshs.641,434,973/=, including an outstanding debt of Tshs.568,634,973.96, and a subsequent loan of Tshs.72,800,000/=.

He argued that, the Defendant's signature, thumbprint, and photograph on Exhibit P2 affirm his acknowledgment of the debt. Despite the Defendant's claim of illiteracy and misrepresentation, he contends that the Defendant's failure to request a reading of the contract terms or to call any witnesses to support his version weakens his defence. Furthermore, he highlighted the Defendant's admission of engaging in business activities that could facilitate debt repayment.

He argued that the loan agreement (exhibit P2) was admitted without objection, thereby proving the debt. He cited the case of **Eupharacie Mathew Rimisho t/a Emari Provision Store & Anor vs Tema Enterprises Ltd & Another, Civil Appeal No. 270 of 2018, CAT (Tanzlilii)**, which establishes that the contents of an unobjected exhibit are considered proved. The Counsel also contended that the Defendant's claim of illiteracy and misrepresentation is unsubstantiated, as he failed to call witnesses who could support his claims. He referred the Court to the principle in the case of **Hemed Saidi vs Mohamed Mbilu** (1984) TLR 113 that failure to call a material witness allows the court to draw an adverse inference.

He submitted further that, according to Section 100(1) of the Evidence Act, when a document is reduced into writing, no evidence shall be given in proof of its terms except the document itself. Hence, the Defendant is therefore bound by the terms of the loan agreement (Exhibit P2). He concluded that the Defendant is liable for the full claimed amount of Tshs.641,434,973/= and requested the Court to order the Defendant to pay the claimed amount with interest and costs.

On his part, counsel for the Defendant, in his final closing submissions, submitted that, the Defendant denies the Plaintiff's claim beyond the acknowledged Tshs.72,800,000/=. He asserted that the Defendant only received fishnets worth Tshs.72,800,000/= and denies receiving any cash. He relied on the principle that the burden of proof lies with the Plaintiff before shifting the same to the Defendant citing the case of **Madeni Ally Mohamed and Others v. Shame Ally Mohamed & Another**, Civil Appeal No. 272 of 2020, CAT (unreported). He maintained that the Plaintiff has not provided sufficient evidence to prove the claimed debt of Tshs.641,434,973/= as it failed to avail prior contracts which created the pending debts referred to in exhibits P1(a) and P2.

He argued that, the Defendant further invokes the doctrine of non est factum, claiming illiteracy and arguing that the contract terms were not adequately explained to him. He asserted that the Defendant was misled into signing the agreement believing it pertained only to the Tshs.72,800,000/= loan for fishnets. He cited the cases of **Tanganyika Bus Service Co. Ltd v. The National Bus Service Ltd (Kamata)** (1986) TLR 2003 (HC) and **Sluis Brothers (E.A) Ltd v. Mathias & Tawari Kitomari**, 1980 TLR 294

(CAT) which protect illiterate individuals who sign documents without understanding their content.

He argued that the loan agreement (exhibit P2) lacks evidential value as the Plaintiff failed to bring forward the officer who attested the document to prove the execution of the said document as required under Section 70 of the Evidence Act and the case of **Asia Rashid Mohamed v. Mgeni Seif**, Civil Appeal No. 128/2011, CAT, (Unreported). He requested the Court to dismiss the Plaintiff's suit and award costs to the Defendant.

After careful consideration of the evidence and submissions, the Court finds as follows: The Plaintiff's evidence, including Exhibits P1(a), P1(b), and P2, substantiates the claim of the outstanding debt. The Plaintiff, through its witness PW1, Rajaram Prakash, testified that the Defendant requested a loan of TZS 72,800,000/= in January 2021 to purchase fishnets and acknowledged a total debt of TZS 641,434,973/= in the agreement.

The Defendant's contention is twofold: firstly, that he never received cash but only fishnets worth TZS 72,800,000/=; secondly, that he was misled into signing the documents due to his illiteracy, believing they pertained only to the fishnets.

