

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO.129 OF 2019

HSE AND SECURITY TASKS (T) LIMITED PLAINTIFF

VERSUS

KNIGHT SUPPORT (T) LIMITEDDEFENDANT

Date of Last Order:20/10/2020

Date of Judgement: 13/11/2020

EX-PARTE JUDGEMENT

MAGOIGA, J.

This is an ex-parte judgement. The plaintiff, HSE AND SECURITY TASKS (TANZANIA) LIMITED by way of plaint instituted the above referred suit in this court against the above referred defendant praying for judgement and decree in the following orders, namely:

- i. Payment of Tanzania Shllings 265,000,000/= (Tanzania Shillings Two Hundred and Sixty Five Million only) being the outstanding debt due to the plaintiff from the defendant.
- ii. Payment of Tanzania Shillings Four Hundred Million (Tanzania Shillings 400,000,000/=) being damages for breach of the contract as per paragraph 8 herein above. Taxes awaiting pay.

- iii. Payment of Tanzania Shillings Three Hundred Million (Tanzania Shillings 300,000,000/=) being damages for financial loss subject to the plaintiff as per paragraph 9 herein above.
- iv. Payment of Tanzania Shillings One Hundred Million (Tanzania Shillings 100,000,000/=) being general damages suffered by the plaintiff as per paragraph 10 herein above.
- v. Interest at 25% per annum against clauses (i), (ii), (iii) and (iv) herein above from October 2018 to the date of payment in full.
- vi. Interest at court's rate on the decretal sum.
- vii. Costs of this suit.
- viii. Any other relief(s) the honourable court shall deem fit to grant.

Upon being served with the plaint, the defendant filed written statement of defence disputing every claim of the plaintiff and consequently prayed that the instant suit be dismissed with costs.

The facts of this suit are imperative to narrate. In the year 2018 the defendant contracted the plaintiff to provide the defendant with security guards each month at various sites on agreed consideration of monthly payment that ranged between 48 and 59 Million each month to be used to pay the said guards remunerations, taxes and other office staffs. Facts go

that the plaintiff provided the defendant with the said security guards but the defendant kept defaulting payments of the agreed monthly consideration and by October 2018 there was outstanding debt at the tune of Tshs.270,000,000/=.

Further facts were that, the act of the defendant failure to pay the money is clear breach of the contract impacting negatively the plaintiff's business for over sixteen months and the relationship with his employees. Also the non-payment of the money has caused the plaintiff's business to great financial loss following the plaintiff's failure to use and invest its monthly gains/profits, penalties for failure to pay return in time threatening the plaintiff's business, hence, subjecting the plaintiff to great stress, anxiety and uncalled inconveniences, hence, claims of the prayers as contained in the plaint.

On the other hand, apart from defendant denying the claims of the plaintiff, denied to have entered any agreement with the plaintiff but alleged that there was a partnership for working jointly and payments and liabilities be shared but the plaintiff never fulfilled her obligations and therefore, there was no any breach of a contract at all.

At all material time the plaintiff was enjoying the legal services of Ms. Miriam Majamba, learned advocate. On the other hand, defendant was represented by Mr. Erick Kelvin, learned advocate.

Before hearing took of the following issues were framed and agreed with the learned advocates for parties for the determination of this suit, namely:

1. Whether the defendant breached the contract entered with the plaintiff and liable.
2. If issue number one is answered in the affirmative, what relief(s) parties are entitled to.

When this suit was called on for hearing on 08/09/2020, the learned advocate for the plaintiff was ready with one witness in attendance, but the learned advocate for the defendant, Mr. Kevin, learned advocate, informed the court that he is not ready on reason that has not filed witness statement because the name of the intended witnesses are not available. However, the learned advocate for the defendant went on to tell the court that they have lodged an application for extension of time to file witness statement. In the circumstances, the learned advocate prayed for

adjournment of the suit to pave way for hearing of the application. His prayer was seriously objected by the learned advocate for the plaintiff.

This court believing, there was an application, grudgingly granted the prayer for adjournment and other punitive costs as per the Rules for the conduct exhibited by the learned advocate for the defendant. The next date set for orders on 20/10/2020 no application was ever filed and the learned advocate for the plaintiff never turned out. The learned advocate for the plaintiff filed a preliminary objection but which she withdrew and prayed that the matter be heard ex-parte. The court granted the prayer and set the suit for hearing on 21/10/2020, hence, this ex-parte judgement.

