

TANZANIA / JUDGMENT

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1 IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL CASE NO. 290 OF 2001 HELENE MASANJA PLAINTIFF VERSUS

1. KENYA NATIONAL SHIPPING LINE LTD
2. TANZANIA INTERNATIONAL CONTAINER TERMINAL SERVICES LTD DEFENDANTS
Date of last order-10/ 12/2012 Date of Judgment- 18/2/2013

JUDGMENT

Shangwa, J. This suit was presented for filing a long time ago on 30th August, 2001. It involves nine issues which are as follows:-

1. Whether the plaintiff is entitled to the payment of GBP 151,731.09 being the value of lost, stolen or i l vandalised items in the plaintiff's consignment. 2
2. Whether the alleged theft and vandalism on the plaintiff)s consignment occurred when the said consignment was under the ct-lsto.q,y of the second defendant . .3. Whether the plaintiff is entitled to the payment of GBP
200) 000. 00 in general damages alleged. -----· · · -
4. Whether the plaintiff is entitled to the payment of GBP
100) 000. 00 in punitive damages alleged.
5. Whether Atlantis Forwarding Ltd prepared any packing list and a collection note for the consignment 1. upon payment of GBP 1) 800 being consideration for a house to house shipment of the 69 pieces of household effects as alleged.
6. Whether the joint verification carried out on 22/6/2001 was made on the l}gsis of a packing list within the meaning of the term in the Stevedoring Industry and the alleged collectfon note. ' ,- 3 ''
7. Whether the plaintiff is not liable to pay demurrage charges on the consignment.
8. Whether the plaintiff is entitldd to the payment of interest at the rate of 30% on the amount claimed.

9. To what reliefs are the parties entitled. The plaintiff Helene Masanja IS an electrical CoI! tractor. The 1st defendant is a shipping-line. The 2nd defendant is a Custodian of all imported consignment at the Dar es Salaam Port Authority's Yard. The plaintiff's suit is founded on the following facts: 1 ~ In 2001, the plaintiff who was: taking her Masters Degree in information systems at Napier University Edinburgh Scotland decided to come back to Tanzania. She packed her household effects in 69 boxes and consulted Atlantis Forwarding Agents for transporting them together with her Suzuki Vitara from UK to Tanzania. After consulting those Agents, they went to her house where she was residing at Haden Place Street in Edinburgh for 14 collecting them. She prepared a list of her household effects and gave it to those Agents: They took them and loaded them in a twenty feet container. The container No. is MSCC - 1300333. After loading them, the container was sealed with seal No. 4936448. From the plaintiff's residence they carried the container to Felix Stowe Port in
- UK from where the container was loaded on board MSC FLORIANA. The plaintiff paid £1,800.00 as shipment charges. After handing over her properties to ATLANTIS Agents, she left UK for Tanzania. After some time, she received a telephone call from ATLANTIS who informed her that she should consult KENYA NATIONAL SHIPPING LINE (1st Defendant) through its Agent SEA LAND at TANCOT HOUSE DAR ES SALAAM. After being so informed, she went to SEA LAND at TANCOT HOUSE from where she was given a copy of the Bill of Lading. She went with it to Dar
- es Salaam. Port where she was shown her container by the 5th Port Officer. On examining it, she found that the seal had been removed from it and a Padlock was just hanging there in its place. She then informed SEA LAND about the situation and SEA LAND told her that the seal was intact when her container arrived at Dar es Salaam Port and when it was handed over to TICTS office (2nd defendant). She then complained to the Chief Executive Officer of TICTS. Upon her complaint, the 1st and 2nd defendant's officers went together with her to the container to make verification. Upon verification, it was found that her properties as per collection note were no longer in boxes as packed in UK. Most of them had been stolen and several of them had been damaged. During verification, a total of 51 pictures were taken to show how her properties had been damaged. Some of those pictures, namely seventeen of them were received in evidence and marked as exhibit P.7. According to her own estimates, the value of her properties which were stolen and damaged is £151,731.095. She asked the 1st defendant to give her some of her properties which were intact and partly damaged but the 1st defendant demanded for payment of demurrage charges of USD 2,226 up to 28th September, 2001 as a condition for their release. She refused to pay the said amount on ground that her properties had been stolen and damaged at the Port in Tanzania. In her testimony, the plaintiff mentioned a total of 143 items which were collected from her house by ATLANTIS Agents in the UK for transportation to Tanzania. It is not in dispute that those items were carried on Board a Cargo ship called Floriana. It is not in dispute also that the container in which those items were transported from UK to Tanzania was sealed and that when it was unloaded from the ship

