

**IN THE HIGH COURT FOR ZANZIBAR
AT TUNGUU
CIVIL CASE NO. 72 OF 2016**

HAKUNA MATATA BEACH LODGE LIMITED	1ST PLAINTIFF
CHUINI ZANZIBAR BEACH LODGE LIMITED	2ND PLAINTIFF
MANGROVE BEACH RESORT LIMITED	3RD PLAINTIFF
VERSUS		
NGALAWA BEACH RESORT LIMITED	DEFENDANT

DEFAULT JUDGEMENT

10/07/2024 & 23/07/2024

KAZI, J.:

The Plaintiffs, Hakuna Matata Beach Lodge Limited, Chuini Zanzibar Lodge Limited, and Mangrove Beach Hotel Limited, are limited liability companies incorporated in Zanzibar that are operating a four-star hotel beach resort and a three-star resort, respectively, at Chuini, Zanzibar. The Defendant, Ngalawa Beach Resort, is a limited liability company incorporated in Zanzibar. The Defendant is a neighbour of the plaintiffs' property at Chuini, and she is also operating a hospitality resort in the mentioned area, which includes music activities and other festivities conducted in halls and the open spaces within her premises.

The Plaintiffs' claim in this suit is for Permanent Prohibitory Injunction and Mandatory Injunction to restrain the Defendant from continuing to carry

out music functions without using soundproof facilities. They also claim a Mandatory Injunction order restraining the Defendant from causing any sound disturbance and allowing noise and sounds to escape from her premises to the adjacent and neighbouring premises, including those of the Plaintiffs. They also claim for the mandatory Injunction restraining the Defendant from conducting herself contrary to the laws concerning Environment Management for Sustainable Development, sound emission control, and Town and Country planning, and other relevant laws governing construction.

Lastly, they seek orders of this Court to direct the Defendant not to commit any nuisance in the neighbourhood.

In a nutshell, the Plaintiffs, through a joint amended plaint, stated that the Defendant, who operates a business under the name of Ngalawa Beach Resort and Chazza Club, as part of Ngalawa Hotel & Resort, operates a disco music and/or similar activities several times a week within her premises, which have a poor acoustic quality, with sound or noise penetrable halls, in open spaces, and at the swimming pool area.

The Plaintiffs contended that the Defendant's discotheque activities and other music performances were conducted without putting into effect noise control requirements as prescribed by the law. As a result, it caused nuisance to the Plaintiffs and their guests, thereby depriving the Plaintiffs of their right of quiet enjoyment of their premises, which rights were being enjoyed by the Plaintiffs and their guests before the Defendant started her

noisy activities, which were immoral and hostile to the Plaintiffs and other persons living in the vicinity.

According to the plaintiffs' complaint, the Defendant's music was being made contrary to the noise pollution control regulations. It was made with loud noises from music-making equipment adjacent to the Plaintiff's hotels, causing nuisance and annoyance to the Plaintiffs and their guest clients. They have pleaded further that the Defendant's Chaza Club and swimming pool or other areas, have no soundproof facilities and have been constructed in such design and manner that they allow penetration of sound at a high level, while the swimming pool where the music activities were conducted, is open to the air, contrary to the laws in relation to Environment Management for Sustainable Development, noise pollution, Town and Country planning and other relevant laws governing loud noises.

The Plaintiffs, through their complaint, contend that the Defendant's actions caused the Plaintiffs' hotel visitors to complain and demand a refund of the money that they had paid to the Plaintiffs' injury. They also claimed that their tour operators and some guests had cancelled bookings and that the loss from the cancellations was colossal.

Therefore, the Plaintiffs prayed for Judgment and Decree for:

- a) A Permanent Prohibitory Injunction and Mandatory Injunction restraining the Defendant from continuing carrying out music functions without using soundproof facilities.

- b) A Mandatory Injunction orders restraining the Defendant from causing any sound disturbance and from allowing noise and sounds from escaping from her premises to the adjacent and neighbouring premises including those of the Plaintiffs.
- c) A Mandatory injunction restraining the Defendant from conducting herself contrary to the laws in relation to Environment Management for Sustainable Development, sound emission control and Town and Country planning and other relevant laws governing construction.
- d) An order that the Defendant pay the First Plaintiff the following for refunds, upgrading and cancellations: -
- i. The total amount of refunds, cancelations, up gradings and losses already suffered is USD 14,778.
 - ii. The total amount of future and continuing cancellations and damages in terms of loss of business is USD 75,000.00 before the problem can be rectified for the new season of July, 2017 to June 2018.
- e) An order that the Defendant pay the Second Plaintiff the following for refunds and cancellations: -
- i. The total amount of refunds, cancelations, upgradings and losses already suffered which is USD 61,500.00
 - ii. The total amount of future and continuing cancellations and

damages in terms of loss of business of not less than USD 75,000.00 before the problem can be rectified for the new season of July, 2017 to June 2018.

