

**IN THE HIGH COURT OF ZANZIBAR
AT TUNGUU
CIVIL CASE NO. 48 OF 2024**

KENDWA ROCKS HOTEL LIMITED PLAINTIFF

VS

GO – GO COMPANY LIMITED 1ST DEFENDANT

ABU HASSAN DUTHUKATL 2ND DEFENDANT

HAPHID ALI JUMA 3RD DEFENDANT

JUDGEMENT OF THE COURT

20/01/2025 & 30/01/2025

KAZI, J.:

In this matter, the Plaintiff, a limited company incorporated in Zanzibar and operating the Kendwa Rocks Hotel in Kendwa, Zanzibar, seeks judgment and decree against the Defendants. The first Defendant is a limited company incorporated in Zanzibar that deals with tour operators and manages and runs hotel properties. The second Defendant is the Director of the first Defendant responsible for contracting and business development, while the third Defendant is the Managing Director of the first Defendant. The Plaintiff is praying for judgment and decree against all three Defendants jointly and severally as follows:

- a. That the Defendants should be ordered immediately jointly and severally pay to the Plaintiff USD 329,526 for services rendered plus interest of Commercial Bank rate of 20% from the date the payment became due (16 March 2022) to the date of satisfaction of the claim in full.
- b. The Defendants should be ordered immediately, jointly, and severally to pay to Plaintiff general damages to be assessed by the Court of not less than USD 30,000 for breach of contract and loss of use of the outstanding monies by Plaintiff.
- c. That the Defendants should be ordered immediately jointly and severally pay the Plaintiff punitive damages of USD 40,000 due to the Defendant's conduct and lie

to the Plaintiff's officials, which have interfered with the Plaintiff's circulation of money and liquidity.

- d. The Defendants should be ordered immediately jointly and severally to pay the plaintiff costs of and incidental to the suit.
- e. Any other reliefs that the Honorable Court may deem proper.

As extracted from the plaint, the brief background of this matter goes as follows: In 2021-2022, the first Defendant entered into a guarantee agreement with the plaintiff, stipulating that the plaintiff would accommodate the defendant's guests and tourists in her hotel. It was agreed that the first Defendant would cover the cost of accommodation for its guests and tourists.

As per the agreement, while acting on the first Defendant's request, the Plaintiff provided accommodation to two groups of the first Defendant's guests and tourists from September 1, 2021, to February 11, 2022, and again from February 12, 2022, to February 28, 2022. After rendering accommodation services to the first Defendant, on March 16, 2022, the Plaintiff issued an invoice to the first Defendant, demanding payment of the accommodation fee, which amounted to 329,526 USD.

The Plaintiff alleges that the Defendants did not pay the invoices but merely promised to settle the debt. On January 12, 2023, and January 13, 2023, the second Defendant emailed Mr. Ali Ibrahim Kilupi, the Plaintiff's Managing Director, acknowledging the debt and taking personal responsibility by promising to settle the outstanding balance by the second or third week of February 2023. However, despite their promise, Defendants failed to fulfil it.

In light of these circumstances, the Plaintiff has decided to initiate this lawsuit, seeking joint and severable damages against Defendants for breach of contract, general damages to be assessed by the court, and punitive damages as specified earlier.

Initially, the summons was issued on September 5, 2024, to the Defendants' offices in Mbwani. However, according to the affidavit deposed by the court process server, Othman Juma Hassan, the Defendants' company was inactive, and the security officer at their office refused to accept the court summons. Consequently, the court

summoned the Defendants to appear in court through substituted service, as announced in the Zanzibar Leo Newspaper on November 7, 2024. Despite being summoned, the defendants failed to appear when the matter was called for mention on November 20, 2024. In light of this, the Plaintiff, through her advocate, Mr. Rajab Abdalla, successfully pleaded the court to proceed with the suit ex parte, as per Order XI rule 6 (a) of the **Civil Procedure Decree** Cap 8 of the Laws of Zanzibar.

Before the hearing, two issues were drawn by the Court: (1) whether there is a breach of contract on the part of the defendants in respect of the services enjoyed by them from the Plaintiff's hotel, and (2) what are remedies the Plaintiff is entitled to.

At the hearing, the Plaintiff called only one witness, Ali Ibrahim Kilupi (PW1), to support her case. In his testimony, PW1, the owner and Managing Director of Kendwa Rocks Hotel in Kendwa, Nungwi, stated that he is suing Go-Go Company and its Directors, the second and third Defendants. He explained that he used to work with the Defendants on tour operating business and had a smooth relationship with them from 2018 to 2019. He stated that, when the tourist business declined due to the COVID-19 outbreak in 2020, the Defendants brought tourists to his hotel and booked all the rooms.

PW1 claimed that from 2021 onwards, the Defendants began to delay their payments. He further stated that while the Defendants were booking tourists for his hotel in 2021, they stopped paying for the outstanding balance. Therefore, he asserted that his claim against the Defendants for the services rendered is 329,526 USD.

