

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
COMMERCIAL DIVISION  
AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 100 OF 2022**

**KUEHNE+NAGEL (TANZANIA) LIMITED.....PLAINITFF**

**VERSUS**

**SVT TANZANIA LIMITED .....DEFENDANT**

**EXPARTE JUDGMENT**

**Date of last Order: 18/04/2024**

**Date of Judgment: 07/06/2024**

**GONZI, J.**

The Plaintiff sued the Defendant praying for Judgment and Decree against the Defendant as for:

- a) A declaration that the Defendant is in breach of the agreement for failure to timely return the 47 containers.
- b) A declaration that the Plaintiff is entitled to payment of demurrage charges for delayed return of containers from the 1<sup>st</sup> February 2022 up to their respective dates of return;
- c) A declaration that the plaintiff is entitled to payment of demurrage charges for eighteen (18) containers that remain

unreturned to the date of their return and or the date when their scrap value or DVR is paid.

- d) Payment of United States Dollars Three Hundred Forty-Three Thousand and Eighty (USD 343,080,000) being daily demurrage charges for delayed return of the 47 containers at USD 60.00 per container per day from 1<sup>st</sup> February 2022 to their respective dates of return and for the eighteen (18) unreturned containers as of 31<sup>st</sup> August 2022;
- e) Payment of demurrage at USD 60.00 per container per day from 1<sup>st</sup> day of September 2022 to the date the 18 containers are returned and or their DVr is paid.
- f) An order for specific performance that the Defendant should return the 18 containers as per the agreement or that the Defendant should pay the DVR value of USD 147,585.00.
- g) Payment of investigation costs of USD 14,382.56.
- h) Payment of USD 58,000.00 as rescue costs;
- i) Payment of USD 16,854.14 being restorage charges;
- j) General damages as assessed by the Court.

- k) Interest on (d), (e), (g), (h), and (i) above at the rate of 28% per annum from their respective due dates to the date of payment in full.
- l) Interest on (f) and (j) above at the court's rate from the date of Judgment;
- m) Costs of this suit;
- n) Any other relief(s) that this Honourable Court may deem fit and just to grant.

The basis of the above claims as it can be gathered from the Plaintiff, is that on 8<sup>th</sup> December 2021 the Plaintiff and the Defendant entered into an agreement for provision of transportation services. The Defendant agreed to provide 47 trucks in good working order with qualified drivers to load 47 containers belonging to MSC and to be taken from MSC. The plaintiff paid the said MSC and issued a guarantee on the return of the 47 containers. The Plaintiff loaded the 47 containers with humanitarian cargo at Dar es Salaam port and were destined for Lubumbashi, the Democratic Republic of Congo. The parties agreed that the transport service would be a round trip that would take a total of 45 days from 9<sup>th</sup> December 2021 to 31<sup>st</sup> January, 2022. Under clause 6.1 of the agreement, the Defendant undertook to

indemnify the Plaintiff and hold him harmless for any cost or loss of use or damage to any property. Under clause 10.4 of the agreement, the defendant was liable for the failure to return the containers within the 45 free days and further be liable to pay demurrage charges and other charges incurred by the plaintiff after that period of 45 days.

The Plaintiff alleged that upon the Defendant transporting the 47 containers to Lubumbashi Congo DRC, he never returned the 47 containers to Dar es Salaam rather disappeared with them to unknown places thereby making the plaintiff incur a lot of expenses in attempting to trace the whereabouts of the containers. To trace the containers, the Plaintiff hired the services of M/s Iris Automation Investigators based in Nairobi Kenya. The investigator who was paid by the plaintiff USD 14,382,56, managed to locate only 29 out of the 47 containers. After locating the 29 containers, the plaintiff spent money at the tune of USD 58,000.00 by using its own trucks to transport the containers back to Dar es Salaam and raised an invoice for the Defendant to reimburse this expenditure, in vain.

The plaintiff also alleged that the defendant had failed to provide the 47 trucks timely to load the cargo at the Port, hence making the plaintiff pay storage charges to Tanzania Ports Authority at the tune of USD 16,854.14.

