



THE UNITED REPUBLIC OF
TANZANIA



**WELLWORTH HOTELS AND LODGES LIMITED V. EAST
AFRICA CANVAS CO. LTD & 3 OTHERS**

COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(KOROSO. J.A, FIKIRINI J.A, And MWAMPASHI J.A,)

CIVIL APPEAL NO. 1488 OF 2024

(Appeal from the Judgment and Decree of the High Court of Tanzania, Commercial Division at Dar es Salaam by Simfukwe, J dated the 10th day of November, 2023 in Commercial Case No. 64 of 2022)

Contract law — Whether party's own failure to perform (transportation, border clearance, export documentation) can excuse counterparty's performance;

Whether the appellant suffered loss or damages as a result of any alleged breach and is entitled to compensation or repayment of advance payments;

The Appellant contracted the 1st Respondent to design, manufacture, supply, install and commission five mobile tented camps for designated locations with staged delivery dates and paid substantial advances. The 1st Respondent completed partial work but did not deliver all camps. The Appellant sued for specific performance or repayment of advance sums and large damages, also alleging directors' personal liability. The trial court found the Appellant's failures to arrange transportation, border clearance and correct export documentation (clause 2.4) caused tax assessments and penalties by KRA, preventing export and completion. On appeal the Court agreed: evidence (including KRA correspondence and testimony) showed unresolved KRA liabilities and Appellant's contributory defaults frustrated performance. The claimed large commercial losses and reputational damages lacked cogent causal evidence; some exhibits were irrelevant. There was no basis to pierce the corporate veil to hold directors personally liable. Accordingly, the Court affirmed that no breach attributable to the 1st Respondent was proved, denied the repayment and damages claims, and dismissed the appeal with costs.

Held



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1. The Court held that the appellant failed to prove, on a balance of probabilities, that the 1st respondent breached the contract. The trial Judge correctly found that delays and incomplete performance were caused by the appellant's own failure to fulfill its contractual obligations, notably in respect of transportation, border clearance and export documentation under clause 2.4 of the contract.
 2. The Court held that the appellant was not entitled to damages for loss of business opportunities or reputational harm because it did not adduce cogent evidence linking any breach to the claimed losses; some documentary evidence relied upon was irrelevant to the Serengenti camps, and the appellant had itself engaged a third party without resolving the tax impasse.
 3. The Court held that the 2nd and 3rd respondents were not personally liable for inducement of breach or jointly liable with the 1st respondent. There was no evidence of malfeasance or actions outside their corporate roles to justify lifting the corporate veil.
 4. Consequently, the Court held that the appellant was not entitled to repayment of the claimed balance of advance payments and that the trial court's dismissal of the suit was correct.
- (i) The appeal is dismissed with costs.

Statutory provisions referred

- i. Section 73(1) of the Law of Contract Act, Cap. 345 R.E. 2019

Cases Laws

- a. William Stirling The Younger v. Mailand and Boyd (1864) 122 ER 1043
- b. Salomon v. Salomon [1897] AC 22
- c. Yusuf Manji v. Edward Masanja & Another, (Civil Appeal No. 78 of 2002) [2005] TZCA 106 (15 November 2005; TANZLII),

The Appellant was represented by Ms. Mariam Bachuba, whereas the respondents were represented by Mr. Heriel Obeid Munisi, assisted by Mr. Said Nassor Salum, both learned advocates.