PW1 further testified that they have a contract and email correspondence, which demonstrate an agreement, and the amount owed to them. Consequently, upon being examined in chief, PW1 presented in Court a contract titled "Guarantee Contract 2021 – 2022," a certificate of authenticity, and email printouts dated January 14, 2023, March 31, 2022, March 16, 2022, January 13, 2023, and January 12, 2023. All the submitted documents were admitted as Exhibits P1, P2, and P3, respectively.

In his testimony, PW1 also mentioned an email dated February 14, 2023, from the second Defendant, confirming the amount owed to him as 329,525 USD. Additionally, he stated that on January 13, 2023, the second Defendant had promised to pay the

outstanding balance by the second and third weeks of February. Furthermore, PW1 explained that in an email dated January 12, 2023, the second Defendant confirmed that the payment would be made from February 2023 onwards and that no reconciliation would be necessary once the outstanding balance was acknowledged.

So far, the above were the testimony and documents relied upon in proving the Plaintiff's case.

Since this suit was heard ex-parte, the Plaintiff is only required to prove his claim as pleaded in the plaint. See; [Lim Han Yung & Another vs Lucy Treseas Kristensen \(Civil Appeal 219 of 2019\) \[2022\] TZCA 400 \(28 June 2022\)](#). Therefore, in addressing the issues regarding this matter, I will consider what pleaded in the plaint, the witness's testimony and the documents he tendered to support his evidence.

The crux of the matter is whether the Defendants dishonoured their contractual agreement with the Plaintiff regarding the services they received from the Plaintiff's hotel. In his testimony, PW1 mentioned that the Plaintiff and the first Defendants had been in business since 2018. Their agreement stipulated that Plaintiff was obligated to reserve accommodations for the Defendants' tourists. Exhibit P1, a Guarantee Contract 2021 – 2022, was presented in court to substantiate this fact. Exhibit P1, as a binding agreement between the parties involved in this lawsuit, clearly demonstrates that the Plaintiff guaranteed 63 consecutive rooms from October 23, 2021, to April 7, 2022, to the Defendants. While PW1's testimony confirmed that he fulfilled his part of the agreement by providing accommodations to the Defendants' tourists, the Defendants failed to honour their commitment by not settling their outstanding balance of 329,526 USD. PW1's evidence further corroborated this fact. On January 12 and 14, 2023, the second Defendant sent an email to PW1, confirming the Plaintiff's outstanding bill and invoice for the period from September 1, 2021, to February 28, 2022, along with the outstanding balance of 329,526 USD. The email also indicated that the Defendants had promised to pay the outstanding balance in instalments starting from February 2023. However, PW1's testimony revealed that the Defendants never made any payments towards the outstanding debt.

Based on PW1's testimony and the contents of Exhibits P1 and P3, it is evident that a valid contract existed between the parties, and the Plaintiff fulfilled her obligations by accommodating the Defendants' tourists at her Kendwa Rocks Hotel as per the terms outlined in Exhibit P1. Therefore, I am not hesitant to find that the Defendants breached the agreement by failing to pay the agreed-upon debt to the Plaintiff. This issue is, therefore, proven in the affirmative.

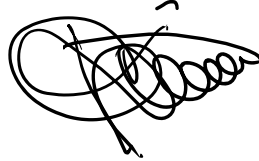
The second issue is what remedies the Plaintiff is entitled to. There's no doubt that Plaintiff suffered direct damages from Defendant's actions, so she's entitled to the relief she requested. In her plaint, the Plaintiff asked for the immediate payment of an outstanding balance of 329,526 USD for the services rendered, plus interest at the commercial bank's rate of 20% from the due date, March 2022, until the full settlement of the claim. She also requested the payment of general damages, which the Court will assess at a minimum of 30,000 USD, and punitive damages of 40,000 USD. As I have stated, the Plaintiff is entitled to the relief sought, so I'm pleased to award her the relief she sought.

In conclusion, I am satisfied that Plaintiff has proven her claim to the required standards. Therefore, the judgment and decree are entered in her favour. Consequently, the Court is pleased to make the following orders:

- i. The Defendants are hereby ordered jointly and severally to pay the Plaintiff the outstanding principal sum of USD 329,526.
- ii. The Defendants are hereby ordered to pay interest on (i) above, at the Bank rate of 20% from when the payment becomes due on 16 March 2022 until the principal sum is fully satisfied.
- iii. The Defendants are hereby ordered jointly and severally to pay the Plaintiff general damages of USD 30,000.
- iv. The Defendants are hereby ordered jointly and severally to pay the Plaintiff the sum of USD 40,000 as punitive damages.
- v. The Defendants are hereby ordered to pay the Plaintiff's legal costs incurred in this Suit.

It is so ordered.

Dated at Tunguu, Zanzibar, this 30th day of January 2025.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

G. J. KAZI
JUDGE
30/01/2025