

TANZANIA / JUDGMENT

FINAL JUDGEMENT ZUNA PRINTING

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT
DAR ES SALAAM COMMERCIAL CASE NO. 98 OF 2023 BETWEEN ZUNA PRINTING SOLUTIONS
LIMITED.....PLAINTIFF VERSUS INK WORLD
LIMITED.....1st DEFENDANT VENKADESH KUMAR
PADMANABAN.....2nd DEFENDANT

JUDGMENT

Date of Last Order: 28/05/2024 Date of Judgment: 05/07/2024 GONZI, J. The Plaintiff instituted the suit against the defendants praying for Judgment and Decree against them jointly and severally for the following orders: -

1. The court declare that the first and second defendants breached their fiduciary duty of being honest to the client and misrepresented the facts knowingly /unknowingly leading to the losses suffered by the Plaintiff. 1
2. The plaintiff seeks a declaration from court stating that both the first and second defendants violated consumer protection laws by intentionally disabling the plaintiffs' printer. this act was carried out with the knowledge that it would result in commercial and financial losses for the plaintiffs' business, which indeed occurred. Additionally, the defendants' actions amount to a breach of privacy concerning the plaintiff printer and property.
3. A declaration that the 1st and 2nd defendants should never remotely disable or interfere with the functionality of the plaintiff business printer.
4. That the first defendant being the employer of the second defendant be ordered to pay 83,000 USD being compensatory damages for the expected income loss occasioned by the defendants' misrepresentation of the contract and negligent breach of legal duty. 2
5. Payment of an additional amount as punitive damages to be determined by the court as a deterrence and punishment for the vendor's wrongfully actions.
6. Interest on the awarded sum at the commercial rate from the date of default payment to the date of Judgment and thereafter at the court's rate till full payment.
7. General damages.

8. Costs of this suit.
9. Any other relief this honorable court may deem just to grant. It was alleged by the Plaintiff that on 30th April 2020, the Plaintiff purchased from the 1st Defendant a large printing machine for USD 25,000. On 19th December 2022, the printing machine malfunctioned and needed repair. The printer was functioning to a certain extent. The Plaintiff consulted the 1st Defendant for technical help. The 1st Defendants' technician (2nd Defendant) advised that the printer heads were faulty and needed replacement. It was the 1st Defendant's technical advice, through the 2nd Defendant, that the printer heads would cost USD 7,000. Other 3 spare parts were approximated to costs USD 1800. Hence total costs communicated to the Plaintiff summed up to USD 8,800. The Plaintiff paid to the 1st defendant, through the 2nd Defendant, USD 4,000.00 as an advance payment to facilitate the amends. However, later on, the plaintiff realized that the printer-head was not actually replaced as earlier on intimated. Rather, the 1st Defendant, through the 2nd Defendant, had re- used the same printer-head that initially had been diagnosed as faulty and reported as needing repairs for which the Plaintiff paid the Defendants. The Plaintiff discovered that the Defendants had majorly replaced the printer head-bases which are valued at USD 800 and not USD 7000. The plaintiff's grievance in this case is that the Defendants deceived the Plaintiff into agreeing to pay USD 7000 for a printer-head replacement, but, instead, they just replaced it with a different part, namely the head base costing only USD 800. Therefore, the Plaintiff complained, the Defendants did not fulfil their obligation as agreed. The Plaintiff sued the Defendants for a breach of trust or fiduciary duty. The plaintiff complained that this misconduct on the part of the Defendants was a result of the defendants' intentional deception (fraud) or negligence in providing accurate information (professional misstatements) which caused financial losses to the plaintiff. It was further 4 narrated by the Plaintiff that upon discovery of foul-play, the plaintiff officially complained to the 1st defendant that replacing the printer head- base would cost a maximum of merely USD 800 to USD 1600 and not the USD 7000 charged by the 1st Defendant for which USD 4000 had already been paid by the Plaintiff. Rather than acknowledging their error, the defendants reacted aggressively and they used their technology to remotely disable the plaintiff's printer as they still retain control over it to remotely activate and deactivate it despite having sold it to the plaintiff. The particulars of misstatement or fraud by the defendants were pleaded by the Plaintiff as follows:
 - (i) The defendant breached their duty of care of giving honest account to the plaintiff on what was the issue with their printer. That this duty of care existed from the special relationship that the plaintiff and the defendants had since the plaintiff reasonably expected the defendants who are printing equipment technicians and vendors to provide the Plaintiff with accurate information. (ii) The defendants failed to full fill their obligation of care by presenting inaccurate or deceptive information that they were fully aware of that the less expensive head base was the 5 problem, not the printer head which is naturally more expensive. (iii) The plaintiff upon receiving information from the defendants that the printer-head needed replacement, it relied upon that information as would be reasonably

expected and acted upon it. (iv) The defendants were fully aware that the printer served heavy commercial purposes and played a significant role in fulfilling contractual agreements between the plaintiff and its customers. As such, it was evident that the actions of defendant could reasonably be expected to cause harm or financial loss to the plaintiff.

