

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL CASE NO. 07 OF 2019

WILD MIND TRAVEL LIMITED.....PLAINTIFF

VERSUS

MES FOOT PRINT LIMITED.....DEFENDANT

EXPARTE JUDGMENT

26/05/2021 & 20/08/2021

GWAE, J

The plaintiff herein, a private company duly incorporated in the United Republic of Tanzania on the 21st March 2019 filed a suit against the defendant which also a company duly incorporated in the United Republic of Tanzania having its head office within Arusha City. The plaintiff prays for the following orders against the defendant;

- i. A declaration that, the defendant breached the agreement for selling assets between her and the plaintiff.
- ii. A declaration that, the plaintiff has suffered irreparable loss as a result of defendant's breach of the agreement for selling assets.
- iii. An order that, the defendant to pay the plaintiff USD 130,022 as special damages for the breach of agreement for selling assets

which includes Motor Vehicle, make Toyota Land Cruiser, No. T 486 DJG.

- iv. Interest on the decretal amount at the court's rate of 12% from the date of judgment to the date when the decree is fully satisfied.
- v. General damages as may be assessed by this Court.
- vi. Costs of this suit.
- vii. Any other relief(s) this court shall deem fit and just to grant.

The plaintiff's version of the story giving rise to this suit is best captured in her plaint and it goes as follows; the plaintiff and the defendant entered into a sale agreement where the plaintiff was the seller and the defendant was the buyer. In the said sale agreement the plaintiff was selling to the defendant the following items; office equipment, households furnishing, safari equipment, kitchen items, power equipment, Wild Mind clothing lines and Toyota Land Cruiser No. T 486 DJG with a consideration of a total of USD 100,000. The said agreement was executed by the parties on the 27th April 2017 where the first installment of USD 15,000 was paid which was to be followed by the second and third installments as expressly indicated in the sale agreement. The agreement further stated that upon default of payment by the defendant, the plaintiff will be entitled to 3% of the amounts owed on the first 2 months of default and after the expiry of 2 months and the

outstanding balance remains unpaid the plaintiff shall repossess the Motor Vehicle which was among the assets sold to the defendant.

The plaintiff went further stating that after the defendant had paid the first installment, he never paid the other installments as stipulated in the sale agreement and to her surprise the defendant forged information to the Tanzania Revenue Authority (TRA) by altering the plaintiff's ownership to that of the defendant. following the failure of the defendant to honor the sale agreement the plaintiff wrote a demand letter to the defendant and the same was replied with no hopes of resolving the matter hence this suit.

On the other hand, the defendant replied to the plaintiff's claims through a Written Statement of Defence which was filed in this court on 09/07/2019. In her defence the defendant does not dispute to have entered into a sale agreement with the plaintiff. He alleges that the parties herein had executed three agreements to wit; agreement of sale of assets, agreement of selling Motor Vehicle No. T 486 DJG and an agreement on business partnership brand developing. The defendant further admitted on the Contractual price being USD 100,000 which she alleged to have paid the installments (first, second and third) making a total of USD 87,442.11. The defendant alleged that the remaining balance is withheld pending matters that he advanced to the plaintiff based on the misrepresentation and perversion which induced the defendant into signing of the agreement. At

paragraph 8 of her statement of defence the defendant claimed that she was misled by the plaintiff that the Motor Vehicle was new and original from Tanzania however he came to note that the Motor Vehicle was imported from Dubai (left hand drive) which was converted into a right-hand drive. The acts which made the defendant to incur more costs.

In proving her case the plaintiff was represented by Mr. Joseph Renju who held power of attorney and testified on behalf of the plaintiff. Five exhibits were also tendered and admitted as follows Special Power of Attorney (PE1), sale agreement assets (PE2), Motor Vehicle's sale agreement (PE3), demand letter and the reply collectively (PE4) and Motor Vehicle Registration Card (PE5).

On the part of the defendant, she only filed her Written Statement of Defence, however in between, she plainly disappeared despite several services as reminder summons being issued to her including services through publication the matter was therefore ordered to proceed ex parte.

During ex-parte hearing, three issues were framed and recorded by the court as follows;

- i. Whether there was an existence of a contract between the parties;
- ii. If issue number (i) is answered in affirmative, whether the defendant had breached the contract;

iii. What reliefs are parties entitled to.

Mr. Joseph, the plaintiff's representative under the lead of his counsel Mr. Safiniely Peter Mbwambo testified that, the parties herein had entered into a sale agreement of the plaintiff's assets to the tune of USD 100,000. Mr. Joseph went further stating that there was another agreement that was entered between the parties of a sale of the plaintiff's Motor Vehicle and selling price was Tshs. 185,000,000/= . The payment of the plaintiff's assets was to be done into three installments; the 1st installment USD 13,000, the 2nd installment USD 25,000 and the 3rd installment for the remaining balance. According to his testimony, the 1st installment was fully paid, the second installment was paid partially and the 3rd installment was fully paid. According to the testimony of PW1, It was further agreed by the parties that the second agreement had a clause that transfer of the motor vehicle would be effected after payment of the agreed purchase price in full however to their surprise the defendant fraudulently transferred the ownership.

