

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 57 OF 2011**

**HERTZ (TANZANIA) LIMITED..... PLAINTIFF**

**VERSUS**

**GALILEO BY TRAVELPORT CO. LTD..... DEFENDANT**

**JUDGMENT (EX-PARTE)**

**BUKUKU, J.**

This case proceeded ex-parte after the defendant defaulted appearance on several occasions, though duly served. The defendant was required to appear in court on 15<sup>th</sup> February 2012, the date which was set for the Final Pre Trial Conference for framing the issues for the trial. There was no appearance by her. Upon plaintiff's prayers to adjourn the Final Pre Trial Conference, the defendant was served again to appear for Final Pre Trial Conference on 28<sup>th</sup> February 2012. On that date, again the defendant did not make appearance .

Having failed to appear in two occasions thereafter, Mr. Ringia, Learned Advocate for the plaintiff made an application to prove the case ex-parte by oral evidence and I readily granted the prayer and the case was fixed for hearing ex-parte on 2<sup>nd</sup> November, 2012. On that day the

defendant defaulted appearance again and so the court proceeded ex-parte.

The plaintiff herein, Hertz (Tanzania) Ltd is claiming against the defendant the sum of USD. 170,168.95 (United States Dollar One Hundred and Seventy Thousand, One Hundred Sixty Eight and Ninety Five Cents) only, being an amount due for hired transport services. It is claimed that the plaintiff and the defendant entered into an arrangement whereby the plaintiff was to provide transport services on credit terms, whereby, the defendant hired from the plaintiff a number of motor vehicles as from August, 2009. It is also claimed that, despite enjoying the said services the defendant has not been able to settle the invoices raised.

According to the plaint, out of the claimed amount, the defendant did admit vide its letter Ref. GT/AC/23/2010 dated 21<sup>st</sup> October, 2010, owing the plaintiff the sum of USD. 141,078.45 (United States Dollars One Hundred Forty One Thousand, and Seventy Eight and Forty Five Cents) only, an amount that the plaintiff herein seeks judgment on admission. That, despite several demands for settlement of the debt due, the defendant has refused and/ or neglected to heed to the said demands hence this case.

The plaintiff now prays for judgment and decree on admission as follows:

- a) The defendant be ordered to immediately pay to the defendant USD 141,078.45 (United States Dollars One Hundred Forty One

The main issue for determination is whether the defendant is indebted to the plaintiff for the provision of transport services, and the other ancillary issue is the relief(s) which the parties are entitled to.

Only one witness testified for the plaintiff, one Mr. Nasri Ahmed Kadri (**PW1**) who is an officer of the plaintiff. **PW1** testified to the effect that, the defendant was their customer since 2008. That, the defendant rented cars from their company, and they were provided with the same, with a provision of fuel and driver(s) (Chauffer driven cars). Asked whether the defendant was paying as agreed, it is the testimony of **PW1** that, at first the defendant used to pay but not on time and later on, they stopped payment. **PW1** told the court that, at the time they filed the suit in this court, already the defendant was indebted to the plaintiff to the tune of USD 170,000. **PW1** tendered in court a statement of account showing the amount which the plaintiff is claiming from the defendant and that which has been paid by the defendant. The document was admitted as **Exhibit. P1**.

**Exhibit P1** clearly shows that, the amount debited from 10<sup>th</sup> December, 2008 to 03<sup>rd</sup> January 2011 is USD 291,183.52 while during the same period, the amount credited in plaintiff's account is USD 121,014.57, thus making an outstanding balance of USD 170,168.95 now claimed by the plaintiff. Testifying further, **PW1** told this court that, on several occasions, they had sent invoices to the defendant who acknowledged the same. He then tendered in court as exhibits, eleven invoices dated 15/9/2010; 18/8/2010; 20/7/2010; and two invoices dated 17/5/2010. Other invoices are dated 31/3/2010; 13/11/2008;

Thousand and Seventy Eight and Forty Five Cents) only, based on admission.