- (v) The plaintiff suffered actual harm and financial loss specifically the loss of a significant contact they had won which would have generated revenue amounting to USD 83,000.00. The Plaintiff claimed further that the defendants' act of remotely disabling the plaintiff's printer made it impossible for the plaintiff to work on it and discharge its contractual duties. This led to failure by the Plaintiff to service a contract between it and One Plus Network Co. Ltd which was consequently terminated. It was claimed by the Plaintiff that the 6 defendants' acts amounted to illegal encroachment to the plaintiff's printer against consumer protection, contract and commercial laws leading to financial losses. On 5th December 2023, Final Pretrial Conference was conducted in respect of this case whereby after engaging the learned counsel for the Plaintiff and the Defendant, the court framed the issues for trial of the case. At the end of the Final Pretrial Conference, the Court directed parties to file Witness Statements and fixed the case for oral hearing. On 19th February 2024 when the case was called for hearing as scheduled, the Plaintiff appeared through Dr. Aloys Rugazia, learned advocate and the Defendants appeared through Mr. Mozart Hyera, learned advocate. At the outset, before hearing of the cases could start, Dr. Aloys Rugazia, learned advocate for Plaintiff, raised an objection with respect to the Witness Statements of the two Defendants' witnesses being filed outside the prescribed time. On 23rd April 2024, this Court in its Ruling found that the Witness Statements for the Defendants were indeed filed outside the prescribed time and proceeded to strike them out. The Plaintiff therefore proved his case unopposed and exparte the Defendants. The Plaintiff proved his case through Form No.1 and an affidavit of proof. 7 In the Affidavit of proof, the Plaintiff attached and tendered Exhibit "F1-F2" which are the defendants' replies to the plaintiff's demand. It shows that around 30th April 2020 the plaintiff purchased from the 1st defendant a large printing machine for about USD 25,000. Exhibit "C" is the proof of payment. It shows that the initial agreement was based on the 1st defendant's technical advice through the 2nd defendant, that the printer-heads would costs USD 7,000 and that the other spare parts would cost USD 1800 hence summing up to USD 8,800. The plaintiff paid the defendants USD 4,000 through one Venkadesh Kumar Padmanaban as an advance to facilitate the amends. Exhibits "D1-D2" are the printouts and a flash disk showing the tentative price of the head-base and the video tape that was confidentially recorded by the plaintiff that reveals what the 2nd defendant did with the Plaintiff's printer. The Plaintiff through Exhibit D1-D2, maintained that he was deceived into agreeing to pay USD 7000 for a printer head replacement, but instead, the Defendants had only replaced a different printer part namely the head-base, which cost lesser amounts. Exhibit "E" shows conversations wherein the 2nd defendant admitted that it was the head-base and not the printer-head that was actually replaced. 8 Exhibits "G1-G2" respectively, to the affidavit of proof, are the agreements between Zuna Printing Solutions Limited and One Plus Network Co. Ltd and the notice to terminate the

said agreement. Due to the remote disabling of the plaintiff's purchased printer, the Plaintiff failed to the service a contract between it and One Plus Network Co. Ltd which was subsequently terminated. Exhibit "H" to the affidavit of proof is a financial audit of the Plaintiff for the year 2022 giving indicators of the business turn-over of the plaintiff that was generated by the stated printer. The Plaintiff testified that since when the printer was disabled to date, the plaintiff has continued to suffer business loss warranting to nominal damages of USD 50,000.00. The suit was founded on breach of contract, fiduciary duty and violation of consumer protection laws. In breach of fiduciary duty, the Plaintiff has alleged that the Defendants had a duty of care towards him; that they breached the duty of care and consequently the Plaintiff suffered losses as result of the breach. The Plaintiff relied on breach of contract by the 1st and 2nd Defendants for misrepresentation of facts relating to the maintenance of the printing machine. The case proceeded one sided after the Defendants excluded themselves from further proceedings when they 9 failed to file their witness statements timely. I will thus examine the Plaintiff's claim briefly based on the evidence brought by the Plaintiff. On breach of fiduciary duty, I asked myself the following questions. Did the Defendants have a duty of care towards the Plaintiff? I find that the 1st and 2nd Defendants were Principal and Agent respectively. The 1st Defendant procured the 2nd Defendant as an expert to service the Plaintiff's printer. The Plaintiff had consulted the 1st Defendant for technical help. The 2nd Defendant as the 1st Defendants' technician, advised that the printer heads were faulty and needed replacement. The 1st and 2nd Defendants charged the Plaintiff for the professional service to be done and the costs of equipment to be replaced. As professionals, the 1st and 2nd Defendants had a duty of care towards the Plaintiff who was relying on their professional service at a fee paid to them. Did they breach their duty of care towards the Plaintiff? I find that they did. They told him that printer head would be replaced and they billed him as such but only to replace the printer head-base, an equipment that cost mucher lesser amount of money. However, they fraudulently charged him for the printer head which they did not replace. Also, upon the Plaintiff discovering the truth and complaining, the 1st and 2nd 10 Defendants remotely disabled the plaintiff's printer hence making it totally dysfunctional. That was a breach of their duty of care towards the Plaintiff. Did the Plaintiff suffer losses as result of such breach? The answer is in the affirmative. The Plaintiff brought evidence that his business is large scale commercial printing and that is why he bought the printer. The Defendants knew this fact. The Plaintiff brought evidence that at the time the plaintiff's printer was disabled remotely by the 1st and 2nd Defendants, the Plaintiff had secured a printing contract deal between it and One Plus Network Co. Ltd which was consequently terminated. The contract was worth USD 83,000.00. There was loss of business income and loss of reputation as well as exposure to legal liabilities for failure to service the contract. The Plaintiff therefore, suffered both specific and general damages. However, I do not accept the Plaintiff's standpoint that due to the breach of fiduciary duty by the Defendants, the Plaintiff has lost the entire USD 83,000.00 which constitute the contract price between the Plaintiff and One Plus Network Co. Ltd. That was the contract sum or price out of which the Plaintiff could earn a portion thereof as profits. By losing the contract, the Plaintiff lost the expected profits