In proof of the suit the plaintiff called one witness by the name, Mr. WILFRED SEMAHAMBA SEZUA-to be referred herein as PW1 for purposes of these proceedings. PW1 prayed for his witness statement dully filed to be adopted as his testimony in chief. The said witness statement was so adopted. PW1 tendered in evidence a certificate of incorporation and permits from the Ministry of Home Affairs showing the legal status of the company and their objects and same was marked as **exhibit P1a-b**. PW1 collectively tendered in evidence two letters from the parties' herein advocates dated 07/12/2018 and 21/12/2018 respectively admitting the

outstanding amount of TShs.270,000,000/= which were marked as **exhibit P2a-b**.

Further, PW1 tendered correspondences between the plaintiff and defendant dated 22/10/2018 which was admitted and marked as **exhibit P3**. Another documents tendered in evidence were an updated statement of account together with invoices dated 09/05/2018 to 05/10/2018 which were collectively marked as **exhibit P4a-b**. PW1 went on to tender in evidence termination of employment letters from his employees which were collectively admitted in evidence and marked as **exhibit P5a-e**. And lastly but not least, PW1 tendered in evidence financial losses, demand notice, loan facility and letter from his suppliers collectively which were admitted in evidence as **exhibit P6a-b**.

This marked the end of hearing of this suit ex-parte. The task of this court now is to determine the merits or demerits of this suit in the light of issues framed. I have gone through the entire witness statement of PW1, which I need not reproduce herein, and the documentary evidence tendered as exhibits carefully and I am of the considered opinion that there is no dispute that parties herein had oral arrangements for the provision of

security guards to various sites managed by the defendant. It is also not in dispute that the parties herein are still in business relationship.

However, there dispute is whether the defendant breached a contract entered with plaintiff and is liable? This is issue without much ado has to be answered in the affirmative. I will explain why I answer this issue in the positive. **One**, according to the letter dated 21st November, 2018 which was admitted as **exhibit P2b** the defendant clearly admits the outstanding debt of Tshs.270,000,000/=, hence, this letter from the defendant support the claims of the plaintiff. **Two**, the defendant in his written statement of defence alleged that the plaintiff was a partner but in exhibit P2b nowhere such statement was stated showing that the plaintiff was a partner, therefore, the defence of partnership was raised out of context. **Three**, the plaintiff was genuine enough to show that the defendant paid Tshs. 5,000,000/= in November, 2018 out of TShs.270,000,000/= leaving unpaid some of Tshs.265,000,000/= as claimed. In the totality of the above reasons and in the absence of evidence to the contrary this court is inclined to hold that defendant breached the contract orally entered with the plaintiff and is liable to pay the principal amount claimed in the plaint in paragraph (i) in the plaint.

As to the claim in paragraph (ii) in the plaint of Tshs.400,000,000/= being damages for breach of contract as per paragraph 8 in the plaint, I am aware and guided by the provisions of section 73 of the Law of Contract Act, [Cap 345 R.E. 2002]. The said provision provides as follows:

Section 73. Compensation for loss or damage caused by breach of contract, etc.

(1) When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

(2) The compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

(3) When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.

(4) In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Guided by the above clear provisions of the above section, I am convinced that the plaintiff is entitled to some compensation from the breach which is proved above. In this limb, the plaintiff claimed Tshs. 400,000,000/=. I have considered the breach and the amount claimed and I am of the considered opinion that the amount claimed as loss for breach of contract is highly and unreasonably claimed. Nevertheless, an amount of Tshs. 15,000,000/= will serve the justice of this case in this limb.

The third limb of claim is Tshs.300,000,000/= being damages for financial loss subjected to the plaintiff. This limb of claim, in my opinion, is special claim in nature and as such, therefore, a trite law that it was supposed to be specifically pleaded and strictly proved. See the case of ZUBERI AUGUSTINO v ANICET MUGABE [1992] TLR 137 (CA). In this suit the prayer for financial loss was not specifically pleaded nor proved, hence, this limb has to fail miserably and is not granted as prayed.

The forth limb of claim is the Tshs.100,000,000/= being general damages. It should be noted that this amount was wrongly quantified because it is

only granted only at the discretion of the court guided by several principles. I have carefully considered this claim and the circumstances of this suit and I am of the considered opinion that payment of Tshs, 10,000,000/= will do justice to this case. There I grant Tshs. 10,000,000/as general damages in this limb.

Next is the claim of 25% interest per annum against clause (i) to (iv) in the plaint. This prayer will not detain me. Only to those prayers granted herein above, I hereby do grant an interest rate of 15% from October 2018 per annum to the date of payment in full. In additional to that the plaintiff is entitled to 7% interest at court rate from the date of this judgment till payment in full.

In the event this suit succeed and fail to the extent I have explained above with costs to the plaintiff.

It is so ordered

Dated at Dar es Salaam this 13th November, 2020




S. M. MAGOIGA
JUDGE
13/11/2020