The Plaintiff alleged that so far only 29 containers have been found and returned, leaving 18 containers of 40' HCs un-returned to date bearing the following container numbers:

1. TCLU94911182; 2. TCNU7802596; 3. TGBU99455499; 4. FSCU9858155;
5. CAIU8565978; 6. MSCU7508936; 7. MEDU7503735; 8. CAIU7736253;
9. FCIU7383468; 10. FFAU3051468; 11. TRHU7887658; 12. TRHU7887658;
13. FSCU9912153; 14. FFAU1743940; 15. TGHU9882458; 16. MSMU8593491;
17. MSMU7746493; 18. MSDU7593000.

The Plaintiff alleged that efforts to recover the 18 containers have proved failure despite meetings with the Defendant and the owner of the containers namely MSC Shipping line and those on 13<sup>th</sup> June 2022 they wrote a demand letter to the defendant for payment of USD 139,950.00 as demurrage for 20 containers which were yet to be returned by then or their DVR value of USD 371,151.00 for the 20 containers that remained unreturned at the date of the demand letter. To this letter, the Defendant replied vide a letter dated 16<sup>th</sup> June 2022 admitting to have not returned the 20 containers and undertaking full responsibility for the delay in respect of both demurrage and DVR value. Further the Defendant assured the plaintiff that the un-returned containers stuffed with timber logs from DRC would remain in custody of the

court or customs until the demurrage and other losses would be cleared before they would be taken outside the country. However, only 2 containers were returned and 18 remain unreturned to-date. The 18 containers are in Dar es salaam, stuffed with timber for export and are stored at NASACO containers yard. The 18 containers have customs seal and are expected to be exported without authorization of the Plaintiff and or MSC and before the Defendant pays the demurrage charges and DVR value thereof. The Plaintiff has written to Tanzania Ports Authority requesting for assistance to hold the said containers until demurrage is cleared and or the containers are purchased by the Defendant.

By 31<sup>st</sup> August 2022 a total of USD 343,080.00 had accrued as daily demurrage charges for delayed return of containers including the 18 unreturned containers; USD 147,585.00 being the value of the 18 unreturned containers.

The Plaintiff filed 1 witness statement and called the witness for cross examination. PW1 was Mr. Maridadi Ndaru. The witness tendered in court Exhibit P-1 the Transportation Services Agreement between the Plaintiff and the Defendant dated 8<sup>th</sup> December 2021. Exhibit P-2 was made up of Bills of lading in the name of Mediterranean Shipping Company S.A in respect of the

47 containers carrying mosquito nets and bathing bars. Also it contained Delivery Orders issued by Mediterranean Shipping Company (T) Ltd to deliver the consigned goods described as mosquito nets and bathing bars to the Plaintiff in Dar es salaam. Exhibit P-3 was made up of the Invoice dated 1<sup>st</sup> September 2022 by Iris Automation Kenya for USD 14,382.56 being the charges for tracking and tracing 22 containers of 40ft. this amount was billed at the Plaintiff herein. Exhibit P-4 is Invoices issued by the Tanzania Ports Authority to the Plaintiff claiming storage charges from the Plaintiff on behalf of SANRU SECRETARIAT GENERAL DE LA SANTE of Kinshasa Congo DRC. Also, Exhibit P4 contains Invoices from the Plaintiff to the Defendant. Exhibit P5 is made up of invoices from the Plaintiff to the Defendant being demurrage charges. Exhibit P-6 is Demand Notice dated 13<sup>th</sup> June 2022 addressed to Mr. Venance Msebo, SVT Tanzania Limited. It is claiming USD 139,950 as demurrage charges up to 13<sup>th</sup> June 2022 and USD 2600 per day for every further day of the delay. Exhibit P6 also contains a demand for USD 231,201 as the scrap or DVL value of 26 containers. Exhibit P-7 is reply to demand letter from SVT Tanzania Limited to the Plaintiff signed by Mr. Venance Msebo, the Managing Director in which the Defendant admits that:

