

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

COMMERCIAL CASE NO 167 OF 2002

1. CAPTAIN OTHMAN M. OTHMAN.....1ST PLAINTIFF
2. MOHAMED SOBO.....2ND PLAINTIFF
VERSUS
TANGANYIKA INVESTMENT OIL
& TRANSPORT COMPANY LIMITED.....DEFENDANT

JUDGMENT

KALEGEYA, J:

Though served, the Defendants failed to make appearance. The Plaintiffs were accordingly allowed to prove their claims exparte. They are represented by Mr. Nyangarika, Advocate.

The two Plaintiffs are the sole witnesses for their respective claims. They also tendered 6 documentary Exhibits (Exh.P1 – 6).

I should from the outset make two observations. One, from the nature of the claims this case is more of a labour dispute than a commercial case. Even at the danger of making this judgment unnecessarily long let salient paragraphs of the plaint tell it all:-

“3. That the plaintiff claims against the owner of the ship and the Defendants for unpaid wages and other provisions to the tune of 21,609,000/= together with interest, damages and costs.

4. *That the plaintiffs were employed by the owner of the ship through the agent defendant who is their at a different capacities as shown in the letter of appointment annexed hereto and marked together as Annexure A and the plaintiffs crave for leave to adopt them as part of the plaint.*
5. *That the first plaintiff was engaged by the owner of the ship through the defendant on 28/11/2000 as a Captain of a ship known by the name of M.V. Hadramount for a salary of US\$2,000.00 per month and the second plaintiff was engaged by owner of the ship through the defendant on the same under the capacity of an Engineer in M/V Hadramount for a salary of US\$1,200 per month as shown in Annexure A referred to in paragraph 4 here in above.*
6. *The plaintiffs were not paid their wages and provisions promptly by the defendant as agreed despite their hardworking on the defendant's vessel throughout their employment.*
7. *That the defendant also failed to supply the plaintiffs with adequate food/catering provisions on board all along, therefore causing the plaintiffs to work in an intolerable hard condition on the ship for a long time.*
8. *That on 1st June 2001 the second plaintiff was injured while he was repairing the defendant's vessel and he sustained a*

permanent broken finger and therefore claim damages of 500,000/=. A copy of IDI 329 is attached herewith and marked to as Annexure B.

9. *The plaintiffs complained against the illegal acts of the owner of the through the defendant to the Labour Office in which the defendant has been promising to take up their demands but the plaintiffs were not paid their outstanding wages and catering provisions to date. Copies of the letter to the Labour Officer is attached herewith and marked as annexure C and the plaintiffs crave for leave to be adopted as part of the plaint.*
10. *That failure of Defendants to honour their promise as stated herein para 8 above resulted to substantial damages and hardships on the part of the plaintiff who are being unfairly infringed of their rights without any justified cause.*
11. *The value of the subject matter is over 10,000,000/= while the registered offices of the defendant are within the jurisdiction of this Court and the ship which is the subject matter in this case has been attached as shown in Annexure D and therefore this Court has jurisdiction to determine this matter."*

Two, the drawing of the pleading itself leaves a lot to be desired. It is in compatible with elements of elegance.

Thirdly, there is a clear misjoinder of parties because the contracts between the defendant and each one of Plaintiffs is separate and different from the other.

That said however, I will proceed to determine the matter on merits. Why? This Division of the High Court has jurisdiction to determine any other case of commercial nature not falling under the 11 categories prescribed under Rule 2 of the High Court Registries, Rules, 1984 as amended vide GN 141/99. I consider this to be a borderline case because the same is pegged on contractual relationship between the Plaintiffs and Defendant. This takes care of observation one. As to the third observation, O. 1, Rule 9 of The Civil Procedure Code provides the cure. It runs,

“No suit shall be defeated by reason of the misjoinder or non – joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it”.

Now, for the merits. The 1st Plaintiff, Captain Othman M. Othman testified that on 28/11/2000 he was employed by the Defendants and attached to a ship called MT Hardramount as its Captain, at a monthly salary of US dollars 2000; that he worked up to June, 2001 (inclusive). He testified further that as was the case with the 2nd Plaintiff, his salaries were not being paid as per agreement and he enumerated what was paid to him as follows:-

US\$.1000, January 2001; US\$.800 in February; US\$.61 in March; US\$.56 in April and US\$.500 in June. He insisted that he was not paid any salary for November and December, 2000 and may, 2001. He tendered employment letters as Exh.P1 and 2. He concluded by deposing that the Defendants refused to pay notwithstanding various demands made through the Labour Office and the Ministry of Communication and Transport. He tendered Exh.P3, a correspondence with the Labour Office and Exh.P4, a letter from the Ministry of Works which was ordering for detention of the ship due to various claims.