- f) An order that the Defendant pay the Third Plaintiff the following for refunds and cancellations: -
 - i. The total amount of cancelations and losses already suffered which is USD 9,135.00
 - ii. The total amount of future and continuing cancellations and damages in terms of loss of business of not less than USD 40,000.00 before the problem can be rectified for the new season of July, 2017 to June 2018.
- g) A decree for orders directing the Defendant not to commit any kind of nuisance in the neighbourhood.
- h) An order that the Defendant should pay the Plaintiffs general damages to be assessed by Court for injury to the hotel's reputation, health of the Plaintiffs' visitors, right of enjoyment of easement and ones' quiet enjoyment of Plaintiffs' visitors/clients of not less than TZS 200,000,000/=
- i) An order that the Defendant pay the Plaintiffs general damages for financial loss, mental and psychological torture to the Plaintiff to be assessed by the Court of not less than Tshs 200,000,000/=

- j) An order that the Defendant pay the Plaintiffs interest on the awarded sums at the Bank Rate of 18% from the date of judgment of the District Court to the date of Court Judgment.
- k) An order that the Defendant pay the Plaintiffs further interest on the decretal sum at the Court Rate of Interest 0.7% from the date of judgment and decree to the date of full satisfaction of the decree.
- l) An order that the Defendant to be compelled to compel his licensees, his agents and workmen to follow the relevant laws of Zanzibar and stop the nuisance.
- m) Costs of and incidental to the case.

In her Amended Written Statement of Defence, the Defendant admitted her music operation and denies other facts. The Defendant contended that they operated music legally by using strict soundproof facilities, and the same has neither penetrated nor permeable towards plaintiffs' properties or does it cause inconvenience or otherwise nuisance to any Plaintiffs or any persons. Therefore, their prayers are that the Plaintiffs' suit be dismissed with costs.

Before the hearing of the suit, the Plaintiffs, through the service of their advocate, Mr. Walter B. Chipeta, by way of chamber summons, applied successfully under section 22 (a), Order XIII rules 1 and 2 of the **Civil Procedure Decree**, Cap 8 of the laws of Zanzibar (herein Cap 8), for leave to deliver interrogatories. Thus, on 17th January 2023, the Defendant

was ordered to answer the set of interrogatories submitted in Court by the Plaintiffs and was given 30 days to answer them. It was the order of the Court that if the Defendant fails to comply with such order, her defence in her amended written statement of defence will be struck out, and the Court will enter a default judgment to this suit.

It is on record that the Defendant submitted in Court her answer on 20th February 2023, beyond the given time. Moreover, the Defendant's answer to the interrogatories violated Order XIII Rule 8 of Cap 8. It is the requirement of rule 8 of Order XIII that Interrogatories shall be answered by an affidavit. In answering the interrogatories, the Defendant did not answer it by affidavit. Instead, she answered it by the document titled 'RESPONDENT REPLY TO THE APPLICANTS' INTERROGATORIES'. It is evident, therefore, that Defendant failed to comply with the order of this Court and the requirements of rule 8 of Order XIII. Under the circumstances, Order XIII rule 21 of Cap 8 requires the Court to strike out the Defendant's defence and place the Defendant in the position as if she had not presented her written statement of defence in Court. Rule 21 of Order XIII provides as follows: -

"... When a party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution and if a defendant, to have his defense, if any, struck out, and to be placed in the same position as if he had

not defended, and the party interrogating or seeking discovery or inspection may apply to the court for an order to that effect and an order may be made accordingly."

On the strength of the above-quoted provision, the Defendant's defence deserved to be struck out for her failure to submit her answer to the interrogatories within the prescribed time allotted by the Court and in accordance with the law. Nonetheless, before exercising power under Order XIII rule 21 of Cap 8, I shall assess the contents of the answers to the interrogatories while disregarding, for now, how Mr. Is-haq Shariff, learned advocate for the Defendant, had submitted them.