and handed over to the 2nd defendant, it was sealed. It is as well not in dispute that when the plaintiff went to collect her goods from the container, she found that it had been tampered with. Its seal had been removed from there and a padlock was just hanging there. The plaintiff told the court that when a joint verification exercise was conducted by the 1st, 2nd defendant and herself, it was found that her goods were no longer in the state she had packed them. Everything was lost and scattered around inside the container. Some of her properties were stolen and or damaged. The situation was as follows:-

- Five cartons out of 23 were missing, 13 were tampered with, 3 were torn and completely empty, 2 were found intact, 4 bags out of 7 were missing. 39 open items were damaged. The Car's radio was missing. The driver's window glass was broken. CD player/ changer and the control box were missing. Some glasses were damaged. The computer was found dismantled. The TV 14 inches make Hitachi was damaged. Control panel and HiFi 8 speakers were damaged. The woofer tweeters and midrange were missing from both speakers.) Let me now embark on considering the issues. In doing so, I will pick any of them as I deem fit. To begin with I will start with the 5th and 6th issues. On these issues, the court has been called upon to determine as to whether or not ATLANTIS FORWARDING COMPANY LTD prepared a packing list and a collection note for the consignment and whether the joint verification which was carried out in June, 2001 was made on the packing list. In my view, no one can tell as to whether ATLANTIS prepared a packing list after collecting the plaintiff's goods. One thing above all is that a packing list is an internal matter. Another thing is that this case does not involve a claim of loss of the plaintiff's goods while in the hands of ATLANTIS. It involves a claim of damages for the theft and damage of the plaintiff's goods while in the hands of the 2nd defendant. The joint verification report was made on the basis of a collection note exhibit P.1 issued by ATLANTIS to the plaintiff. That was sufficient verification in the eyes of justice. On the 2nd issue the court has been called upon to determine as to whether the alleged theft and damage/vandalism on the plaintiff's consignment occurred when the consignment was under the custody of the 2nd defendant. There is direct evidence of D.W.2 Ahmad Nasiri - Magambo for the 1st defendant to show that when the plaintiff's container was unloaded from the Floriana ship on 2nd April, 2001, it was handed over to the 2nd defendant's clerk while sealed. Had it been unsealed at the time when it was handed over to the 2nd defendant's clerk, he could not have accepted it. I hold therefore that the theft and damage on the plaintiff's consignment was done while it was in the 2nd defendant's hands at the Container Terminal Dar es Salaam Port. My holding is as well supported by the fact that the 2nd defendant offered to pay the plaintiff USD 30,000, so that she withdraws the case against it. On the 1st issue, the plaintiff has called upon this court to determine as to whether or not she is entitled to payment of GBP 151,731.09 as value of her properties which were stolen and damaged at Dar es Salaam Port. The joint verification report does show that properties which were found missing to be as follows:-