- b) The defendant be ordered to pay to the plaintiff the sum of USD 29,090.05 (United State Dollars Twenty Nine Thousand and Ninety and Five Cents) being the outstanding amount for services rendered.
- c) That the defendant be ordered to pay to the plaintiff general damages for loss of earnings and profit as may be assessed by this honorable court.
- d) That the defendant to pay the plaintiff interest on the principle amount in paragraph (a) herein above at commercial rate of 30% from the due date till Judgment.
- e) That the defendant to pay the plaintiff interest on the principle amount in paragraph (a) herein above at Courts rate of 9% from the date of judgment till the date when the decree is satisfied in full.
- f) Costs of this suit be provided for.
- g) Any other and further relief(s) the Court may deem fit.



11/10/2008; 22/7/2008; 11/7/2008 and 30/11/2010 which were then admitted in court as **Exhibit P2** collectively.

Narrating further, **PW1** testified that the defendant used to acknowledge the invoices and have never disputed them. He further claimed that, sometimes in 2009, they sent an email to the defendant, and the defendant acknowledged to pay USD. 70,000. **PW1** then tendered in court the acknowledgement letter from the defendant dated 13<sup>th</sup> November, 2009 which was admitted as **Exhibit P3**. **PW1** further testified that, notwithstanding the acknowledgement letter, the defendant failed/neglected to pay. That notwithstanding, it is **PW1's** testimony that, the plaintiff continued rendering service to the defendant in the hope that they will be paid.

**PW1** further stated that, sometimes in October, 2010, they received another letter from the defendant informing them on the payment plan for the outstanding balance. In that letter, the plaintiff acknowledged presence of outstanding balance for unpaid invoices amounting to USD. 141,078.45, as at September, 2010. **PW1** tendered in court the said letter from the defendant dated 21<sup>st</sup> October, 2010, which was admitted as **Exhibit P4**. Testifying further, **PW1** told the court that despite the letter, the defendant failed to honor its obligation and at that point, they asked their lawyer to send a demand notice to the defendant. The demand letter which was tendered in court, was admitted as **Exhibit P5**.

Concluding his testimony, **PW1** averred that, even after the demand letter, the defendant did not pay and that is why they instituted

this suit in which they pray for judgment and decree for the payment of USD. 170,168.98, out of which USD. 141,078.45 is based on admission. They also pray for costs, interest and any other relief(s) this court may deem fit to grant.

That is all for the testimony. Now, for the analysis.

This is evidence which has not been controverted. Although the plaintiff has been allowed to prove their claims ex-parte, this court has a duty of seeing to it that the standard required has been reached. It is trite law that, even in ex-parte proofs, the plaintiff has to prove his case up to the standard required- balance of probability **(CAT) Civil Appeal No. 10 of 1998, Peter Ng'homango V. Gerson M. K. Mwanga and the Attorney General.**

Regard being had to the totality of the evidence given in relation to the pleadings, I am satisfied that, the plaintiff has proved their claim up to the standard required. I am also satisfied that, the defendant had on various dates acknowledged indebtedness to the plaintiff by acknowledging the invoices **(Exhibit P2)** and also by writing two letters to the plaintiff. The first letter, **Exhibit P3** provides as hereunder:-

*"Our Ref. GT/AC/144/2009*

*13 November, 2009*

*Hertz (Tanzania) Ltd.*

*P.O Box 6100.*

*Dar Es Salaam.*

*Attn: Mr. Ahmed Karim*

*Dear Sir,*

***RE: PAYMENT PLAN FOR OUTSTANDING BALANCE***

*Galileo By Travelport Co. Ltd (GTCL) acknowledges presence of huge outstanding balance for unpaid invoices amounting to USD 70,793.00 as at 30<sup>th</sup> September, 2009.*

*In reference to our meeting held at your office on 29<sup>th</sup> October, 2009 regarding the subject matter, the following will be our payment plan.*

- Payment of USD 25,000.00 on or before 25<sup>th</sup> November, 2009.*
- Payment of USD 25,000.00 on or before 28<sup>th</sup> December, 2009.*
- Payment of USD 20,793.00 on or before 25<sup>th</sup> January, 2010;  
and*
- GTCL will pay all your invoices raised for the month of October to December inclusive on or before 25<sup>th</sup> February 2010.*

