



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

In the matter between:

Case No. 1694/2014

**SEYLAN TRAVEL AND TOURS  
(PTY) LTD T/A UNIGLOBE SEYLAN TRAVEL**

**Plaintiff**

And

**QUALITY CATERING SERVICES (PTY) LTD**

**Defendant**

**Neutral citation:** *Seylan Travel and Tours (Pty) Ltd t/a Uniglobe Seylan Travel v Quality Catering Services (Pty) Ltd (1694/2014) [2015] SZHC200(10<sup>th</sup> November 2015)*

**Coram:** M. Dlamini J.

**Heard:** 13<sup>st</sup> November 2015

**Delivered:** 10<sup>th</sup> November, 2015

*It is trite that where parties give mutually destructive version, the court is bound to examine the evidence adduce and draw inferences where necessary. It must uphold the most probable story.*

Summary: The plaintiff instituted action proceedings and claimed against the defendant in respect of services rendered the sum of E66,864 together with interest. The defendant filed its notice to defend.

Brief resume`

[1] The defendant having filed its notice to defend, also filed a Rule 23 (1) application on the basis that the particulars of claim failed to disclose any cause of action. The plaintiff filed a summary judgment application. When Rule 23 (1) application was argued, I dismissed it and ordered applicant to file its affidavit resisting summary judgment. I put the parties to terms in filing further pleadings. When the summary judgment application was argued, I found that the defendant had raised a *bona fidedefence* and ordered the parties to go on trial.

Oral evidence

[2] The plaintiff called **Nonhlanhla Fortunate Msibi** as its witness. She testified on oath that she was employed by plaintiff as an Accountant since June 2010. She pointed out at annexure Q1 and stated that the said receipt was issued by the plaintiff for Morkel Bridgett who was an employee of defendant. She stated that Q1 had nothing to do with defendant. She further pointed out that if the payment was done by defendant, it would have reflected so.

[3] In respect of invoice 760, she disputed the version put by defendant in its affidavit resisting summary judgment that it never gave instruction to plaintiff to issue air flight tickets in respect of invoice 760. Instructions by the defendant were always verbal. There was no further authorization other

than verbal instructions from Fazel Ibrahim and Morkel Bridgett who always represented the defendant.

[4] An air flight ticket in respect of invoice 790 was issued on 11<sup>th</sup> August 2012 while for 791 on 27<sup>th</sup> August 2012. The ticket for invoice 0965 was issued on 10<sup>th</sup> November 2012. The ticket in respect of invoice 1013 was issued on 4<sup>th</sup> December 2012 upon defendant instructions but was not utilized. As the ticket is classified non-refundable, defendant is liable to pay for it. This witness was cross examined at length. I will refer to her cross examination later. The plaintiff closed its case.

[5] **Penelope Ibrahim** testified on behalf of defendant. She pointed out that she became the beneficiary of defendant after the death of her husband, Fazel Ibrahim. Upon his death, he met Ishara and Shenan, the directors of plaintiff and explained to them that she was taking the reins in defendant's Company.

[6] She did make orders for flights from plaintiff. She did so through calling or emailing Ishara. Ishara would advise her of the ticket number, the date and time by email. She never collected any ticket but when boarding at the airport she would use the ticket number and her identity. She has always dealt with Ishara.

[7] She never authorized any issuance of air tickets with regard to invoice number 760. The names appearing in the said invoices reflect that they are for Morkel's relatives. She queried invoices 790 and 791 as reflecting that the tickets were issued on the same day in respect of her and lack particulars as to where she was from and where she was heading to.

[8] With regards to invoice number 1013, she did call to book a ticket but she never received any feedback from Ishara. She therefore booked the ticket from elsewhere as she failed to get a response from Ishara. She only became aware of this ticket upon receiving invoices from plaintiff.

[9] She did pay plaintiff as reflected from a bank deposit slip Exhibit 1 and an original cheque Exhibit 2, Exhibit 3a and Exhibit 3b. This witness who gave evidence under oath was never cross examined. The defendant closed its case.

### Adjudication

[10] The question for determination is whether defendant is liable to pay plaintiff the debt of E66,864-00. It is trite that where parties give mutually destructive version, the court is bound to examine the evidence adduce and draw inferences where necessary. It must uphold the most probable story.

