

IN THE COURT OF APPEAL OF KIRIBATI
CIVIL JURISDICTION
HELD AT BETIO
REPUBLIC OF KIRIBATI

CIVIL APPEAL NO. 10 OF 2024

BETWEEN

RONALD TEEM T/A TROPICAL ELECTRONCS

Appellant

AND

ATTORNEY GENERAL IRO KAO

Respondent

Before:

Sir Salika, JA
Nelson, JA
Khan JA

Date of Hearing:

5 December 2024

Date of Judgement:

13 December 2024

Civil Appeal – Breach of contract - Contract between Kiribati Audit Office and Tropical Electronics – Offer and acceptance – Supply of five laptops – Considerations paid – five laptops not delivered.

Principle of Frustration raised – principle explained – principle of frustration does not apply.

Cases referred to:

Davis Contractors Limited v Fareham UDC (1956) AC 696 and

Etuati Corrie v Captain Cook Hotel Limited (2010) KHC, Civil Case 208 of 2010

APPEARANCES:

Counsel for the Appellant:

Ms. T Timeon

Counsel for the Respondent:

Mr. M Kakiarerei

JUDGEMENT OF THE COURT

INTRODUCTION

1. This appeal arose first from a decision of a Magistrate sitting alone on 6 March 2023. The appellant aggrieved by the decision appealed to the High Court. The High Court upheld the decision of the single

Magistrate and dismissed the appeal. The appellant still aggrieved by the decision of the High Court appealed to the Court of Appeal.

2. The Court of Appeal heard the appeal on 5 December 2024 and reserved its decision.

This is the decision of the Court of Appeal.

FACTS

3. The Plaintiff's original claim was based on a breach of contract. The factual circumstances are outlined in an affidavit filed by Taukoriri Meita, the Acting Principal IT Auditor of Kiribati attached to the Bairiki Kiribati Audit Office at Bairiki. He deposed to being the Officer responsible for arranging the 5 laptops for the Kiribati Audit Office (KAO). He recorded all the discussions on this matter with the team from Tropical Electronics.

4. Mr Meita's affidavit is reproduced here showing facts of the matter:-

| Date | Concerned user | Description | Detail | Amount tax included |
|-------------|-----------------------|--|---------------|----------------------------|
| 20/12/2019 | KAO | KAO decided to buy 5 laptops and therefore we chose Ronald quote as it was the cheapest | | |
| | Ronald | Ronald agrees and sent Invoice for the 5 laptop | QT005 | \$4,4400.00 |
| 27/12/2019 | KAO | Payment made to Ronald for the 5 laptops | PV No. 205/19 | \$4,950.00 |
| 07/01/2020 | KAO | I asked for an update regarding our order for the Laptop screen part which we ordered before the laptops and was supposed to arrive this date. | | |
| 08/01/2020 | Ronald | Ronald said arrival date postponed to Friday due to freight route changed to Nauru Air etc | | |

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| | Ronald | He also updated on the purchase laptops and said, "Laptops will be packed by tomorrow 3-4 packing and shipment process and update once ship with tracking numbers thanks". | | |
| 15/01/2020 | KAO | Laptop screen part did not arrive at DHL and now at Customs. Ronald asked us for the official release letter | | |
| 17/01/2020 | Ronald | Laptop screen part arrived at DHL and now at Customs. Ronald asked us for the official release letter. | | |
| 23/01/2020 | Ronald | Laptop LCD screen part arrived at the Office | | |
| 28/01/2020 | KAO | I asked Ronald for an update regarding our 5 laptops | | |
| 03/02/2020 | KAO | No response so I asked again for an update on our 5 laptops order and tracking number asap | | |
| 07/02/2020 | Ronald | Ronald said item has arrived at DHL now being processed. He will provide tracking number asap. | | |
| | KAO | I asked him to provide proof that the items were really arrived at DHL. Any kind of document etc. | | |
| | Ronald | He said he will update ASAP | | |

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| | KAO | I told him that because it's been taking so long for the shipment, he should have at least provide something to us | | |
| | Ronald | He said not to worry he will provide the documents asap... today if possible | | |
| | KAO | I told him it doesn't have to be a document... a screenshot of his communication with DHL of some sort will suffice | | |
| 11/02/2020 | KAO | No response from Ronald so we wrote him an email: "Follow up on our order with conditions". | | |
| 13/02/2020 | Ronald | He asked us to give him more time due to some delay from his contact and that there was a misunderstanding with shipping details due to laptop battery not being declared etc.. | | |
| | KAO | We asked him again for proof of any document or screenshot regarding his claims. | | |
| | Ronald | He kept on saying he'll provide all the details once available. | | |
| 14/02/2020 | KAO | I encouraged him to respond to our emails with conditions | | |
| | Ronald | Ronald responded to our email.. but his response was just the same as our chat conversation. | | |