but not the whole contract sum as some of that amount would have gone into fees, charges, costs and expenses necessary for, and incidental to, the performance of 11 the contract. USD 15,000 would be a reasonable profit margin in my view which the Plaintiff could be justified to claim for the loss of business. The Plaintiff pursued a trinity of causes of action for breach of fiduciary duty, breach of contract and breach of consumer protection laws. In my view, the same reasoning above, applies to the cause of action for breach of contract. The Plaintiff and the 1st Defendant had an agreement for the 1st Defendant to service the printer of the Plaintiff. The 1st Defendant used the 2nd Defendant as its agent in effecting the service of the printer. The 1st Defendant and the 2nd Defendant misrepresented facts within their knowledge to the Plaintiff when they told it that the printer part to be replaced was printer head that would cost USD 7000.00 while actually they knew the printer part to be replaced was Printer head-base which cost USD 800 to USD 1600. The Law of Contract Act, CAP 345 provides that: 18.(b) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; 12 What the 1st Defendant did in the case at hand fits under section 18(b) of the Law of Contract Act. Under section 19(1) of the Law of Contract Act, CAP 345 where consent to an agreement is caused by fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. The Plaintiff's consent to the service agreement with the 1st Defendant was procured by fraud and misstatement by the 1st and 2nd Defendants that they were replacing the faulty printer-head at USD 7000 because that was the defective part of the plaintiff's printer. However, it turned out that the faulty part was the printer head - base and the 1st and 2nd Defendants knew that fact and actually they went ahead to replace only the printer-head base. The Plaintiff was deceived into paying USD 8,800.00 for a printer party that actually was costing USD 800.00. That contract was voidable at the option of the Plaintiff. The benefit of USD 4000 that passed under it is returnable to the Plaintiff upon the contract being avoided. I do not, however, find it necessary to determine the present case in line with consumer protection laws given that the infringement of right in this case appears to be in rem and the nature of damages claimed fall more on unliquidated sums. Breach of fiduciary duty adequately disposes of the matter at hand. 13 This court therefore does hereby enter Judgment and Decree in favour of the Plaintiff against the 1st and 2nd Defendants jointly and severally and orders that: -

1. It is hereby declared that the first and second defendants breached their fiduciary duty of being honest to the Plaintiff and knowingly misrepresented the facts leading to the losses suffered by the plaintiff.
2. The 1st and 2nd defendants are hereby ordered not to interfere with the functionality of the plaintiff's business printer, anyhow.
3. The 1st and 2nd Defendants are ordered to pay the Plaintiff USD 15,000 USD as profits margin for the loss of USD 83,000 contract work which the Plaintiff had secured and lost upon disablement of the Plaintiff's printer remotely by the 1st and 2nd Defendants.

4. The 1st and 2nd Defendants are ordered to refund the USD 4,000.00 the Plaintiff had paid as an advance for the USD 8800.00
5. The 1st and 2nd defendants are hereby ordered to pay the Plaintiff TZS 10,000,000/= as general damages.
6. The amount in 3 and 4 shall attract interest at the commercial rate of 7% per annum from the date of filing the case to the date of Judgment and Decree. 14
7. The 1st and 2nd Defendants shall pay the Plaintiff interest on the decretal sum at the court rate of 7% per annum from the date of Judgment and Decree to the date of full and final satisfaction thereof.
8. Costs of this suit will be borne by the defendants. It is so ordered. A. H. GONZI JUDGE 05/07/2024 Judgment is delivered in Court this 5th day of July, 2024 in the presence of Aloys Rugazia, Advocate for Plaintiff and Sitta Banzi, Advocate for the Defendant. A. H. GONZI JUDGE 05/07/2024 15

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