Following the transfer of the ownership by the defendant, the plaintiff issued the defendant with a demand notice which was replied by the defendant admitting to be indebted by the plaintiff. The witness went on testifying that as a result of the breach of contract by the defendant, the plaintiff has suffered damages to the tune of USD 130,000, therefore he prayed this court to grant the orders sought in the plaintiff's plaint.

It is now time for this court to determine the framed issues which were framed in accordance with the parties' pleadings; on the **first issue as to whether there was an existence of a contract between the parties**, this issue does not need to detain me much as it is evidently from the parties' pleadings as well as the plaintiff's evidence that, there was a contract of sale of assets between the plaintiff and the defendant. This piece of evidence is also supported by PE2 which is a contract for sale of assets between the parties. Also, PE3 which establishes that there was another contract of sale of a motor vehicle between them as adduced by PW1. More so, I have considered the defendant's written statement of defence in particular paragraph 3 where the defendant admits to have entered into three agreements with the plaintiff. Similarly, at paragraph 4 the defendant admits that the contractual price in respect of the agreement for selling of the plaintiff's assets was to the tune of One Hundred Thousand Dollars (USD 100,000). From this piece of evidence this court is thus fully satisfied that there was existence of a contract between the parties.

Having answered in affirmative, the first issue takes me to the 2nd issue, if the 1st issue is answered in affirmative, **whether the defendant had breached the contract**. The plaintiff has seriously alleged that, the defendant has not honored the terms and conditions of the contract as he failed to pay the plaintiff's 2nd and 3rd installments as agreed and that the defendant has also forged

information and fraudulently transferred the ownership of the plaintiff's motor vehicle.

Going by the plaintiff's oral evidence, it is established that the defendant did not pay the 2nd and 3rd installments though on the other hand the defendant through her written statement of defence claims to have paid the 2nd and 3rd installments as agreed however he admitted to have not fully paid the agreed sale price of the motor vehicle. Issue of misrepresentation alleged by the defendant ought to be proved in court during trial, short of that, it would sound that the evidence of the plaintiff is credible and reliable. I have considered the fact that there is no evidence that the defendant filed an action against the plaintiff for the alleged fraud and misrepresentation. It follows therefore, the defendant has to inevitably bear the liability of having breached the terms of the agreements particularly on the sale of the motor vehicle (PE3).

Coming to the **last issue as to what reliefs are the parties entitled to**; the reliefs sought by the plaintiff are stated in her plaint and among others is an order to pay the plaintiff USD 130,022 as special damages for the breach of agreement of sale of assets which includes Motor Vehicle, Make Toyota Land Cruiser. It is the principle of law that special damages must be specifically pleaded. In this principle, I feel persuaded by a foreign jurisprudence in the case of **Bolag Versus Hutchson** (1950) A. C. 515, at page 525 that:

"What we accept special damages are such as the law will not infer from the nature of the act they do not follow in the ordinary course. They are exceptional in their character and therefore, they must be claimed specifically and proved strictly".

See also a judicial decision in **Zuberi Augustino vs. Ancent Mugabe** (1992) TLR 132. From the judicial authorities above, it is vividly clear that when special damages are pleaded in a plaint by a party, it is the duty of such party to strictly give proof of what he or she claims. In the matter at hand the plaintiff is claiming USD 130,022 as specific damages arising from the breach of contract for selling of assets which includes the motor vehicle. It should first be noted that from the evidence and the exhibits tendered before this court there were two contracts entered between the plaintiff and the defendant as explained above, the agreed consideration price for the car was USD 100,000 while in PE3 the agreed amount for consideration was Tshs. 185,000,000/=.


Nevertheless, the plaintiff in justifying her case has specifically given an account on the amount claimed (USD 130,022) as special damages arising from the parties' agreement as already explained above that the defendant is in breach of contract in particular to the sale of the Motor Vehicle (PE3), therefore, this court is of the view that special damages in the tune of USD 130,022 have been proved as prayed considering the fact that there is no evidence to the contrary

The plaintiff has also pleaded for general damages, the position of law on general damages is very clear that the same do not need to be specifically claimed or proved. Given the fact that the defendant is in breach of a contract of sale of a motor vehicle something which she partly admits, and looking at the contract of sale (PE3) where it is clearly shown to have been executed on the 27th April 2017 and this suit was filed on 21/03/2019 almost two years, Hence, court is of the view that, the plaintiff should be entitled to a payment of Tshs. 20,000,000/= as general damages. More so interest on the decretal amount is awarded at the court rate of 7% from the date of judgment to the date when the decree is fully satisfied.

Consequently, the plaintiff's suit succeeds. The defendant is declared to have breached the contract and following that breach the plaintiff is entitled to USD 130,022 as special damages, Tshs.20,000,000/= being general damages and interest at the court 7% from the date of this judgment to the date of satisfaction of decree in full. Costs of this case shall be borne by the defendant

It is so ordered.




M. R. GWAE
JUDGE
11/08/2021