

**IN THE HIGH COURT OF UNITED REPUBLIC OF
TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO.21 OF 2023**

NOVA ESPERANCA SERVICES LIMITED.....PLAINTIFF

VERSUS

SVT TANZANIA LIMITED.....DEFENDANT

Date of Last Order: 15/5/2023

Date of Judgment: 09/06/2023

DEFAULT JUDGMENT

NANGELA, J

This is a default judgment. The judgement arises from the Plaintiff's alleged breach of contract and failure on the Defendant to enter defense despite having been duly served by way of a substituted service. In her plaint filed in this Court against the above-named Defendant, the Plaintiff is praying for judgment and decree as follows: -

1. Payment of USD 79,767 equivalent to TZS 186,495,246.00 being the amount emanating from the Defendant's acts of breach of the transportation agreement
2. Payments of USD 50,000 as general damages arising from the Defendant's acts of breach.
3. Cost for this suit.

4. Any other relief that the honorable court deems fit to grant.

The Plaintiff is enjoying the legal services of Mr. Anwaar Katakweba, learned counsel. The facts of this suit as gathered from the plaint are that, sometimes in 2022 the Plaintiff entered a consignment transportation agreement with the Defendant for transportation of 7 trucks from Dar es Salaam to Kigali-Rwanda. As consideration for the assignment, the Plaintiff paid the Defendant 80% of the agreed amount, a total of USD 21,751.3, as advanced payments.

Unfortunately, the Defendant failed to comply with his part of the agreement with the Plaintiff as out of 7 consignments which were to be ferried to Kigali, only 1 consignment was offloaded as the rest got detained by the Transporters subcontracted by the Defendant due to claims regarding unpaid charges.

It is further stated that, due to the above failure, the Plaintiff and Defendant entered into an agreement to remedy the situation whereby the two agreed as follows: -

1. That, the Plaintiff was to pay the full charges owed to the Transporters to facilitate the movement of the remaining consignments.
2. That, the Defendant is to refund the Plaintiff, part of the advanced amount of US\$ 19200 paid by the Plaintiff to the Defendant.

3. That, the Defendant was given two weeks from 29/11/2022 up to 15/12/2022 to comply with the terms above, whereas failure to comply there would be an additional interest of 5% per day.

It is averred, however, that, despite such agreed remedial efforts, up to date, the Defendant has not complied with the agreed terms above despite the Plaintiff having duly complied with what was agreed by paying a total of US\$ 21000 to the transporters and despite further demands from the Plaintiff's legal representatives, hence, this suit.

When this suit was set for orders on the 06th of April 2023, Mr. David Kassanga, learned Advocate appeared for the Plaintiff. The Defendant was absent and unrepresented in Court. An order for reservice of the Defendant by way of publication following prayers for substituted service was made. The suit was again scheduled for orders on the 15th of May 2023.

On the material date, still the Defendant was absent in Court. A prayer was made, therefore, that, the matter should, by virtue of Rule 22 (1) of the High Court (Commercial Division) Procedure Rule, 2012 (as amended), proceed by allowing the Plaintiff to file Form No.1 applying for a default judgment. In the circumstances, his prayer was granted, and the Defendant filed the requisite Form No.1 accompanied by an affidavit.

The record as it stands, it speaks louder and clear that, after efforts made by Plaintiff to serve the Defendant by normal means were in vain, the Plaintiff resorted into substituted service and a summons was published in two local newspapers in the country. In particular, the Plaintiff, effected service to the Defendant on 24th April 2023 through *The Citizen* and *Mwananchi Newspapers*.

It against this background that, this Court, on strength of the proof availed on Form No.1 and the accompanying affidavit of one, Mr. August Song, who is the Principal Officer of the Plaintiff, proceeds to issue this *Default Judgment* in favour of the Plaintiff. The Court does so having carefully gone through the affidavit and the exhibits annexed in proof of the claim and got satisfied that the Defendant is in breach of contract and has unjustifiably failed to effect a refund of the monies already paid by the Plaintiff or perform that which was agreed by the parties as a remedial measure.

Guided by what Rule 22(1) of the High Court (Commercial Division) Procedure Rules, 2012 (as amended in 2019), I therefore find that the Defendant is entitled to default judgment as prayed because: **One**, there is no dispute that the two parties herein on 26th October 2022 entered into transport agreement through email communication as vividly evidenced in exhibit **P1** which is loud and clear on the fact.

Two, the gist of this suit is breach of the parties' commitment agreement by the Defendant wherein the Defendant has failed to refund monies the Plaintiff paid as an advance payment for the remaining 6 trucks on 16th November 2022 as agreed. In the circumstances, it my finding that, the Plaintiff has ably proved before this Court.

As I pointed out hereabove, the Plaintiff did take efforts, including signing of an agreement with the Defendant to settle the claims. However, which, after its signing, the Defendant did not honour the agreement and further failed to deliver the consignments to their respective destination as agreed. So, failure to perform his obligation as agreed, this Court hereby declares the Defendant to be in breach of contract.

Consequently, in terms of Rule 22(1) of the Rules as amended by G.N. No.107 of 2019, I hereby enter default judgment and decree in favour of the Plaintiff and states as follows: -

1. The Defendant is ordered to pay to the plaintiff a sum of US\$ 79,767 equivalent to TZS 186,495,246.00 being the amount emanating from the Defendant's acts of breach of the transportation agreement.
2. The Defendant is ordered to pay US\$ 5,000 as general damages arising from the defendants acts of breach.

3. The Defendant is ordered to pay costs of this suit.

FURTHER ORDER

That In terms of Rule 22(2) (a) and (b) of the rules, I further order that the decree in this suit shall not be executed unless the decree holder has, within a period of ten (10) days from the date of the default judgment, published a copy of the decree in at least two newspapers of wide circulation in the country and after the period of twenty one (21) from the date of expiry of the said ten (10) days has elapsed.

It is so ordered.

It is so ordered.

**DATED AT DAR-ES-SALAAM ON THIS 09TH DAY OF
JUNE 2023**



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**DEO JOHN NANGELA
JUDGE**