

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

**COMMERCIAL CASE NO. 74 OF 2023**

**EURO GAMES TECHNOLOGY LIMITED ..... PLAINTIFF**

**VERSUS**

**EVERGRANDE INVESTMENT**

**DEVELOP CO. LTD. (STARCITY CASINO)..... DEFENDANT**

**JUDGEMENT**

*Date of last order: 28/03/2024  
Date of judgement: 23/04/2024*

**AGATHO, J.:**

The Plaintiff, EURO GAMES TECHNOLOGY LIMITED on 26/06/2023 filed a suit against the Defendant in this court seeking the following orders:

1. Declaration that the Defendant has breached gaming machines hire contracts executed by and between her and the Plaintiff;
2. Declaration that the Plaintiff is entitled to recover a total of USD 214,083.65 outstanding rent due from leasing the gaming machines to the Defendant.
3. That the Defendant be ordered to pay the Plaintiff a total of USD 214,083.65 rent due from leasing the gaming machines to the Defendant.

4. The Defendant be ordered to pay the Plaintiff general damages for loss of business as will be assessed by the court.
5. The Defendant shall pay interest on decretal sum in (3) above at commercial rate of 12% per annum from the time the cause of action arose to the time of filing the suit.
6. The Defendant shall pay interest on decretal sum at court's rate of 7% from the date judgment to the date of payment in full.
7. Punitive damages of such amount as the court shall deem proper and just to award in favour of the Plaintiff.
8. That the costs of the suit be borne by the Defendant.
9. Any other relief in favour of the Plaintiff that the court may deem fit and just to grant.

Upon being served with the plaint the Defendant filed her Written Statement of Defence refuting the Plaintiff's claims. She contended that the Defendant neither executed any games machines hire contracts with the Plaintiff nor have the parties any business relationship.

Before making headway, it is worthwhile to point out here that this case was initially assigned to his Lordship Mbagwa, J., following his transfer to another duty station the case file was reassigned to me. The parties never had any objection against me preside over the case.

That aside, the matter went through mediation which could not yield any amicable settlement. The case therefore proceeded to trial. But prior to hearing in final pre-trial conference the court with assistance of the parties framed the issues for determination of the suit. The issues were:

- (a) whether there were contracts between the Plaintiff and the Defendant executed on the 1<sup>st</sup> day of January 2022 and 16<sup>th</sup> day of July 2022.
- (b) If the first issue is answered in the affirmative, whether there was breach of the terms of the contracts.
- (c) To what reliefs are the parties entitled to.

It is on record that in terms of legal representation both parties enjoyed the services of learned counsel. Whereas Mr. Nobert Mlwale appeared for the Plaintiff, Mr. Godlisten Lyimo stood for the Defendant.

The parties intimated to bring their witnesses on the hearing. The witnesses filed their witness statements. On 26/03/2024 the date fixed for hearing the Plaintiff brought one witness Lilia Georgieva, herein referred as PW1. After taking oath she tendered her witness statement which was received as her testimony in chief. She in addition tendered four exhibits: P1 collectively - A copy of contracts signed by the parties on 1<sup>st</sup> January 2022; P2 collectively - the original copy of two additional contracts between the parties executed on 16<sup>th</sup> July 2022; P3 - the invoices issued in January 2022 to December 2022 by the Plaintiff to the Defendant; and P4 - a copy of the Plaintiff's board resolution dated 15<sup>th</sup> June 2023 authorising institution of the case.

On the closure of the Plaintiff case, the Defendant's side ought to open theirs. But unfortunately, they failed to bring their witness Stelios Tsihlas who had filed his witness statement in court. There was no exceptional circumstance advanced by the Defendant for failure to procure the

appearance of her witness in court for cross examination. The allegation that the witness travelled to Greece had no evidence to support. And so was the allegation that the defence sole witness was sick. Consequently, the court by virtue of Rule 56(2) of the HCCD Procedure Rules 2012 as amended in 2019 struck out the witness statement which left the defence case without evidence.

The central issue is whether the Plaintiff and the Defendant executed gaming machines hire contracts in the year 2022. Next issue for determination is if there were contracts, then whether they were breached.

PW1 testified that the Plaintiff and the Defendant executed gaming machines hire contracts which were tendered in evidence, and they were admitted as exhibits P1, and P2. The witness also tendered 28 invoices raised by the Plaintiff against the Defendant on various dates between January to December 2022. These were collectively admitted as exhibit P3.