As for the 2nd Plaintiff, Mohamed Sobo, he testified that he was employed as a 2nd Engineer and attached to the same ship on 1/12/2000 at a monthly salary of US\$.1200 and that he worked up to August, 2001. Supporting what was stated by the 1st Plaintiff, the 2nd Plaintiff insisted that the salaries were not being regularly paid and as per agreement and itemizes payments he received as follows – US\$.800 in December 2000; US\$.56.20 in January, 2001; US\$.600 in February; US\$.56.20 in March; US\$.500 in June; US\$.300 in July. He stated that as arrears of salary he claims a total of US\$.8,487.60. He tendered Exh.P5 as an employment letter.

The said 2nd Plaintiff went on to depose that during his employment he sustained a finger injury estimated at shs.123,750/= as per Exh.P6, a Labour Officer's compensation assessment. He also claims shs.500,000/= as specific damages he incurred while moving here and there for treatment.

Both Plaintiffs also fronted common claims – they alleged that as per terms of employment they were entitled to payments for

food/provisions. They both claim same rate although put differently by each of them – 1st Plaintiff claims 10 US dollars per day while the 2nd Defendant talks of US\$.300 per month which comes to the same thing. Under this item the 2nd Plaintiff claims US\$.2296.55 while 1st Defendant claims US\$.403.

The above is the evidence upon which I have to base my finding.

Although the Plaintiffs have been allowed to prove their claims exparte this court has a duty of seeing to it that the standard required has been reached. It is trite law that even in exparte proofs the Plaintiff has to prove his case up to the standard required – balance of probability (**CAT Civil Appeal No. 10 of 1998, Peter Ng'homango vs Gerson M.K. Mwanga and The Attorney General.**)

Now, on the evidence available, I am satisfied that indeed the Plaintiffs were employed by the Defendants in the capacities and on salaries they have stated.

That they were thus employed is sufficiently established by Exh. P1, 2 & P5 which provide as under:-

*"TO Capt. Othman Mohamed Othman
Dar es Salaam*

Date 28 11 2000

Dear sir,

SUBJECT: M/T HADRAMOUT,

Your are hereby temporarily appointed Master of the above named vessel.

Regards,

Sgd:
Capt. Soud Ahmed Salim
Marine Superintendent " (Exh.P1);

"To Capt. Othman Mohamed Othman
Master,
M.V. Hadramout,
Dar es salaam.

Date 28/11/2000
Dear Sir,
SUBJECT: WAGES

Your salary will be US\$ 2,000.00 (Two Thousand Dollars only) per month.

Regards,

Sgd:
Capt. Soud Ahmed Salim
Marine Superintendent " (Exh.P2); and

"To Mr. Mohamed Seif Sobo
Dar es Salaam

Date 01 12 2000
Dear Sir,
SUBJECT: M/T HADRAMOUT

You are hereby appointed as 2nd Engineer of the above named vessel. You will be on probation period of 3 months. Your salary will be US\$ 1200.00 per month all inclusive.

Regards,

Sgd:
Capt. Soud Ahmed Salim

Marine Superintendent

c.c. Master, Hadramout" (Exh.P5).

The question is whether they were not paid all their dues as stated by them. Having regard to their demeanour as they detailed what they received per month, I am satisfied that indeed they were not being regularly paid their monthly salaries, and also that where an attempt was made to pay, it was partial payment. I am thus satisfied that the 2nd Plaintiff is entitled to arrears of salaries amounting to US\$.8,487.60 flowing from unpaid salaries (monthly) as follows: US\$.400, December 2001; US\$.1143.80, January, 2001; US\$.600, February; US\$.1.143.80, March; US\$.1200, April; US\$.1200, May; US\$.700 in June; US\$.900 in July and US\$.1200 in August. As regards the 1st Plaintiff, although he did not specify the amount, using same formulae of deducting from his salary what he states was paid monthly, the amount which is outstanding is US\$.9983 as per cumulative salary arrears as follows – US\$.2000, December 2001; US\$.200, January 2001; US\$.400 in February; US\$.1939, March; US\$.1,944, April; US\$.2000, May and US\$.1500, June. I have disallowed the claim for November, 2000 because the 1st Plaintiff did not bother to assist the court in determining the amount due. The facts show that he was employed on 28/11/2000, just two days to the end of the month. The said 1st Plaintiff should have indicated how much sum he was entitled to, proportionately to the number of days worked in November and the monthly salary.