The court notes that the Defendant admitted signing the documents and affixing his thumbprint. His defense hinges on the assertion of misrepresentation, claiming that the Plaintiff exploited his inability to read and write. However, the Defendant did not call any witnesses who could corroborate his version of events. This failure to provide supporting testimony weakens his defense.

The Plaintiff's evidence, on the other hand, is supported by the admitted documents. The consistency between the Defendant's signatures on various documents and his written statement of defense further corroborates the Plaintiff's claim. The Defendant's admission that he signed the documents, failure to object to the admissibility of these documents during the trial, combined with his acknowledgment of the fishnets in his written statement of defense, underscores the absence of a valid basis for contesting these documents and lends additional credibility to the Plaintiff's case.

With regards to the evidentiary value of exhibit P2, this Court notes that, the Plaintiff's testimony indicates that the loan agreement (Exhibit P2) detailed the terms of the loan, including the Defendant's agreement to repay TZS 641,434,973/= by deductions from fish supplies. This agreement was

executed in the presence of company officials and a lawyer, adding a layer of formality and authenticity.

Counsel for the Defendant's argument based on Section 70 of the Evidence Act is without merit. The Defendant did not object to the admission of Exhibit P2 during the trial, nor did he question its authenticity until his defense submissions. By failing to raise an objection at the earliest opportunity, the Defendant has implicitly admitted the validity of the document. Furthermore, the Defendant's acknowledgment of receiving TZS 72,800,000/= under the same agreement undermines his current challenge to the document's evidential value.

The court finds that the Defendant failed to provide sufficient evidence to refute the Plaintiff's claim. The signed documents, the consistency in the Plaintiff's witness testimony, and the lack of credible evidence supporting the Defendant's claim of misrepresentation lead to the conclusion that the Defendant is indeed indebted to the Plaintiff for the total claimed amount.

In light of the above, the court finds that the Plaintiff has proved, on a balance of probabilities, that the Defendant is indebted to the Plaintiff to the tune of TZS 641,434,973/=.

Coming to the reliefs entitled to the parties, given the analysis above, the Court finds that the Plaintiff has proven its case on a balance of probabilities. The Defendant's acknowledgment of TZS 72,800,000/= and the consistent and credible evidence presented by the Plaintiff regarding the additional debt of TZS 568,634,973/= leads to the conclusion that the Defendant is indeed indebted to the Plaintiff for the total claimed amount.

Consequently, the Defendant is hereby ordered to pay the Plaintiff TZS 641,434,973/=, being the sum advanced during their business relationship.

With regards to interest and general damages, the Court finds and holds that, it shall not order the defendant to pay interest since the original agreement between the parties (Exhibit P2) did not include a provision for the payment of interest. The court is reluctant to impose interest since it was not explicitly agreed upon by the parties.

Furthermore, the Court has considered that the Defendant demonstrated without being controverted that the delay in repayment was due to circumstances beyond his control, particularly the government

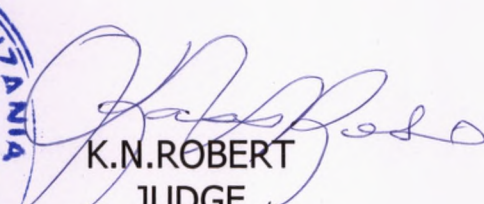
operation seizing and burning his fishnets. The court finds it inequitable to impose interest under these circumstances.

The Court also denies the claim for general damages, as there is no direct causal connection between the Defendant's alleged breach of contract and the Plaintiff's claim for general damages. General damages must be reasonably foreseeable as a result of the breach, and since the Plaintiff failed to establish this connection, the court finds no justification for the claim.

In the end, the Court orders the Defendant to pay the Plaintiff TZS 641,434,973/=, being the sum advanced during their business relationship. The Defendant is to bear the costs of this suit.

It is so ordered.




K.N.ROBERT
JUDGE
31/5/2024

