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

COMMERCIAL CASE NO. ……. OF 200…..

……..…..…… PLAINTIFF

VERSUS

…….…….. FIRST DEFENDANT
…….SECOND DEFENDANT
…….…….THIRD DEFENDANT

THE FIRST AND THIRD DEFENDANT'S JOINT FINAL SUBMISSION

[Pursuant to Orders of Justice Massati. Dated….. day of …., 200..]

0.0 INTRODUCTION

0.1. YOUR LORDSHIP, this Joint Final Submission by the First and Third Defendants are made against prayers sought in the Plaint filed by the Plaintiff in this Court on the …….. day of ……., 200…, seeking the following relief's:-

a) **An order for payment of specific damages of ……..;**
b) **An order for payment of general damages of ……..;**
c) **Interest at commercial rate of ….% on a) and b) above from the date of filing this suit to the date of judgement;**
d) **Interests at Court rate of ….% from the date of judgement to the date when the Decree will be fully settled;**
e) **Costs be provided for;**
f) **Any other order and/or relief as the Honourable Court may deem just and fit to grant.**

The submission is also in support of the separate First and Third Defendant's Written Statements of Defence filed in this Court on ……..of ……., 200…, with the main prayer that the Suit be dismissed with Costs, for both the First and

Third Defendants, while the First Defendant praying also for judgement and decree against the Plaintiff in terms of the Counter Claim averred in paragraph… of the Written Statement of Defence of the First Defendant.

The submission is predicated on the pleadings and evidence adduced in the course of the trial.

0.2. At the first hearing of the case, before Your Lordship, the following **ISSUES** were framed:-

1. **Whether or not the Plaintiff contracted the 1st or Second Defendant to ……..to the Plaintiff's godown?**
2. **If so what were the terms of the said contract?**
3. **Whether the First and or the Second Defendant breached any term of the said contract?**
4. **Whether or not the Plaintiff paid the Third Defendant for the value of l……..**
5. **Whether the Third Defendant ……...**
6. **Whether or not the Plaintiff suffered loss of profit or any loss following the Third Defendant's act of……..**
7. **What reliefs are the parties entitled to.**

0.3. YOUR LORDSHIP, the Submission herein is divided in three parts, namely:-

0.3.1 The Chronological Background setting out the material events that led to the dispute;

0.3.2 Analysis of the evidence, the issues and the law; and

0.3.3 Remedies.

1.0. **<u>A CHRONOLOGY OF MATERIAL EVENTS</u>**

2.0 <u>ANALYSIS OF THE EVIDENCE, THE ISSUES AND THE LAW</u>

<u>ISSUE No. 1</u>

Whether or not the Plaintiff contracted the 1st or Second Defendant to deliver cargo to the Plaintiff's godown?

2.1. YOUR LORDSHIP, to answer this question would require evidence of one of these three things. One, an express contract which clearly stipulates that the Plaintiff did contract either the First Defendant or the Second Defendant or both of them, to ……..deliver the ……..by the Plaintiff. Two, evidence that though there is no express or written contract between the Plaintiff; and the First and Second Defendants, the Plaintiff has dealt with either the First Defendant or the Second Defendant, in such a way that an implied contract can be inferred. Three, ……..

2.2. YOUR LORDSHIP let us begin by exploring the first alternative to the effect that there was an express contract between the Plaintiff and either the First or the Second Defendant. This alternative seems out of the equation, because the Plaintiff has failed to produce a single document of any type to prove that it contracted either the First or Second Defendant…….. ***Annexure JCB*** to the Plaint.

2.3. To muddle matters more, the Principal Officer of the Plaintiff, one ……., who testified as **PW1,** when questioned whether the Plaintiff had contracted the First Defendant or Second Defendant, in no uncertain terms…….replied that the Plaintiff did not contract any one of them. His answer was……...

2.4. YOUR LORDSHIP, it is not disputed that the First Defendant, played the role of ……..issue.. What is not clear is on whose instructions the First Defendant handed over the cargo to Waziri. The evidence before Your Lordship infers a contract between the Plaintiff and the Second Defendant. In paragraph 6 of the Plaint, the Plaintiff avers that on the ….day of ….., 200… it

contracted both the First and the Second Defendants to deliver …….. However, no contract was produced to evidence that.

2.5. There is more inference in the testimony of **DW2**, one ……..**,** a manager of the Second Defendant that an implied contract existed between the Plaintiff and the Second Defendant. Mr. ……..did agree that one ……was an employee with the Second Defendant, that……...

2.6. Your Lordship, the only conclusion flowing from this is that the Plaintiff has an arrangement with the Second Defendant, which we can call an implied contract to ……. premises. This is the only reason why its ……..contacted the Second Defendant and not the First Plaintiff in connection with the ……... If the Plaintiff knew that it was the duty of the First Defendant to ……. then **PW1** would have straight forwardly contacted the First Defendant and not the Second Defendant in connection with the ……... The only conclusion flowing from this is that the Plaintiff had an arrangement with the Second Defendant to deliver ……

2.7. This is plausible because the First Defendant was contracted by the Plaintiff to act as its …….agent only. This it is admitted has been their tradition as is acknowledged by the Plaintiff in the Reply to the First Defendant Written Statement of Defence, in regard to paragraph 4 (c) and (d) of the First Defendant Written Statement of Defence, which makes the case that the relation of the First Defendant and the Plaintiff was that of ……an agent only not ……..