As regards the claim for food and provisions, I am afraid the Plaintiffs have not established the same up to the standard required. They allege that as per shipping practice they were supposed to be paid 10 dollars a day for food/provision. No evidence had been adduced in this respect. I may also add that their employment letters are silent on this. Yes, there is Exh.P3, a letter by the crew (including the Plaintiffs) to the Labour Officer and signed by 1st Plaintiff, in which among the claims, are claims for food/provision but in here, merely flat and general allegations are fronted. There is no specificity and it is not evidence that they were entitled to such payment. The said letter provides:-

*"Crews
MT Hadramout
25/9/01*

*Regional Labour officer
P.O. Box 1181
Dar es Salaam*

Sir,

***REF: CREW WAGES, FOOD/CATERING PROVISION AND
TERMINAL BENEFIT CLAIMS AGAINST MT
HADRAMOUT OWNER***

The above captioned matter refers.

We crews of MT Hadramout some of us joined the ship in Mukala Yemen, in July, 2000. Others joined the same in Dar es Salaam in November 2000.

Since then, none of us received any salary according to our agreement and we have been given inadequate supply of food/catering provisions onboard, all along. On 25th June 2001, they tried to pay us but very little amount, under the witness of the Ministry of Communication and Transport representative in promise that the outstanding balance will be paid within four week's time. On 25th July 2001, they pushed us to the Ministry which directed us to go the court claiming that it had no power to press the owner to pay us out. On the 14th August 2001, the owner gave us a copy of a letter Ref. No. JEAN/GF/01/24 narrating that our claims would be dealt with the owner through the Ministry. On the 16th August 2001, we sought help from TASU, in vain.

Now, we see our future very blank and argue you held us to recovery our sweat. Hoping you will consider our situation, we remain and thank you in advance.

Yours faithfully,

Sgd
Capt. Othman Mohamed Othman
For crew

These claims stand disallowed.

As for the compensatory amount, shs.123,750/=, for injury by 2nd Plaintiff, it stands allowed. Exh. P6, para 2, provides,

“

2. *Compensation has been assessed in accordance with the provision of the Workmen’s Compensation Ordinance as Section 7, 8 and 9 as follows:-*

<i>(i)</i>	<i>Temporary Incapacity for 14 days</i>	<i>=</i>	<i>Shs. 10,500/=</i>
<i>(ii)</i>	<i>Partial temporary incapacity for 14 days</i>	<i>=</i>	<i>Shs. 5,250/=</i>
<i>(iii)</i>	<i>Permanent Total Partial Incapacity Assessed at 6%</i>		<i>Shs.108,000/=</i>
	<i>Total</i>		<i>Shs.123,750/=</i>

.....”

However, specific damages in the sum of Shs.500,000/= claimed by 1st Plaintiff stand disallowed as they were not proved and so are general damages.

Before concluding, I should make one further observation – Exh.P4, a letter from the Ministry of Communication and Transport addressed to the THA – Director General with an order to detain and tow MR. Hadramout “Ex TOOFAN” is irrelevant as the conflict leading to that order is different from Plaintiffs’. Reference was being made to injuries and deaths sustained by other Tanzanians in their (Defendants) employment.

In conclusion, judgment is hereby entered in favour of the Plaintiffs as follows:

- (a) Salary arrears (1st Plaintiff) US\$.9,983
- (b) Salary arrears (2nd Plaintiff) US\$.8,487.60
- (c) Interest on the sum stated in (a) and (b) above at the rate 15% per annum as from June, 2001 for 1st Plaintiff and August, 2001 for the 2nd Plaintiff, up to the date of judgment.
- (d) Interest of 7% per annum on the decretal sum from date of judgment till payment in full.
- (e) Defendants are condemned in costs.

L.B. KALEGEYA
JUDGE

Delivered in the presence of Mr. Nyangarika.

L.B. KALEGEYA
JUDGE
15/7/2003

Mflembe
Date 15/7 of 2003

for personal liability for fraudulent trading. So, in my view the Second Defendant is personally liable to the Plaintiffs in the total sum of shs.82,526,140/= and to each of the Plaintiffs for interests on their respective claims at 21% interest from the date of filing the suit, to payment in full, and for interest on the decretal sum from the date of judgment to that of payment in full. The 2nd Defendant shall also bear the costs of the Plaintiffs, but the 1st Defendant's costs shall be borne by the Plaintiffs.

Decree to issue accordingly.

S.A. MASSATI

JUDGE

30/4/2007