In the application for leave to deliver interrogatories, Mr Chipeta submitted that Defendant's defence either omitted or avoided disclosing some pertinent facts that must be known by this Court for a fair determination of the case. He, therefore, submitted 15 questions for the examination of the defendants. In her response, the Defendant did not exhaustively disclose pertinent facts that will enable this Court to determine this matter fairly. For instance; First, Plaintiffs asked if the Defendant had been registered with the Zanzibar Business and Property Registration Agency (ZBPRA); they also required the Defendant to exhibit her Memorandum and Article of Association and the Certificate of Incorporation. In her reply, the Defendant affirmed that it was registered by ZBPRA. Still, she failed to attach or show the Court her Memorandum and Article of Association and the Certificate of Incorporation. Second, Defendant was asked if there was a structural design of the building that harbours Chaza Discotheque, the

name and a firm or company of the person who designed and prepared the drawings of the building and his qualifications. In her response, she did not reveal the name of the person or company who designed and prepared the drawings of her property and his qualifications, as asked. Third, Defendant avoided revealing the facts when asked if she had an Environment Impact Assessment (EIA) and/or Environment Social Impact Assessment (ESIA) Certificate from ZEMA for her entire hotel and the area where the Chaza Discotheque was constructed. Fourth, Defendant was asked to disclose the specifications of the music equipment used to play music in Chaza Discotheque and at swimming pool parties, but in her response, she did not disclose the specifications of the music equipment used on her premises. Fifth, Defendant was asked to provide the names and details of the DJs operating in her premises, the schedule of disco events for each week and holidays, and the schedule of pool parties or activities around the swimming pool. In the reply, Defendant failed to disclose all that was asked by the Plaintiff's interrogatories.

In totality, Defendant failed to exhibit the interrogatories; she avoided revealing some facts, and other facts were not disclosed comprehensively. Therefore, it is my view that not only the Defendant fails to submit her reply to the interrogatories within time and according to the prescribed procedures, but she also failed to answer the same as required. As a result, the Defendant's amended written statement of defence is hereby struck off under Order XIII rule 21 of Cap 8; hence, the Defendant is placed in a position as if she had not filed in Court her written statement of defence. Consequently, the default judgement is entered in favour of the Plaintiffs

under Order VIII rule 10 of Cap 8 of the Laws of Zanzibar, which provides thus:-

"Where any party who has been ordered to present a written statement or other pleading fails to present the same within the time fixed by the Court, the Court may pronounce judgement against him, or make such order in relation to the suit as it thinks fit".

To this end, I am pleased to order the following: -

1. The Defendant is permanently prohibited from continuing to carry out music functions without using soundproof facilities.
2. The permanent injunction order is hereby issued restraining the Defendant from causing any sound disturbance and from allowing noise and sounds from escaping from her premises to the adjacent and neighbouring premises including, those of the Plaintiffs.
3. The Defendant is restrained from conducting herself contrary to the laws concerning Environment Management for Sustainable Development, Sound Emission Control, Town and Country planning, and other relevant laws governing construction.
4. The Defendant should pay the first Plaintiff the following for refunds, upgrading and cancellation: -
 - i. USD 14,778 being the amount of refunds, cancellations, upgrades, and losses suffered.
 - ii. USD 75,000 being damages in terms of loss of business.

5. The Defendant should pay the second Plaintiff the following for refunds, upgrading and cancellation: -
 - i. 61,5000 USD being the amount of refunds, cancellations, upgrades, and losses suffered.
 - ii. USD 75,000 being damages in terms of loss of business.
6. The Defendant should pay the third Plaintiff the following for refunds, upgrades and cancellation: -
 - i. USD 9,135 being the amount of refunds, cancellations, upgrades, and losses already suffered.
 - ii. USD 40,000 being damages in terms of loss of business.
7. The Defendant is ordered not to commit any nuisance in the neighbourhood.
8. The Defendant should pay the plaintiffs TZS 200,000,000/= as general damages for injury to the Plaintiffs' hotel's reputation, right of enjoyment of easement and quiet enjoyment of plaintiffs' hotel visitors.
9. Defendant should pay interest on the decretal amount at the bank rate of 18% per annum from the date of this judgment until the decree is fully satisfied.
10. The Defendant should pay the Plaintiffs for the costs of this suit.

It is so ordered.

Dated at Tunguu, Zanzibar this 23rd Day of July 2024.

A handwritten signature in black ink, appearing to be 'G. J. Kazi', written in a cursive style.

G. J. KAZI
JUDGE
23/07/2024