***"That it is true that the said containers have not been returned because the trucks loaded timber logs and for reasons unknown to our side the trucks, cargo, and containers have been withheld by the DRC Government. We are aware of the total amount of USD 139,950 a discounted demurrage amount and subsequent USD 371,151 being a DVL. On top of the letter, I had meeting with your official from Nairobi and make a bit of post mortem of what conspired hence the situation of the empty containers. As I explained to them, I had no idea concerning the loading of the timber logs however I take full responsibility for the situation. We have agreed that:***

- 1. I have until the 15<sup>th</sup> July to ensure the containers are in Dar es Salaam alternatively, we plan how to purchase them.***
- 2. I deal with my court case to ensure that the timber logs and trucks remain in customs or court custody to ensure the demurrage is cleared.***
- 3. To provide a weekly report.***

***That we Svt Tanzania we clearly understand our contractual duty and therefore we are happy to cooperate as required until this matter comes to rest."***

The Defence filed their WSD and a witness statement of Mr. Venance Msebo.

But on 23<sup>rd</sup> February 2024 the witness did not appear in court for cross



examination hence the witness statement was struck out and the matter turned exparte the defendant.

The case at hand is one for breach of contract and which typically would require the Plaintiff to prove existence of a valid contract with the Defendant and that the Defendant has unjustifiably breached the contract thereby resulting into the Plaintiff suffering damages.

I asked myself whether there exists a valid agreement between the Plaintiff and the Defendant in this case? The answer is in the affirmative. Exhibit P-1 tendered by PW1 Mr. Maridadi Ndaró is a valid agreement dated 8<sup>th</sup> December 2021 for transportation services signed by the Plaintiff and the Defendant. The relative rights and obligations of the parties are contained therein. The plaintiff has tendered Exhibit P-2 made up of Bills of lading in the name of Mediterranean Shipping Company S.A in respect of the 47 containers all carrying mosquito nets and Delivery Orders issued by Mediterranean Shipping Company (T) Ltd to deliver the consigned goods described as mosquito nets to the Plaintiff in Dar es salaam. These containers were to be transported by the Defendant to Congo DRC and be delivered to the recipient SANRU SECRETARIAT GENERAL DE LA SANTE of Congo DRC and the empty containers be returned to the Plaintiff or MSC in Dar es Salaam

within 45 days. The existence and validity of the agreement have never been disputed by the Defendant. In fact, Exhibit P-7, the reply to the demand notice by the Defendant confirmed that **"we Svt Tanzania we clearly understand our contractual duty and therefore we are happy to cooperate as required until this matter comes to rest."**

The next question is whether the Defendant has breached the contract for transportation services with the Plaintiff? The Plaintiff has alleged that the defendant has breached the agreement in a number of ways including delayed picking the consigned goods from the Port, delayed return of the empty containers after delivery of the humanitarian goods in Congo, DRC, and non-returning of 18 containers to date. This has been substantiated by the oral testimony of the Mr. Maridadi Ndaru PW1. Also, it has been substantiated by Exhibit P5 which is made up of invoices from the Plaintiff to the Defendant being demurrage charges. The defendant has not paid the plaintiff the claimed funds. Breach of the agreement is evidenced further by Exhibits P-6 the demand letter to the Defendant and P7 the reply to the demand notice made by the managing Director of the Defendant Company who categorically confirmed the aspects of breach of contract when he said that **" it is true that the said containers have not been returned**

**because the trucks loaded timber logs and for reasons unknown to our side the trucks, cargo, and containers have been withheld by the DRC Government.”** This reply undoubtedly confirmed the fact that the containers had not been returned within the agreed time and that contrary to the round trip agreement, that the containers were to be returned empty, the same were loaded with timber logs while in control of the defendant. At any rate there is no contradictory evidence on the part of the Defendant to dispute the breach of any of the contractual terms alleged by the plaintiff. The Defendant did not testify in opposition to the claims. Hence, I find that the plaintiff has proved the aspect of breach of contract.