### Evaluation of evidence

[11] On invoice 760 and 1013, PW1 was cross examined as follows:

*Miss G. Reid:*                    *“Who took orders from defendant on behalf of plaintiff?”*

*PW1:*                                *“Sales representative.”*

*Miss G. Reid:*                    *“You would not know who called the sales department to issue tickets as you only invoiced defendant?”*

*PW1:*                                *“Yes.”*

*Miss G. Reid:*                    *“Since you were in the accounts department, you did not deal with issuing of tickets or orders of tickets?”*

*PW1:*                                *“Yes.”*

*Miss G. Reid:* “How therefore would you know who placed orders?”

*PW1:* “It was Ishara who dealt with defendant – only Ishara knows.”

[12] This response by plaintiff viewed with the evidence of DW1 that she dealt with Ishara, in light of the denial by defendant that defendant never placed any orders in respect of invoice 760 points to only one direction and that is only Ishara would be in a position to shed light on who exactly placed the order for the air tickets totaling E33,520-00. Plaintiff decided to close its case without availing this witness. Further DW1 gave evidence on behalf of defendant and stated under oath that she never placed an order in respect of invoice 760. This evidence stood unchallenged and therefore must be admitted by this court. Worse still, Q1 reflects payment by Morkel Bridgett. This Q1 was identified by PW1 as a receipt emanating from plaintiff in favour of Morkel Bridgett. Considering this evidence with that of DW1’s that the name of those who used the flight tickets for invoice 760 appear to be Morkel Bridgett’s relatives, the inference drawn by defendant that Bridgett was making part payment in respect of invoice 760 stands to be accepted. The explanation tendered by PW1 that Bridgett had borrowed money from Ishara and as she returned it, a receipt had to be issued does not augur well in terms of business transaction. PW1 identified herself as an accountant. How she could issue the company receipts for a transaction falling outside the business of plaintiff is not clear for the reason that when auditors look at plaintiff’s books, this receipt will be considered and this might have serious repercussion against plaintiff in terms of tax. I do not think therefore any accountant would have issued Morkel with plaintiff’s receipt in the circumstances. I therefore accept defendant’s version that the receipt demonstrated Morkel settling the debt under invoice 760.

[13] There is another approach to plaintiff's claim for the sum of E33,520.00 in respect of invoice number 760. PW1 in her evidence in chief, without being prompted, revealed that they knew Morkel Bridgett as a mistress to Mr. Fazel. Mr. Fazel died on 1<sup>st</sup> April 2012. Invoice number 760 is for a ticket issued after the death of Mr. Fazel. Now PW1 further revealed that the relationship between Morkel Bridgett and Mrs. Fazel (DW1) was good. It antagonized after the death of Mr. Fazel. Surely even if one were to accept that an order for tickets was made verbal and there was no follow up written authorisation, under these circumstances where Mrs. Fazel was running the business following the death of her husband, and the relationship between her and Morkel Bridgett having strained, the plaintiff, as an astute business, ought to have called Mrs. Fazel to confirm that indeed she had given Morkel Bridgett the authority to order tickets for the account of defendant and for the benefit of her (Bridgett's) relatives. This was more so because as is common cause, Bridgett caused six members of her family to travel at the expense of defendant and this doubled the defendant's account with plaintiff.

[14] The same applies with respect to invoice 1013. Defendant stated that although she placed an order for a ticket for the date mentioned, Ishara never came back to her to confirm it. Again Ishara was needed to appear in court as PW1 only dealt with issuing of invoice. She could not attest whether defendant did or did not receive confirmation from Ishara. Again this evidence by defendant was unchallenged when given by DW1 following that DW1 was never cross examined.

Invoice 790 and 791

[15] PW1 testified with regard to invoices number 790 and 791:“Invoice 790, the ticket was issued on 11<sup>th</sup> August,2012 while 791 the ticket was issued on 27<sup>th</sup> August, 2012.”.Under cross examination she was asked:

“Miss G. Reid:                    “The statement is generated after the invoice but what we see here is contrary. Was this a genuine transaction?”

PW1:                                    “The ticket was issued on 11/8/2012 while invoice on 27/8/2012.”

Miss G. Reid:                    “You rely on annexure A4?”

PW1:                                    “Yes and I say the ticket was issued on 11/8/2012

Miss G. Reid:                    “Did you rely on document before court?”

PW1:                                    “Yes.”