Turning to analysis of evidence in relation to the issues framed, let us begin with the first issue: whether there were contracts between the Plaintiff and Defendant executed on the 1<sup>st</sup> day of January 2022 and the 16<sup>th</sup> day of July 2022.

One way to prove that the parties have executed a contract especially when the same is reduced in writing is to look at the contract itself to see if it was signed by the parties. In this case PW1 testified that the parties entered into gaming machines hire contracts via their directors as exhibited by exhibits P1 and P2. It was the testimony of PW1 that these contracts were executed by the parties through their directors. While the Plaintiff was

represented by PW1, its director, the Defendant was represented by her two directors Vincenzo Cozzolino, Italian and Innocent Felix Mushi, a Tanzanian. According to PW1 these were the directors as per BRELA records and due diligence done by the Plaintiff. That testimony of PW1 was not challenged during cross examination.

It is the law that once a company is incorporated it acquires separate legal personality. But such company does not have physical existence. It thus operates through the directors. These are the ones that execute contracts for and on behalf of the company. That was held in **Mackriman Trust Fund v. National Bank of Commerce & Two Others**, Civil Appeal No. 330 of 2022, CAT at page 11. That resonates with what transpired in the case at hand where the parties' directors executed the contracts for and on behalf of the parties (Plaintiff and Defendant). These are evidenced by exhibits P1 and P2 that were signed by the parties' respective directors. Therefore, in absence of fraud or any claim of mismanagement by the directors, the acts of the parties' directors is binding upon the said parties. In this case, the directors' execution of the contracts binds the Plaintiff and the Defendant.

The Defendant denouncing in her WSD that she had not concluded any contract with the Plaintiff is thus without merit. The Defendant never disputed the signature of its directors found in the exhibits P1 and P2.

The Defendant's counsel during cross examination probed PW1 on the names of the parties to the contracts. The witness testified that parties are Euro Games Technology Limited and Evergrande Investment Develop Co. Ltd. (Starcity Casino). It is on record that the Plaintiff removed during the proceedings the words Starcity Casino in the name of the defendant. The

defence counsel pressed that the Defendant as per her name Evergrande Investment Develop Co. Ltd (Starcity Casino) is not a party that concluded the contracts. The party to the contracts has the name that and Evergrande Investment Develop Co. Ltd. (Starcity Casino). The name is which is not in the BRELA register. However, PW1 clarified that the words in bracket that is Starcity Casino stands for Defendant's commercial premise. She added in her testimony that the executed contracts were for hiring of the gaming machines for the Defendant's commercial premise called Starcity Casino. The Defendant failed to rebut that testimony. Nor was the credence of the PW1 shaken by cross examination. The court is of the considered view that the parties indeed entered into the agreements for the supply of gaming machines for hire. The testimony of PW1 is credible that the words Starcity casino represents business premises of the Defendant.

The evidence adduced by PW1 including the exhibits P1 and P2 leads to only one conclusion that the parties did indeed execute the gaming machine hire contracts. The first issue is thus answered in the affirmative.

The next issue was that if the first issue is answered in the affirmative, whether there was breach of the terms of the contracts. It was the testimony of PW1 that after having executed the contracts the Plaintiff performed her obligations by delivering the gaming machines and systems to the Defendant. The delivery is evidenced by the delivery notes that were part of exhibit P1 and P2 as appendices. As per PW1 evidence, the appendices were signed on the date of delivery of the gaming machines and systems. The performance of the first contracts (exhibits P1) attracted the parties to enter the second round of contracts (exhibit P2). Under these contracts the

obligation of the Plaintiff was to supply and deliver the gaming machines to the Defendant. The latter was obliged to pay the gaming machines hiring/leasing price. The testimony of Pw1 shows that in the early months the Defendant effected payments for some invoices raised from January to May 2022. It is for that reason the Plaintiff's claim does not include invoices raised and paid for. The Defendant defaulted in making payments. She promised to perform her obligations but eventually she failed. She neglected the invoices raised and the demand notices sent. The outstanding amount for gaming machines hiring amounted to USD 214, 083.65.

