

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 139 OF 2018.

SILENT OCEAN TANZANIA LIMITED.....PLAINTIFF

VERSUS

SILENT OCEAN RWANDA LIMITED1ST DEFENDANT

Date of Last order: 12/08/2021

Date of Judgement: 15/10/2021

EX-PARTE JUDGEMENT

MAGOIGA, J.

This is an ex-parte judgement. The plaintiff, **SILENT OCEAN TANZANIA LIMITED** by way of plaint instituted the instant suit against the above-named defendant praying for judgement and decree in the following orders, namely: -

- i. Judgement for the plaintiff against defendant for payments of USD 849,730.00 (United States Dollars Eight Hundred Forty - Nine Thousand Seven Hundred and thirty only)
- ii. Costs
- iii. Any other reliefs this Honourable court may deem fit and just



Upon being served with plaint, the defendant filed a written statement of defence disputing the plaintiff prayers and urged this court to dismiss the instant suit with costs for being premature and for want of merit.

Facts of this suit is imperative to be stated for better understanding the gist of this suit. It is alleged that in the 2015 defendant as an agent of Rwandese and other East and Central African business communities entered into oral agreement with the plaintiff for shipment of cargo to Rwanda and other East and Central African Business communities.

According to the plaint, it was averred, among others, that after the shipment of the container, the plaintiff was to issue invoice for service rendered and the defendant was to make payment for service provided within 30 days after receipt of the invoice. Facts go that, the defendant failed to perform his obligation as agreed as a result the number of unpaid containers kept growing. Plaintiff raised invoices against all services but which invoices were not paid for. The unpaid amount stands at the tune of USD 849,730.00.

Parties' efforts to settle the debt culminated into contract of debt payment which was signed on 30th May, 2018. In the said agreement, among others, it was agreed that, the debt should be repaid by instalments of which in every 30th day of the each month, the defendant

was to make an instalment of USD 30.000.00. Notwithstanding the said agreement, the defendant failed, neglected and ignored to repay the said outstanding balance. It was against this background, the plaintiff instituted the instant suit claiming for prayers as contained in the plaint, hence, this judgement.

The plaintiff at all material has been enjoying the legal services of Mr. Bilali Juma, learned advocate. On the other adversary part, the defendant at all material time was equally enjoying the legal service Mr. Charles Alex, learned advocate.

Before hearing started, during final pre trial conference, the following issues were framed, recorded and agreed between the parties for determination of this suit, namely; -

1. What were the terms and conditions of the contract between parties?
2. What were the consignments which are subject of dispute?
3. Whether the said contract was executed as agreed.
4. What reliefs' parties' are entitled.

This court during final pre trial conference, among others, ordered and directed parties' learned advocates to file their respective witness statements within prescribed time of 14 days of that order and the suit



was set for hearing on 17/10/2019. The suit for some reasons suffered several adjournments and in between Mr. Charles Alex, learned advocate for the defendant withdrew from the conduct of this suit. On 12th October, 2020, when this suit was called on for hearing, Mr. Juma, learned advocate for the plaintiff informed the court that defendant has so far not filed witness statement as ordered and prayed that the matter proceed ex-parte against the defendant. This court granted the prayer and this tells why this is an ex-parte judgement.

In proof of the suit the plaintiff called two witnesses. The first witness was one Ms. ASIA ALLY SEIF (to be referred hereinafter as **(‘PW1’)**). PW1 through her witness statement adopted in these proceedings as her testimony in chief, PW1 told the court that she is Shipping Officer of the plaintiff and as such conversant with the facts of the suit. PW1 went on to tell the court that her roles, among others, are to receive bill of lading, follow up on payments and for other bill of lading which they have contract with customers she was to pay for bill of lading and then seek refund. PW1 testified that the defendant was one of their customers and that arrangement until when she was stopped by Managing Director.

PW1 further testimony was that for services rendered, she was making calls to the defendant who always promised but in vain. PW1 told the

court that, the outstanding debt was USD.849,730.00. PW1 went on to tell that court that she was involved in follow up of the payment and was communicating with the defendant by emails, phone calls and meetings but the defendant declined to pay.

In proof of the plaintiff's suit, PW1 tendered in evidence the following exhibits, namely:

- a. Contract of debt payment, dated 30th day of May, 2018 as **exhibit P1,**

The second witness was one, Mr. SWALAH SAID MOHAMED (to be referred hereinafter as '**PW2**'). PW2 through his witness statement adopted as his testimony in chief told the court that, he is Managing Director of the plaintiff and therefore conversant with the facts of this suit. PW2 went on to testify that, his roles, among others, is to oversee, and supervise all daily operations of the plaintiff and to ensure necessary procedure are followed during recovery exercise for all debtors based in Rwanda and elsewhere in the world. PW2 told that his prayers are as contained in the plaint. Further, PW2 testified that he was present when plaintiff and defendant entered into oral agreement concerning shipment of containers belonging to the defendant and also he witnessed plaintiff performing services as requested by defendant.



