

L S VENTURES [PVT] LTD

T/A GOLDEN ACRES GUEST LODGE

Versus

EREZ DAYELOT

And

RAIZ-EL NICKEL PROCESSING COMPANY [PVT] LTD

IN THE HIGH COURT OF ZIMBABWE
NDLOVU J
BULAWAYO & 15 FEBRUARY 2024

Stated Case.

NDLOVU J:

BACKGROUND

Plaintiff is a duly registered company that owns and operates a lodge in Kwekwe commonly referred to as Golden Acres Lodge. 1st Defendant is a Belgian national who is temporarily resident in Zimbabwe as a visitor and a Director of the 2nd Defendant. Plaintiff instituted an action proceedings against the Defendants for the payment of US\$72 133.00 being the amount due and owing for accommodation provided to the Defendants as well as laundry, car hire, typing, and printing services.

The matter is before me as a Stated Case. The parties agree that the Court makes its determination on the papers filed.

KEY FEATURES OF THE STATEMENT OF AGREED FACTS AND DOCUMENTS

On 28 December 2019, Plaintiff entered into a verbal agreement with the 1st Defendant for his accommodation and the accommodation of his workmate, Tafadzwa Gumbochuma, as well as ancillary services for an unspecified period at the agreed rate of US\$40.00 a night per person. For the pursuant period of 60 days, the 1st Defendant paid a total of US\$4800.00 in various amounts and on various days. The 1st Defendant and his colleague were later joined by Thokozile Queen Ncube on 01/03/2020 and were accommodated till 30 November 2020.

The plaintiff alleges that it was agreed by the parties that the rate chargeable from the 1st of March 2020 would be US\$60.00 per person per day inclusive of breakfast, the Defendants challenge that assertion and say it was US\$50.00.

Tafadzwa Gumbochuma and Thokozile Queen Ncube checked out on 30 November 2020 and the 1st Defendant remained accommodated till the end of May 2021 when he left Plaintiff's lodge without following the set check-out procedures. His items left in the room he used are still kept at Plaintiff's lodge.

During the time the 1st Defendant was accommodated by the Plaintiff, he was occasionally joined by other persons.

According to Plaintiff, during Defendant's stay, they enjoyed ancillary services in the form of laundry, typing, and printing services as well as car hire services for a total of US\$8 453.00.

The Defendants insist that the agreed rate was as follows:-

- (i) January 2020 to April 2020 US\$50 per day per individual inclusive of breakfast*

(ii) *May 2020 to May 2021 US\$40 per day per individual for bed alone.*

(Defendants aver that during that period they did not take breakfast due to a decline in their business)

ISSUES FOR DETERMINATION.

- 1. *What is the applicable rate per day for the Defendants' stay at the Plaintiff's lodge?***
- 2. *Whether Wellington Takawira and Bigboy Takawira were accommodated by Plaintiff at the Defendants' specific instance.***
- 3. *What if any is the amount owed by the Defendants for their stay at Plaintiff's lodge?***
- 4. *Whether the Defendants liable for ancillary services claimed?***

What is the applicable rate per day for the Defendant's stay at the Plaintiff's lodge?

The plaintiff attached the Defendants' statement and an invoice for another client, ***"to confirm that indeed their going standard rate was US\$60.00 per person per day inclusive of breakfast"***.

Defendants have argued that these documents have not been discovered. The plaintiff is therefore not entitled to use them without the leave of the court and they should therefore be disregarded. They further argue that Plaintiff has not put anything before this court to prove the terms of the verbal accommodation agreement.

Considering that the agreement was verbal, it is now Plaintiff's word against Defendants' word. Ultimately the court has to make a decision. It cannot and should not "toss a coin" nor should it pluck the rate from the air. The Court

must be sufficiently moved and be supported by probabilities to find for one part against the other in contested issues.

Whether Wellington Takawira and Bigboy Takawira were accommodated by Plaintiff at the Defendants' specific instance.

According to Plaintiff, the two were employed by the 2nd Defendant and were accommodated on different occasions at its Lodge at the instance of the Defendants. Defendants vehemently deny this claim. They further argue that if the two stayed at Plaintiff's lodge in the period alleged, Plaintiff should have produced guest registration forms. According to the Defendants, the plaintiff has not produced anything to show that the two ever set foot at its Lodge for a specific period.

What, if any is the amount owed by the Defendants for their stay at Plaintiff's lodge

According to Plaintiff its rate for accommodation was US\$60.00 per person per day from 1st March 2020 until the end of 1st Defendant's stay on 31 May 2021. The amount due and owing for accommodation is as follows:

3 people x 274 days @ 60usd = US\$49 320.00

1st Def x 180 days @ 60usd = US\$10 800.00

Col Gondo x 6 days @ 60usd = US\$360.00

Sam Proph x 4 days @ 60usd = US\$240.00

Bigboy x 7 days @ 60usd = US\$420.00

Wellington x 37 days @ 60usd = US\$2 220.00

Total = **US\$63 360.00**

According to Defendants, Plaintiff has failed to prove its allegedly agreed rate of accommodation. Corollary to that it has failed to prove the quantum of what it claims. 1st Defendant's defense is that he does not owe Plaintiff anything at all. Furthermore, there is no evidence supporting Plaintiff's claims that Colonel Gondo stayed for six nights.

Whether the Defendants are liable for ancillary services claimed

Plaintiff argues that it accommodated Defendants for a lengthy period during which they carried out their business operations from its premises and did not operate from any other office space. It therefore made use of typing and printing services at the lodge and accumulated a bill of US\$2 815.00. 1st Defendant denies utilizing typing and printing services offered at the lodge and goes further to say he does not even know that such services are offered at Plaintiff's lodge. He does not know how Plaintiff arrived at the sum of US\$2 815.00.