*We hope that this arrangement will assist on clearing the balance.*

*Thank you for your continued good business relationship.*

*Yours sincerely,*

*(signed)*

***Riziki Messa***

***Finance and Administration Manager***

As if that was not enough, to complement **PW1's** testimony, the defendant wrote another letter, **Exhibit P4** which not only acknowledges the debt but also brings on board a further payment plan on how defendant will discharge the outstanding debt. The said letter reads:

"Our Ref. GT/AC/23/2010

21<sup>st</sup> October, 2009

Hertz (T) Ltd  
P.O Box 6100  
Dar Es Salaam.

Dear Sir,

**RE: PAYMENT PLAN FOR OUTSTANDING BALANCE**

*Galileo By Travelport Co. Ltd (GTCL) acknowledges presence of outstanding balance for unpaid invoices amounting to USD. 141,078.45 as at September, 2010.*

*In reference to our meeting held today regarding the subject matter, the following will be our payment plan.*

- *USD. 20,000 payable on 28<sup>th</sup> of November, 2010 thereafter USD 12,000 payable on 28<sup>th</sup> each month for 11 consecutive months until the backlog is cleared.*
- *GTCL will be paying the monthly invoices as they fall due from Oct 2010.*

*We hope that this arrangement will assist on clearing the balance.*

*Thank you for your continued business relationship.*

***Galileo by Travelport Co. Ltd (GTCL)***

***Name:***     *Joachim Enos*

***Name:***     *Ag. Finance and Administration Manager*

*(Signed)*

***Supplier Name:*** *Hertz (T) Ltd.*

***Name:***     *Ahmed Karim (Signed)*

***Title:***      *Manager*

***Witness:***

***Name:***     *Julius Haule (signed)*

***Title:***      *Technical Manager GTCL*

I have carefully considered the evidence given in this ex-parte hearing, and I am satisfied with the same. The plaintiff is entitled to recover the sums claimed from the defendant. Therefore, this ex- parte judgment is entered in favour of the plaintiff. Having said so, I will now consider the reliefs claimed. In their plaint the plaintiff has prayed to be paid an amount of USD 141,078.45, as admitted and USD 29,090.05 outstanding, general damages, 30% interest on the principal amount of USD. 141,078.45, further interest at court's rate of 9% from the date of

judgment till the date the decree is satisfied in full, costs and other relief(s) the court may deem fit. The plaintiff has not led any evidence in connection with the 30% commercial rate of interest. It is certainly not reflected in the invoices in **Exhibit P2**.

In the upshot and for the foregoing reasons, I enter judgment in favour of the plaintiff and award the following:

- (i) The defendant shall pay the plaintiff an amount of USD. 141,078.45 (United States Dollars One Hundred Forty One Thousand and Seventy Eight and Forty Five Cents) only, based on admission.
- (ii) The defendant shall further pay the plaintiff the sum of USD. 29,090.05 (United State Dollars Twenty Nine Thousand and Ninety and Five Cents) being the outstanding amount for services rendered.
- (iii) The defendant shall pay the plaintiff interest on the principle amount in paragraph (i) herein above at commercial rate of 21% from the due date till Judgment.
- (iv) The defendant shall pay the plaintiff interest on the principle amount in paragraph (i) herein above at Courts rate of 9% from the date of judgment till the date when the decree is satisfied in full.

(v) The defendant is condemned in costs of this suit.

It is ordered accordingly.

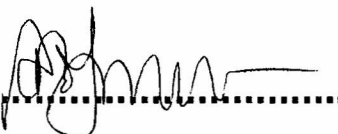
  
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**A.E BUKUKU, J.**

**JUDGE**

**18<sup>TH</sup> FEBRUARY, 2013**

Judgment delivered this 18<sup>th</sup> day of February in the presence of Mr. Ringia, Learned Advocate for the Plaintiff and in the absence of the Defendant.

  
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**A.E BUKUKU, J.**

**JUDGE**

**18<sup>TH</sup> FEBRUARY, 2013**