As to damages suffered by the plaintiff, the plaintiff has substantiated the monetary losses that she was exposed to due to breach of the transportation agreement by the Defendant. The Plaintiff has presented in court Exhibit P- made up of the Invoice dated 1<sup>st</sup> September 2022 by Iris Automation Kenya for USD 14,382.56 being the charges for tracking and tracing 22 containers of 40ft. This amount was billed upon the Plaintiff herein. Exhibit P-4 is made up of Invoices issued by the Tanzania Ports Authority to the Plaintiff claiming storage charges from the Plaintiff on behalf of SANRU SECRETARIAT GENERAL DE LA SANTE of Kinshasa Congo DRC. Also Exhibit P4 contains

Invoices from the Plaintiff to the Defendant. Exhibit P5 is made up of invoices from the Plaintiff to the Defendant being demurrage charges. They all contain the accurate figures as claimed by the Plaintiff in the plaint and as testified through the witness statement and oral evidence of PW1.

In the upshot, I find that the Plaintiff has managed to prove the claim for breach of contract against the Defendant and I hereby enter Judgment and Decree in favour of the Plaintiff against the Defendant as prayed in the Plaint that:

- a) The Court does hereby declare that the Defendant is in breach of the agreement for failure to timely return the 47 containers.
- b) The Defendant is hereby ordered to pay United States Dollars Three Hundred Forty-Three Thousand and Eighty (USD 343,080,000) being daily demurrage charges for delayed return of the 47 containers at USD 60.00 per container per day from 1<sup>st</sup> February 2022 to their respective dates of return and for the eighteen (18) unreturned containers as of 31<sup>st</sup> August 2022.
- c) An order for specific performance that the Defendant should immediately return the 18 containers as per the agreement or that the

Defendant should pay the DVL or scrap value of USD 147,585.00 in respect thereof.

- d) The Defendant is hereby ordered to pay demurrage charges to the Plaintiff at USD 60.00 per container per day from 1<sup>st</sup> day of September 2022 to the date when the 18 containers shall be returned by the Defendant to the Plaintiff or MSC or when their DVL/scrap value of USD 147,585.00 is paid by the Defendant in full.
- e) The Defendant is hereby ordered to pay the Plaintiff a sum of USD 14,382.56 being the investigation costs incurred by the Plaintiff to track and trace the containers misplaced by the Defendant.
- f) The Defendant is hereby ordered to pay the Plaintiff USD 58,000.00 being the rescue costs for the plaintiff transporting the rescued containers to Dar es Salaam.
- g) The Defendant is hereby ordered to pay the Plaintiff USD 16,854.14 being restorage charges.
- h) The Defendant is hereby ordered to pay the Plaintiff TZS. 50 million as general damages for the inconveniencies caused to the Plaintiff by breaching the contract.
- i) The sums under items (b),(c), (d),(e),(f) (g) and (h) above shall carry interest at the commercial rate of 12% per annum from the 31<sup>st</sup>

January 2022 when the contract period was due to lapse to the date of institution of this suit.

j) Interest is awarded on the decretal sum at the court rate of 7% per annum from the date of Judgment and decree to the date of full and final satisfaction thereof.

k) The Plaintiff is entitled to Costs of this suit.

Rule 22 of Commercial Court Rules be complied with. It is so ordered.



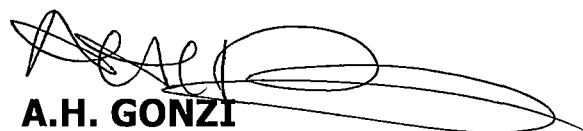
  
**A.H. GONZI**

**JUDGE**

**07/06/2024**

Judgment is delivered in Court this 7<sup>th</sup> day of June, 2024 in the presence of Mr. Yusuf Abdallah Yosi, learned Advocate for the Defendant also holding brief for Mr. John James, learned Advocate for the Plaintiff.



  
**A.H. GONZI**

**JUDGE**

**07/06/2024**