Miss G. Reid:                    “Invoice 791 at page 22 of the book of pleadings is dated 22/8/2012 while in the statement it is 27/09/2012 why?”

PW1:                                    “It is a misprint on the statement. The invoice date is 27/09/2012. The column at page 5 statement reflects dates on which the invoices were issued.”

Miss G. Reid:                    “On invoice 790 you told court that the column was for date of issue of ticket. Does this mean another amendment?”

PW1:                                    “I agree this is another misprint.”

[16] From the evidence of PW1 under cross examination, it was clear that the statement as reflected at page 5 of the book of pleading was confusing. There was only one column on dates. This column, in one instance was said to be reflecting when tickets were issued while in another,dates of invoices. When confronted with this, PW1 stated that the evidence that the

date column reflects dates upon which tickets were issued must be amended. This would mean that the column refers to dates upon which invoices were issued. Now invoices 0790 would mean that the invoice was issued before the ticket. This is an untenable circumstance. 0791, the invoice at page 22 reflects 27/08/2012 while at page 5 (statement) 27/09/2012. PW1 under cross examination requested that the month August should read September. This was so as to align with the date on the statement. However, this information is not helpful in the light of defendant disputing having taken the flight under these two invoices. This is moreso as PW1 gave evidence in chief under invoices 790 and 791 and referred to the statement and the invoices. It is not clear why PW1 failed to make the amendment then until defence Counsel pointed the confusing state of the documents presented by plaintiff in this regard

[17] Plaintiff having admitted that there were errors in its statement, this denied defendant to plead accordingly and justice dictates that the scales must weigh in favour of defendant. The result of this confusion is that the documents presented before court are unreliable and should be held inadmissible for the reason that they do not say what they appear to convey. The second reason the statement at page 5 together with the supporting invoices stand to be rejected is that they deny the defendant the right to formulate a defence by reason that they do not correlate.

Payment of E10 000 and E5 000

[18] In chief PW1 was shown Exhibit 1, the deposit slip. She commented:

*“This is not our deposit slip. I have never seen it in the office. This receipt is for Southern Trading not plaintiff. The cheque drawn is for Southern Trading and*



*we have never dealt with Southern Trading and we have never deposited any cheque from Southern Trading.”*

[19] This piece of evidence coming from the mouth of an accountant was shocking when one considers the face of the deposit slip. PW1 under cross examination read out the document correctly that it was a cheque belonging to Southern Trading deposited into plaintiff’s account by the defendant. She knew very well that Southern Trading had no business with plaintiff. It is not clear as to why she failed to credit the account of defendant upon receipt of this exhibit as it does not take an accountant to realise that defendant was paying its debt using a cheque from Southern Trading. When PW1 was asked to explain why she failed to consider this deposit in favour of defendant and therefore deduct this sum from defendant’s account with it, she responded: *“There are so many E10,000 in the bank statement of plaintiff.”* This response was totally unwarranted.

[20] Defendant’s cause of action is confounded further by a cheque now in the name of defendant drawn in favour of plaintiff on 5<sup>th</sup> February 2013 of E5 000.. Again in this instance plaintiff opted not to credit the account of defendant held in its offices. When quizzed under cross examined as to the reason, PW1 gave a very lame and startling response that plaintiff could not do so because defendant had indicated prior that it shall not settle its debt.

[21] In all fairness, plaintiff’s failure to deduct this sum of E15,000 from the debt owed by defendant demonstrate that it was not dealing with due diligence in respect of defendants account and the assertion by the defendant that plaintiff was negligent stands to be sustained.

[22] The plaintiff in its heads of argument submitted that defendant did not dispute invoices 0759, 0761, 0762, 0853, 0854, 0920, 0921. This does not take plaintiff's case any further for the reason that when adding up the amounts claimed against these six invoices, they sum up to E18,169.00. Now taking into account that plaintiff failed to deduct a sum of E15,000-00 from this amount and the court having found that plaintiff was negligent as asserted by defendant and ably demonstrated in the two instances, it stands to follow that the entire claim by plaintiff stands to be rejected.

[23] For the above, I enter the following orders:

1. Plaintiff's cause of action is hereby dismissed.
2. Plaintiff is ordered to pay costs of suit.

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**M. DLAMINI  
JUDGE**

**For Plaintiff: E. Maziya of Elvis M. Maziya**

**For Defendant: G. Reid of Gigi A. Reid Attorneys**