

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT MWANZA
COMMERCIAL CASE NO. 27 OF 2015

BETWEEN

TANZANIA PORTS AUTHORITY----- PLAINTIFF

VERSUS

MANAGING DIRECTOR, MUAPI LIMITED-----1ST DEFENDANT

DIRECTOR GRAVIMPORT-SPRL -----2ND DEFENDANT

JUDGMENT

B.K. PHILLIP, J

The plaintiff herein lodged this case praying for judgment and decree against the defendants jointly and severally as follows;

- (i) Payments of the sum of USD 293,904.00 being the outstanding Debt accrued during the Lease Agreement and/or amount agreed and acknowledged upon under Deed of Hand Over.
- (ii) Payments of the sum of TZS. 1,900,000.00 being an outstanding amount remained unpaid to the respective Authority (water and Electricity Bills) before the handing over date as per Deed of Hand over.
- (iii) Payments of the sum of USD 50,000.00 being damages for the loss of use of the outstanding debt.

- (iv) Cumulative interest on the Principal amounts at the commercial rate computed against each instalment on the date it became due and payable until the date of filing these proceedings.
- (v) Interest on the decretal amount at the court rate from the date of filing this suit to the date of judgment.
- (vi) Interest at the court rate on the decretal amount from the date judgment until payment in full.
- (vii) Compensation for recovery expenses incurred in pursuing the recovery of the outstanding amount.
- (viii) Costs of the suit.
- (ix) Any other relief this Honourable Court may deem fit and just to grant.

A brief background to this case is that on 16th October 2007, the plaintiff and the defendant entered into an agreement for the operation of the Kigoma Cargo Terminal (henceforth "the agreement") whereby the plaintiff leased the Kigoma Cargo Terminal to the defendant at a fixed annual rent of USD 200,000.00 for a period of five years. The fee was agreed to be calculated on the basis of USD 1.6 per ton. A copy of the agreement is attached to the plaint as annexure 'TPA 1'. It is stated in the plaint that by 14th March, 2011 the defendants had an outstanding debt to a tune of USD 545,000.00. On 26th May, 2011 the defendants submitted to the plaintiff challenges that they faced in operation of the terminal during the period between January 2008 to April 2011, among them being non reliability of railway Transportation.

According to the pleadings, in response thereto the parties (Plaintiff and defendants herein) amended the provisions of the agreement through addendum 1 and 2 to the agreement and rent was reduced from USD 200,000/= per annum to USD 100,000/= per annum. Also, the addendum waived the outstanding debt amounting to USD 400,000/=. Despite the aforesaid waiver of the debt the defendants neglected to pay the outstanding rent and other charges, as a result at the expiration of the agreement the plaintiff and the defendants executed a deed of handover that included acknowledgement by the defendants of the outstanding rent, wharfage and throughput charges to a tune of USD 293,904/= and TZS 1,900,000/= being outstanding debt for utilities. A copy of the Deed of Handover duly executed is attached to the plaint as annexure "PTA 7".

Upon being served with the plaint, the 1st defendant filed a written statement of defence while the 2nd defendant did not file any written statement of defence. When the case was called for 1st PTC on 30th of October 2018, all the defendants did not appear in court despite the fact that they were served with the notice for the 1st PTC by way of publication in the Daily News and Mwananchi Newspapers, all dated 10th October 2018. Consequently, I struck out the 1st defendant's written statement of defence under the provisions of Rule 31(1)(b) of the High Court (Commercial Division) Procedure Rule, 2012.

Following the striking out of the 1st defendant's written statement of defence, the plaintiff lodged an application for default judgment for the prayers in the plaint pursuant to Rule 21(1) of the High Court (Commercial Division) Procedure Rule, 2012.

Accordingly, in terms of rule 22(1) the High Court (Commercial Division) Procedure Rules 2012, I hereby enter a default Judgment for the plaintiff as follows;

- (i) The defendants shall, joint and severally pay the plaintiff a sum of USD 293,904.00 being the outstanding debt accrued during the Lease Agreement.
- (ii) The defendants shall, jointly and severally pay the plaintiff a sum of TZS. 1,900,000.00 being an outstanding amount in respect of water and Electricity bills before the handing over date as per Deed of Hand over.
- (iii) The defendants shall, jointly and severally pay the plaintiff interest on the decretal sum in item (i) herein above at a commercial rate of 23% per annum from the date it became due to the date of judgment.
- (iv) The defendants shall jointly and severally pay the plaintiff of interest on the decretal sum in item (i) (ii) herein above at a rate of 7% from the date judgment until payment in full.
- (v) The defendants shall jointly and severally pay the plaintiff costs of this suit.

And in terms of rule 22(2) (a) and (b) of the High Court (Commercial Division) rules, 2012, I further direct that the decree in this case shall not be executed unless the decree holder has within a period of ten (10) days from the date of this judgment, publish a copy of the decree in at least two (2) newspapers of wide circulation in the Country and after a period of twenty one (21) days from the date of expiry of the said period of (10) days has lapsed.

It is so ordered.

Dated at Dar es Salaam this 5th day of February, 2019



B.K. PHILLIP

JUDGE