PW2 went on to testify that the plaintiff used to perform services as requested by the defendant and send invoice for services offered for the defendant to effect payment within 30 days upon receipt of the invoice. According to PW2, as the number of cargos was growing, defendant started to default payments or paying less amount from what is shown in the invoices submitted or making late payments.

PW2 told the court that, the total unpaid balance for rendered service stands at USD 849,730.00. PW2 went on to tell the court that, the efforts by the plaintiff to be paid the balance culminated into signing debt payment agreement between parties. In the said agreement, among others, it was categorically agreed the defendant to pay USD.30,000.00 to the plaintiff on the 30th of each month from the date of signing the said agreement.

However, it was the testimony of PW2 that, despite debt payment agreement, the defendant has refused, neglected and denied to pay the outstanding balance hence this suit claiming the relief (s) as contained in the plaint.

In proof of the case, the plaintiff recognized **exhibit P1** and tendered in evidence the following exhibits, namely;



b. Silent Ocean Rwanda Limited Statement of Account dated from 1st Jan 2017 to 30th May, 2018 as **exhibit P2,**

This marked the end of hearing of this suit ex-parte. The task of this court now is to determine the merits or demerits of this suit in the light of issues framed. I have gone through the pleadings, entire testimonies of PW1 and PW2 and documentary evidence tendered as exhibits, I have no flicker of doubt that, there is no dispute that the relationship between the plaintiff and defendant at first was regulated by an oral agreement. Later according to the contents of exhibit P1, parties' agreed to reduce payment of debt into writings as exhibited in exhibit P1 duly signed by both parties. The terms, therefore, are as contained in exhibit P1. This brings to answer issue number one in that, the agreement started with oral arrangement but which was later reduced into writing for payment of debt.

However, the dispute is "**What were the terms and conditions of the contract between parties.**" The plaintiff alleged, among others, that it was an agreement of the parties that, payment was to be made within 30days after receipt of invoice. On the other hand, the defendant in his written statement has stated that, no usage was developed to effect that but it was mandatory to make payments

within 30 days after the receipt of the invoices. I have travelled through the testimony of PW2 and exhibit P2 in their totality, I'm inclined to answer this issue in the affirmative. My reasons for taking this instance are not far to fetch **One**, it is trite law that, since the relationship between plaintiff and defendant was governed by an oral agreement the question as to what were terms and condition of the contract has to be ascertained from the parties conduct and testimony of witnesses who were present at a time agreement was made. In the case of **Hotel Travertine Limited and Two others V. National Bank of commerce Limited [2006] No 133 TLR** the court of appeal quoted the following passage in the case **Brodgen V Metropolitan Railway .co (1989) 2App Case 666 (HL)**


“ I have believed always the law to be this, that when an offer is made to another party, and in that offer, there is a request express or implied that he must signify his acceptance by doing some particular thing, then, as soon as he does the thing is bound”

I find this statement relevant in this case, on the following reasons exhibit P2 shows how the sequence of payment were being made, it was

made every month after receipt of the invoice, within 30days. Therefore, the conduct of plaintiff to issue invoice after rendering the service and defendant after receipt of the invoice within 30dys pays for the amount claimed, justify the claim by plaintiff that payment was agreed to be paid within 30days after receipt of the invoice.

And for the 2nd issue which was couched that **“what was the consignment which are the subject of dispute”** I should make it clear at the outset that, based on the evidence on record, this issue was raised out of context, and therefore, it will not retain this court much, because the dispute is not on the number of shipped container but rather how many invoices were issued but not paid for by the defendant and whereby the amount remained unpaid is answered by exhibit P1.

This trickles down to the third issue which was couched that, **“whether the said contract was executed as agreed.”** This issue will not detain this court much, as would only have been relevant, if the 1st issue had been answered in negative. Having concluded and answered the 1st issue in affirmative it follows that the said contract was not executed as agreed and the contents of exhibit P1 further shows and proves that execution was not performed as agreed.



Last issue was coached that **"What reliefs parties are entitled to"**.

The learned advocate for the defendant prayed that this suit be dismissed with costs. Based on the findings above this suit is merited.

The plaintiff on the other hand prayed judgment against defendant for payment of USD 849, 730.00 being an outstanding balance for the service rendered.

I have no flicker of doubt, in this suit plaintiff has discharged the burden of prove to the standard required under the civil cases.

That said and done, I enter judgment against defendant on the following orders, namely:

- a. The plaintiff is entitled to payment of USD 849, 730.00 being amount pleaded in (i) of the reliefs claimed;
- b. Costs of the suit be borne by the defendant.

It is so ordered.

Dated at Dar es salaam this 15th day of October, 2021.



S.M. MAGOIGA

JUDGE

15/10/2021