This default by the Defendant in making payment and clear the outstanding amount constitutes a breach of contract. The law under Section 37 of the Law of Contract Act [Cap 345 R.E. 2019] provides that:

37 (1) *"the parties to a contract must perform their respective promises...in absence of excuses under the provisions of this Act or any other law."*

The Plaintiff agreed to supply the gaming machines for hire to the Defendant, and the latter committed herself to pay monthly leasing price. It is trite law that the parties' agreements must be respected. See the case **Simon Kichele Chacha v. Aveline M. Kilawe, Civil Appeal No. 160 of 2018 CAT at Mwanza**, where it was held that:

*"With the same spirit of the principle sanctity of contract and being mindful with the clauses of the Exhibit P1, we are reluctant to accept the appellant's excuse for non-performance of the agreement which he freely entered with sound mind. On our part,*

*we are satisfied that the contract entered between the appellant and the respondent had all attributes of a valid contract. It was not prohibited by the public policy, and it is on record that the appellant was not complaining about his consent to the agreement being obtained by coercion, undue influence, fraud or misrepresentation in order to make it voidable in terms of the provisions of Section 19(1) of the Law of Contract Act, Cap 345 R.E. 2002. We therefore wish to put emphasis here that since the appellant at the time he concluded Exhibit P1 with the respondent was a free agent and he was of sound mind, he must adhere and fulfill the terms and conditions of it."*

The above principle of sanctity of contract was earlier on pronounced in the case of **Abualy Alibhai Azizi vs Bhatia Brothers Ltd [2000] TLR 288**.

It is with the above understanding that the court is of the view that the act of the Defendant to discontinue payment of gaming machines monthly rent amounts to breach of her obligation under the contracts. In **Simba Motors Limited v. Joh Achelis & Sohne GMBH & Another**, Civil Appeal No. 72 of 2020 CAT at DSM held that a party's failure to perform a primary obligation in the contract is a breach of contract.

As to what reliefs are the parties entitled to, since from the foregoing analysis it evident that the Plaintiff has proved her case on the balance of



probability that there were contracts executed and that the Defendant has breached them, then she is entitled to the amount claimed.

It is also clear from the provision of Section 73(1) of the Law of Contract Act that whenever there is a breach of contract a party not at fault deserves compensation. Therefore, the Plaintiff is awarded general damages to the tune of USD 20,000.

Regarding the claim of interest on decretal sum at commercial rate of 12% it is the law the same must be pleaded and justified. No evidence was given on the issue of interest. Even in her testimony PW1 did not lead any evidence about interest claimed. The Plaintiff's counsel did not submit on the issue of interest. It is the law that interest must be rooted in the pleadings as was held by the CAT in **National Insurance Corporation T. Limited & Another vs China Civil Engineering Construction Corporation (Civil Appeal No.119 of 2004) [2010] TZCA 4; (25 March 2010)**. The CAT further emphasized in **Zanzibar Telecom Ltd vs Petrofuel T. Ltd, Civil Appeal No.69 of 2014, [2019] TZCA 176; (06 February 2019)** at page 25 that:

*"...as a matter of substantive law, the court cannot grant interest in a case where such interest was not pleaded and proved."*

Despite the above findings, the other limb of interest claimed on decretal sum at court's rate of 7% from date of judgement to payment in full is granted as per the dictates of Order XX Rule 21 of the Civil Procedure Code [Cap 33 R.E. 2019].

As for the claim of punitive damages, that is rejected because there is nothing before the court to convince it to award punitive damages. There is no evidence adduced by the Plaintiff to show that the acts of the defendant were so treacherous that she should be punished with imposition of punitive damages.

As for costs, it is a general rule of civil litigation in our jurisdiction that a party that emerged victorious deserves costs. In this case the Plaintiff shall thus have her costs.

In the end the court orders as follows:

1. It is declared that the Defendant breached gaming machines hire contracts executed by and between her and the Plaintiff;
2. The Defendant is ordered to pay the Plaintiff a total of USD 214,083.65 rent due from leasing the gaming machines to the Defendant;
3. The Defendant is ordered to pay the Plaintiff general damages of USD 20,000;
4. The Defendant shall pay interest on decretal sum at court's rate of 7% from the date judgment to the date of payment in full; and
5. that the Defendant shall bear the costs of the suit.

Order accordingly.

**DATED** at **DAR ES SALAAM** this 23<sup>rd</sup> Day of April 2024.



  
**U. J. AGATHO**

**JUDGE**

**23/04/2024**

**Court:** Judgment delivered today, this 23<sup>rd</sup> April 2024 in the presence of Kassim Mussa Ititi, advocate holding brief of Fatuma Songoro, Advocate for the Plaintiff and in the presence of Godlisten Lyimo, advocate for the Defendant.



  
**U. J. AGATHO**

**JUDGE**

**23/04/2024**