1. Five cartons.
2. Four bags.
3. The car's radio.
4. CD Player/ changer.
5. Control box t
6. Woofer tweeters and midrange speakers. Those which were found damaged are as follows:
 1. Several open items.
 2. Driver's door window glass.
 3. Some glasses. 11
 4. Computer.
 5. TV 14 inches make Hitachi .
 6. Control Panel.
7. Hi-fi Speakers. In fact, the plaintiff did not produce any receipt to prove the value of the above listed items which were stolen and damaged. She simply estimated them to be valued at GBP 151,731,095. In my considered view, the amount estimated is exaggerated. In January, this year GBP 151,731,095 were equivalent to Tshs.2,902,362,359/=. In fact, by the time this suit was filed twelve years ago the equivalent amount was lesser. For instance, I do not think that her stolen and damaged properties were worth billions of Tanzania shillings. As I have already mentioned, the estimated value of those properties is exaggerated by the plaintiff. I think therefore Tshs.50,000,000/= is sufficient to cover those properties. This amount should be paid by 2nd defendant to the plaintiff. I so order. On the 8th issue, the court is asked to determine as to whether or not the plaintiff is entitled to the payment of interest at the rate of 30 % on the amount claimed. In my view, she is not supposed to be paid interest on the amount claimed. The claim of interest in this case has no basis. I hold so because the plaintiff's goods were for personal use and not for sale. On the 7th issue, the court is asked to determine as to whether or not the plaintiff is liable to pay demurrage charges on the consignment as counter claimed by the 1st defendant. In its counter-claim, the 1st defendant is claiming from the plaintiff USD 2,226 as demurrage charges for the plaintiff's container MSC 1300333 counting from the date of its discharge up to 28th September, 2001 plus USD 14.00 per each day of delay thereafter. That is to the present day. In general, the plaintiff does not refute the fact that demurrage charge for the stay of her container at the 2nd defendant's container terminal is a procedure in clearing one's goods from the port area. However, she resists to pay it on grounds that her goods were stolen and damaged while in the 2nd defendant's hands. In his re-examination by Mr. Kamugisha for 1st defendant, D.W.1 for 1st defendant Alphonse Francis Riwa told this court that the procedure is that one has to pay demurrage

charges before handing over the goods to him or her and that the plaintiff's goods cannot be released free of charge. In my view, the plaintiff is not supposed to pay demurrage charges. Had her container not been tampered with and her properties stolen and damaged, she would have immediately paid such charges. Also had she been fairly compensated she would have immediately paid such charges. As she was not fairly compensated she decided to sue the defendants. Since when the container arrived at Dar es Salaam port and discharged from the ship to the present date, it is over 13 years. If she were to be ordered to pay demurrage charges for all those years, she would not be able to do so and she will lose all her valuable properties including jewels, video camera and Suzuki Vitara such an order would certainly be unfair and unconscionable. I order the referee that she should be handed over her goods which were found intact and partly damaged without demand of demurrage charges. This order must be complied with immediately. I dismiss the counter claim with costs. On the 4th issue, the court is asked to determine as to whether the plaintiff is entitled to payment of GBP 100,000 as punitive damages. In my view, the plaintiff is not entitled for punitive damages either from the 1st defendant or 2nd defendant due to theft and damage of her household goods which occurred in the hands of the 2nd defendant. The court cannot punish these companies for criminal activities of its unfaithful workers at the port area. I believe criminal action against workers of these companies who are suspected of stealing goods from containers at the port is always taken against them including being sacked. The referee, I do not think that it would be proper for this court to grant the claim by the plaintiff of GBP 100,000.00 as punitive damages against the 2nd defendant which had a duty to protect the plaintiff's goods from theft as well as On the 3rd issue, this court is called upon to determine as to whether or not the plaintiff is entitled to payment of GBP 200,000 as general damages. In her testimony, the Plaintiff told this court that she was humiliated by the watchmen of 1st defendant who treated her as if she is a thief and that she is claiming for general damages of so much pounds for loss of use and enjoyment of her goods. I think her claim of general damage for loss of use and enjoyment of her goods is quite genuine. She lost use of a variety of things which were stolen and damaged from her container as well as enjoying the same. Although her claim of general damages is quite genuine, the amount of GBP 200,000 which she claims is on the high side. I reduce it to Tshs.30,000,000/= to be paid by 2nd defendant to her. The 9th issue is a general one. On this issue, the court is called upon to determine as to what reliefs are the parties entitled. As already indicated, the plaintiff is entitled for payment of Tshs.50,000,000/= by 2nd defendant to cover the value of her stolen and damaged household effects plus Tshs.30,000,000/= being general damages and costs of the suit. She is also entitled to be given her goods which were not stolen free of demurrage charge. The 1st and 2nd defendants are not entitled to any, 17 Delivered in open court this 18th day of February, 2013 in the presence of Mr. Ngudungi for the plaintiff and Mr. Kamugisha for 1st defendant and Miss Dolla for 2nd defendant. jj

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