2.8. YOUR LORDSHIP the third alternative is whether the law …… Your Lordship, the practice tells us that…… Your Lordship as our argument is supported by the pleading of the Plaintiff itself in the preceding paragraph, viz. 2.6 above, the relationship between the First Defendant and the Plaintiff was restricted to ….. Thus the first issue is disposed in the negative for the First Defendant, but in the positive for the Second Defendant.

2.9. YOUR LORDSHIP, the Evidence Act, [CAP 6 R.E.2002] is clear on the burden of proof. Section 110 (2) provides that ***whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*** The Plaintiff in paragraph 6 of the Plaint has asserted that on the …….day of ……, 200 contracted the First and Second Defendant to deliver the …….... However it has failed to prove before your honourable court that such a contract existed between the Plaintiff and the First Defendant. No document was produced exhibiting such a contract, or any relation between the Plaintiff and the First Defendant to imply a contract. The relationship between the Plaintiff and the First Defendant simply imply that the latter operated as an agent only. Since the Plaintiff has failed to prove a contract with the First Defendant to ……..the Plaintiff has no action arising out of the …….loss of the ……. The Plaintiff tried to rely on …….. However, we understand that ……a house to house cargo simply means that a container will be allowed to ……..

ISSUE No. 2

What were the terms of that contract?

2.10. YOUR LORDSHIP we have answered the first issue in the negative for the First Defendant but in the positive for the Second Defendant. Having been answered in the negative for the First Defendant, the second issue would not apply for the First Defendant.

ISSUE No. 3

Whether the First or Second Defendant breached any term of that contract?

2.11. YOUR LORDSHIP, since there was no contract between the Plaintiff and the First Defendant, the third issue does not apply to the First Defendant.

ISSUE No. 4

Whether or not the Plaintiff paid the Third Defendant for the value of ……?

2.12. YOUR LORDSHIP, it is clear without any dispute that on the ……, day of ……, 200…., the Third Defendant raised an invoice ……..(Annex A) against the First Defendant, not the Plaintiffs, in which the Third Defendant claimed ……..being amount of the accrued loss ……... As exemplified by "APPENDIX AL 3A" annexed to the Written Statement of Defence of the Third Defendant, that invoice was in the account of the First Defendant not the Plaintiff. The First Defendant was simply asked to notify the Plaintiff, but no ……sums were claimed against the Plaintiff by the Third Defendant.

2.13. Your Lordship, …… .

2.14. Your Lordship, ……..

2.15. YOUR LORDSHIP ……

2.16. YOUR LORDSHIP, ***the burden of proof in a suit proceeding lies on that person who would fail if no evidence were given***, as per section 111 of the Evidence Act, [CAP 6 R.E 2002]. The Plaintiff is on record to have asserted in the Plaint as per paragraph ….. that it paid the Third Defendant for the value of the loss of ……..However no evidence was produced to prove that. To the contrary the document relied upon by the Plaintiff to prove that, the Plaintiff paid the Third Defendant for the value of the loss …… thereon is **ANNEXURE XJTS** attached to the Plaint, which in no uncertain terms, clearly shows that the said amount was paid by the First Defendant. The Plaintiff having failed to prove that, it is just that the Counter Claim of the First Defendant against the Plaintiff must succeed.

ISSUE NO.5

Whether the Third Defendant had a right of……?

Your Lordship there is no dispute that the Plaintiffs had …..

2.15 Your Lordship, the Third Defendant went even further to the extent of ……..

Your Lordship……..The learned authors of ……..10th edition, Longman Publishing, 1992, at page 231, remind us of the legal maxim: **"……".** In this case the ……

ISSUE NO.6

Whether or not the Plaintiff suffered loss of profit or any loss following the Third Defendant's act of……?

2.16 YOUR LORDSHIP the fact that …….

2.17 Your Lordship, if the ……the Plaintiff, then truly they had suffered a loss. However that loss was their own creation for which they have no one to blame except themselves.

ISSUE NO.7
What reliefs are the parties entitled to?

2.18 YOUR LORDSHIP, it has been inferred from the facts that the Plaintiff contracted the Second Defendant to……...

2.19 Your Lordship, the First Defendant had raised a counter claim against the Plaintiff equivalent to …… US$ ….being the sum of money paid to the Third Defendant for …… In that regard it is only just that the counter claim of the First Defendant prevails.

The humble First and Third Defendants pray that the Plaintiff's suit be dismissed with costs.

We humbly submit.

Dated at Dar-es-Salaam this …… day of ……..200….

_____

ADVOCATE FOR THE DEFENDANT

Presented for filing this……...day of ……..., 200…..

_____

REGISTRY OFFICER

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