

IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR ES SALAAM  
COMMERCIAL CASE NO. 56 OF 2004  
SCANIA TANZANIA LIMITED.....PLAINTIFF  
VERSUS  
WASWARD MAPANDE.....DEFENDANT

Date of submissions        -15 November 2005  
Date of Judgment         - 4 January 2006

Counsel: Mr. Mwakipesile for Plaintiff  
              Mr. Rweyongeza for Defendant

JUDGMENT

Dr. Bwana, J:

1. The Plaintiff is a company registered under the Companies Ordinance, Cap 212 of our laws. The defendant is a businessman in the transportation sector. He had purchased buses from the plaintiff and continued to enjoy workshop services and spare parts to the said buses for a considerable period of time on credit basis.
2. Sometime in 2000 things turned sour on both sides. Prior to that period, the defendant used to pay for the spare parts and workshop services as and when the plaintiff raised the relevant invoices. The defendant had opened an account with the Plaintiff (account No. 4121585) through which all the

invoices were recorded – Exh P1. By the year 2000, the debit on the said Account stood at shs.65,883,017/-. The defendant was informed and a copy of the statement of account was sent to him – Exh P3 – asking him to go through it and give his views on the same.

3. Failing to respond, the plaintiff, through its lawyers sent him a demand notice. The Defendant replied Exh P2 stating inter alia, the following: \_

**“ However for purposes of expediting settlement of this matter, I propose to liquidate the amount due in monthly installments of shs.2,000,000/- until such time as we shall convene and ascertain the actual amount due...”**

The parties never met to ascertain the actual amount due, hence this suit..

4. Both parties called one witness. The Plaintiff called one Sanjay Kantilal Oza – PW1 – an accountant with the Plaintiff. He is incharge of all financial matters of the Plaintiff. The Defendant appeared in person as DW1. The only issue for determination by this court is whether the Defendant owes the Plaintiff the sum of shs.65, 883,017/- or any part thereof.
5. According to the evidence of PW1, the parties had carried on business for a period of over six years. The arrangement had been that the defendant would first be provided with the required spares and or workshop services. He would be invoiced at a later period. He would then settle the same. That procedure was followed smoothly until the year 2000 when the defendant stopped servicing his account. By that time, there were about 61 outstanding invoices, Exh P1 inclusive.

6. However the defendant denies all liability. He claims that the invoices – all computer print outs – are fabricated, they re not genuine. No accompanying supporting documents have been attached to substantiate those claims contained in the invoices. It is further averred that at one stage i.e. when he wrote Exh P2, he attached payment of shs.2,100,000/- as part of his attempt to reduce the debt. The said sum comprised the 2m/- referred to earlier and the shs.100,000/- being costs as claimed by the Plaintiff's advocates. Those sums are not reflected in Exh P1, therefore confirming his averment that the claim is not genuine.
7. Let me start with the last point raised in the proceeding paragraph (6) namely that the shs.2,100,000/- are not reflected in Exh P1 hence questioning its genuineness. It is clear from Exh P1 that it covers the period between 21 February 1995 and 31 July 2000. The letter, ExhP2, was written on 9 October 2001 therefore, more than a year later. If the 2m/- payment was accompanied with that letter, it means that it cannot be reflected in Exh P1. The most this court can do is to have that sum deducted from the plaintiff's claims, if awarded.

The suit cannot be dismissed merely on the grounds as submitted by Mr. Rweyongeza, citing SARKAR'S LAW OF CIVIL PROCEDURE (8<sup>th</sup> Ed) at p.652 that:-

**“ In a money suit for specific and ascertained sum on finding no settlement of accounts, such must either dismiss the suit or pass a preliminary decree for settlement of accounts affording full opportunity to the defendant.....”**

No.. It does not work that way, so mechanically. Even relying on the provisions of Order VII r. 2 of the Civil Procedure Code, 1966 does not make this court concur with the defendant's averment. The said R.2, which, again, the defendant relies upon in support of his case, states:

**“R.2. Where the Plaintiff seeks recovery of money, the plaint shall state the precise amount claimed.**

**Provided that where the Plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for” (emphasis added)**

With due respect, I do not see any fault in the plaint in its present form. All those requirements are met and reflected in the plaint.

8. Also raised by the defendant is the fact that Exh P1 is a mere computer print out which does not show supporting documents cum evidence to such claims. It is correct that supporting documents, such as job cards, were not produced in Court so as to solidfy the plaintiff's case. Lack of the same, however, does not, in my considered view, invalidate the contents of Exh P1. These are computer statements stored and printed out when required. In this age of such technology, that information cannot be dismissed on flimsy grounds such as the ones raised by the defence case. The parties had used a similar procedure for a considerable long period. Further, it is the uncontroverted evidence of PW1, that the Defendant was served with a copy of the same computer print out and asked for his comments. His response was in the form

of Exh P2, which, part of it is quoted above (para 3). Therefore I see no reason to dismiss this case on the mere claim that the computer print out lacks certain information.

9. My considered view is that the plaintiff has proved its case on a balance of probabilities, the standard required in cases of this kind. The workshop and other services were provided by the plaintiff to the defendant's vehicles. The outstanding invoices were never settled as shown in Exh P1. Therefore the said sum should be paid by the defendant, minus shs.2100,000/- which was paid, as reflected in Exh P2, and which is not denied by the plaintiff.

10. In conclusion therefore, judgment is entered in favour of the plaintiff as prayed. The defendant is ordered to pay to the plaintiff the sum of shs.63,783,017/- (that is shs.65,883,017 minus shs.2,100,000/-). The said sum to carry a 17% interest per annum from the date of filing this suit to the date hereof. The decretal sum to carry a further interest of 7% per annum from the date hereof until full and final payment. Costs of this suit awarded to the plaintiff. It is accordingly ordered.

Dr. S. J. Bwana  
**JUDGE**  
4/1/2006

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