During their period of stay, Defendants required laundry services, according to Plaintiff. They would not have purchased clothes every day. The laundry services were utilized at a fee of US\$1 per item totaling the sum of US\$4 030.00. 1st Defendant denies utilizing laundry services at Plaintiff's lodge. According to 1st Defendant, he and his workmates washed their clothes on their own.

The plaintiff claims that Defendants made use of its motor vehicle at a fee of US\$0.50 per kilometer and totaled US\$1608.00, for the 3216 Km it was driven on the Defendants' business by 31 March 2020. The total distance covered by the vehicle in the custody of the Defendants was 3 216km. Documents relating to the hire and places driven to have been pleaded. Defendants deny ever using Plaintiff's motor vehicle and say the allegations by Plaintiff are false.

CONCLUSION

The general principle of civil procedure law is that one who alleges must prove.

Nyahondo vs Hokonya & Ors 1997 ZLR (2) 457 (S)

Plaintiff has tendered the Defendants' statement of accounts and an invoice relating to a different customer to prove the rate it charged the Defendants. On the other hand, the Defendants have averred that during that period they did not take breakfast due to a decline in their business. This is no more or better than a bare and bold assertion. No evidence was availed that such an arrangement was communicated to the Plaintiff.

I find that Plaintiff has satisfactorily proven that the rate the parties agreed on for the period 01 March 2020 to 31 May 2021 was US\$60.00 per person per night.

Defendants have not denied that Wellington and Bigboy Takawira were employees of the 2nd Defendant. The issue for determination was whether or not they were accommodated at the instance of the Defendants. The fact of their accommodation was never an issue for determination. Defendants are therefore wrong in trying to challenge the fact of their accommodation. Probabilities are that had the two been responsible for paying for their accommodation, they would have paid, or been sued in their capacities or they would have provided evidence to the Defendants to show that which the Defendants say is the reality and the Defendants would have adduced that evidence in their defence. It is improbable that Plaintiff would place strangers in the Defendants' account. In any case, had that been so, the Defendants' defence would have been a denial that they know the two individuals concerned.

In my view, Plaintiff has on a balance of probabilities sufficiently proven that it accommodated the two, on the specific instance of the Defendants.

1st Defendant's defence is that he does not owe Plaintiff anything at all.

Surprisingly the pleadings are full of his pleas to be afforded more time to settle the amount owing and due. There is sufficient evidence on the papers filed of record showing and proving that Colonel Gondo stayed for a total of 6 [six] nights at the Lodge belonging to the Plaintiff.

The accommodation bill has therefore been proven to the requisite standard of proof by the Plaintiff to be US\$65, 288.00.

Plaintiff has not shown what was typed, printed, washed, or ironed and on which dates by and for the Defendants. The rates applied for the alleged typing and printing services are not given. The bottom line is that Plaintiff has not provided evidence proving that 1st Defendant utilized its laundry, typing, and printing services. No information has been provided as to the specific dates the laundry, typing, and printing were done and the quantity of items taken for laundry on those specific dates. Even if Plaintiff were to be believed that it rendered these services to the Defendants it nonetheless has not proven the amounts it is claiming. It is one thing to allege but a different thing to prove what is alleged.

The Plaintiff has therefore failed to prove these claims.

The Plaintiff has however proven that the Defendants hired its car and did not pay for the hire. The evidence pleaded is sufficient in settling this issue as proven by and in favor of the plaintiff.

Defendants claim that they effected payments on various occasions to a total amount of US\$ 40,000.00. No evidence has been adduced in that regard. The plaintiff denies the same. Nowhere in communications between the parties that form part of the record did Defendants ever mention that kind of payment. Had

those payments been made, surely Defendants would have confronted Plaintiff with a reminder about those payments right from the onset.

Defendants also claim that they caused payments to be made to Jesta Saungweme's children in South Africa who were attending university, and to some of her relatives at her instruction. No particulars of payments to Jesta's relatives have been given. No proof has either been pleaded. They produced some proof of deposits made to one L Saungweme and T Saungweme. These deposits were made by one S. Prophetor. There is no proof that such payment was towards settling the debt owed to the Plaintiff. The said Sam Prophetor attested in an affidavit that he never made any payments towards settling the debt owed to Plaintiff. The central issue has always been the quantum of the debt owed. It is quite curious how 1st Defendant in all his communications with Plaintiff was silent on such payments.

1st Defendant confirmed indebtedness towards the Plaintiff. Correspondence between the parties filed of record shows as much, and legal practitioners representing the warring parties held round table conferences with a view of settling the matter amicably.

DISPOSITION

The proven debt owed to Plaintiff by the Defendants and remaining due and owing is US\$65 288.00.

The Plaintiff has been forced to litigate and incur legal costs on a simple matter by the Defendants. The conduct of the Defendants in this matter call for censure by way of punitive costs.

I therefore make the following order:

1. The Defendants be and are hereby ordered, jointly and severally, one paying the other being absolved, to pay the Plaintiff, the sum of

US\$65,288.00, payable in RTGS\$ at the prevailing interbank foreign exchange rate at the time of payment.

2. Interest thereon at the prescribed rate from the Date of Summons to the date of full and final payment.
3. Costs of suit at an attorney and client scale.

NDLOVU J

15/02/2024

CT Mugabe & Associates, Plaintiff's Legal Practitioners.

Messrs Mawadze & Mujaya, 1st & 2nd Defendant's Legal Practitioners.