

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 141 OF 2018

CHUI SECURITY COMPANY LIMITED.....PLAINTIFF

Versus

AL OUTDOOR (T) LIMITED.....DEFENDANT

Last Order: 25th July, 2019

Date of Judgment: 12th Sept, 2019

EX PARTE JUDGMENT

FIKIRINI, J.

The plaintiff through Aymak Attorneys sued the defendant for the claim of Tshs. 143, 106, 373.25 (*Tanzania Shillings One Hundred Forty Three Million One Hundred and Six Thousand Three Hundred Seventy Three and Twenty Five Cents*) being outstanding dues payable to the plaintiff arising out Security Service Contract (the Contract) between the parties. The plaintiff thus praying for the following reliefs:

- (i) Declaration that the defendant has breached the contract.
- (ii) Payment of Tzs. 143, 106, 373.25 being special damages suffered by the plaintiff following the breach.

- (iii) Payment of interest on the outstanding amount at a rate of 12% from the date of breach of the contract to the date of judgment.
- (iv) An order for payment of 21% interest per annum on the decretal sum from the date of the judgment to the date of full settlement of the decree.
- (v) Costs of the suit, and
- (vi) Any other reliefs this Honourable Court deems fit and just to grant.

On 15th November, 2018 the defendant entered appearance through Mr. Iddi Omary Mlisi learned advocate and on 21st November, 2018 filed the written statement of defence on behalf of the defendant. The filing was within the required time since, as claimed by the plaintiff, the service to the defendant was effected on 02nd November, 2018. Ever since the defendant has never entered appearance, and the court on two occasions adjourned the hearing to leave space may be the defendant could show up in one of the scheduled hearing dates.

After three (3) adjournments the Court ordered the plaintiff to prove its case *ex parte* pursuant to Rule 31 (1) (c) of the High Court (Commercial Division) Procedure Rules, 2012 as Amended by GN. No. 107 of 2019 (the Rules). The plaintiff filed witness statement pursuant to Rule 48 (2) of the Rules and on 25th July, 2019, *ex parte* hearing took place. Through PW1- Nancy William Mosha, 67 years of age, female, Christian and Tanzanian by nationality, had this to state before the Court: that she knew the defendant as they had business relationship. The defendant hired the plaintiff to provide the defendant with security services. The agreement entered was from 1st February, 2015 as exhibited by written agreement entered between the parties. A copy of the agreement was tendered and admitted into evidence as exhibit P₁. The agreement was that each guard was to be paid Tzs. 230,000/= and inspectors/supervisors Tzs. 300,000/= per month. The payment was usually done at the end of the month after the plaintiff has raised an invoice. Copies of the invoices were admitted for identification pending production of original copies, which were supplied to the Court prior to the date of judgment. The copies were admitted and marked as exhibit P₃.

It was further testimony of PW1 that she was before the Court because the defendant has failed, without giving reasons, to honour its obligation and pay the plaintiff. PW1 also testified that she approached the defendant who kept on promising the plaintiff that they will undertake to pay but to no avail. The witness stated to have personally visited the defendant's office to discuss the matter but to no fruition. And that finally the plaintiff sent the defendant a demand notice, a copy which was admitted into evidence as P₂.

The total claim raised against the defendant was Tzs. 143 million but must have risen as the plaintiff still provides security for the defendant as agreed.

That was the plaintiff's case and the case was marked closed.

The only issue for determination is whether the plaintiff has been able to prove its case on the required standard that of balance of probabilities. And in course of doing so, I will first examine if there was a valid contract between the plaintiff and the defendant as claimed and if the defendant breached the said contract.

The plaintiff through PW1 told the Court that there was a contract between the parties regarding provision of security services by the plaintiff to the defendant. This assertion was backed by exhibit P₁. The defendant's written statement of defence was too general and contrary to the requirement of Order VIII Rule 4 and 5 of the Civil Procedure Code, Cap. 33 R.E.2002 (the CPC), which required specific and not general or evasive denials. Examining the written statement of defence against the plaint which contained detailed information, I find the defendant has failed to denounce that there existed a contract between the parties.

On top of that, further scrutiny of the written statement of defence and in particular in paragraph 2, the defendant though disputed the claim of Tzs. 143, 000,000/= but admitted making some payments to the plaintiff. This was stated without telling the purpose of the payment made; how much was paid and out of what amount. Unlike the defendant's written statement of defence, the plaint was so detailed, such that this Court was expecting categorical or specific denial or more information by way of written statement of defence. Weighing the plaintiff's account, exhibits and what was availed in the plaint, I find the plaintiff's version of the story more credible to that of the defendant. Guided by the decision in **Hemedi**

Saidi v Mohamed Mbilu [1984] T.L.R. 113, I find the plaintiff's evidence heavier compared to the defendant's general and evasive denial in the written statement of defence filed.

Carrying on from the above, I am as well convinced that the defendant breached the contract of service entered between the parties for failing to pay for the services provided. The law is clear that there is no particular number of witnesses required to prove any fact. Under section 143 of the Evidence Act, Cap 6 R.E. 2002 and that subject to well-known exceptions, a fact may be proved by the testimony of a single witness. In **Anil Phukan v State of Assam** 1993 AIR 1462, addressing on a testimony of a single witness had this to say:

"A conviction can be based on the testimony of a single - eye witness and there is no rule of law or evidence which says to the contrary provided the sole eye witness passed the test of reliability in basing conviction on his testimony alone"

Although the decision was from a criminal case but the principle is the same. Coming to the present case, even though PW1 is the only witness

but I find her testimony credible and trustworthy.

Section 73 (1) of the Law of Contract Act, Cap. 345 provides as follows:

- (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"*

In the present case, it is undisputed fact that the defendant has in essence breached the contract which existed between the parties for failing to pay for the services provided. The plaintiff is thus entitled to compensation for the injuries suffered. The plaintiff apart from specifically pleading in the plaint for specific damages has as well been able to prove her claim. A number of invoices raised admitted into evidence as P₃, are in my view sufficient proof of the plaintiff's unpaid services offered.

In light of the above, I find the plaintiff has been able to prove the claim

against the defendant on the balance of probabilities the standard required in law. I thus proceed to enter *ex parte* judgment against the defendant and order the following:

- (i) And declare that the defendant has breached the contract.
- (ii) Payment of Tzs. 143, 106, 373.25 being special damages suffered by the plaintiff following the breach.
- (iii) Payment of interest on the outstanding amount at a rate of 12% from the date of breach of the contract to the date of judgment.
- (iv) An order for payment of 7% interest per annum on the decretal sum from the date of the judgment to the date of full settlement of the decree.
- (v) Costs of the suit, and

It is so ordered.



A handwritten signature in black ink, appearing to read "P.S. FIKIRINI", written over a horizontal line.

P.S.FIKIRINI

JUDGE

12th SEPTEMBER, 2019