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| somedate | KAO | I called Ronald discussing our order that it is important that he provide proof to us. He said he will provide them. | | |
| 17/02/2020 | KAO | I reminded him to keep us to date with his emails regarding our order. | | |
| 19/02/2020 | Ronald | Sent us email that our items were booked with DHL and that he's waiting for the tracking number – process of packing takes 2-3 days | | |
| | KAO | I responded – we are awaiting the tracking number. | | |
| 24/02/2020 | KAO | After 3 days with still no tracking number, Eriati Manaima (Auditor General) sent me an email emphasizing the lateness of our order and that we should cancel our order giving Ronald the end of Feb 2019 deadline to pay us back | | |
| 27/02/2020 | Ronald's wife | Ronald's wife messaged me via Ronald's account saying that once we received our order from Ronald, we should not order from Ronald again due to the unreliability of suppliers etc. | | |
| | KAO | I immediately messaged Ronald's wife directly via her messenger account and told her if she really was using | | |

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| | | Ronald's account to say what she said. | | |
| 28/02/2020 | Ronald | Ronald sent email requesting that we give him more time. He is now changing his supplier to one which he trusts more and that there may be some delay due to the new process from new supplier. | | |
| | KAO | I responded – telling him to provide me with proof that he is now engaging a new supplier etc so that we can maybe allow his request to give him more time. | | |
| 29/02/2020 | Ronald's wife | Ronald's wife responded to my message via her own chat account and claimed that it was her who uses Ronald's account to message me and that she apologizes for Ronald's incompetence. | | |
| | KAO | I told her that we don't mind if the item is a bit late but we just want proof to his claims... at least something and after a long time he hasn't provided anything. | | |
| | Ronald's wife | She mentioned that Ronald lied to her that he already provided proof to KAO, everything including tracking number etc... she said that she | | |

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| | | just found out that he was lying to her the whole time and that she is very disappointed and that she wanted to leave him. | | |
| 01/03/2020 | Un-official | I met with Ronald face-to-face at the George bar and discussed the matter – he admitted that all was his fault and that he is trying his best to get our items through his new supplier. I kept telling him that even if he got a new supplier for our item he should at least provide proof to us... anything. | Ronald wasn't drunk. He just came to try and settle the matter with me and left. | |
| 02/03/2020 | KAO | Eriati Manaima sent email to Ronald cancelling our order and claiming our money. | Contract termination for breach of contract. | |
| | | I messaged Ronald to remind him of our face-to-face conversation and that he still did not comply with our conversation etc.... and told him to check his email from our AG regarding the cancellation and payback. | | |
| 16/03/2020 | Ronald | Sent via email – his proof of order payment of our 5 laptops and tracking number. | | |
| | KAO | I checked the tracking number and it was valid – item still in the US, I couldn't tell the | | |

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| | | content of the cargo being tracked through | | |
| | KAO | I cc'd Eriati and Itaia (accountant) Ronald email regarding his proof etc | | |
| 20/03/2020 | Ronald | Items reached US Freight Forwarder destination – Ronald sent pictures of the laptops being packed by Freight Forwarders | | |
| 28/04/2020 | KAO | I asked for an update regarding our order | | |
| 29/04/2020 | Ronald | He said he sent his email to Freight Forwarder regarding our order but their respond was that they are awaiting the reopen of Flights due to Covid-19 lockdown. | | |
| 26/05/2020 | KAO | I reminded him to keep on top of our order | | |
| 27/05/2020 | Ronald | He responded that we should not worry he never forget about it. The Freight Forwarder are just not replying to his messages at the moment, but he will update us. | | |
| 16/06/2020 | KAO | I asked him again for an update. | | |
| 19/06/2020 | Ronald | "on the way" he said | | |
| 23/07/2020 | KAO | I messaged him that I heard Freight are now open. | | |

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| 28/07/2020 | Ronald | He agrees that Freight are now open and that he will then again follow up and update us | | |
| 06/08/2020 | KAO | "Any update on our order?" I messaged him | | |
| 24/08/2020 | KAO | No response so I reminded him again regarding our order... we need update since we heard some other supplier were receiving their orders without a problem saying that Freight is still open. | | |
| | Ronald | He is on top of it, he booked the freight flight but there was some problem he said he will update asap. He mentioned that the US was hit hard with Covid-19 so there were lots issues with Flights | | |
| 27/08/2020 | KAO | I asked for an update and this time I requested him to provide me with proof of his contract with his supplier, Freight Forwarders etc. | | |
| | Ronald | He said he will get to the bottom of this and then fully explain to us what the problem was. | | |
| 28/08/2020 | Ronald | He is still waiting for their reply and will update us via email as soon as he got all the info. | | |

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| 02/09/2020 | KAO | I asked for an update... and if he could forward it to me his message to his contacts as proof that he's still on top of it. | | |
| 03/09/2020 | KAO | Still no response -- I told him that we gave up with his service and that we no longer need the laptop from him and that he should prepare himself to get our money back because we are taking it to court. | | |

ORIGINAL PLAINTIFF'S CASE

5. On those facts the KAO sued for compensation for the return of its money in the sum of \$4,950.00 for breach of contract.

GROUND OF APPEAL

The High Court erred in law in finding the contract of sale for the supply of the 5 laptops was not frustrated when there was strong and compelling evidence that the contract was frustrated.

APPELLANT CASE

6. The appellant argued that there was no breach of contract but that the contract could not be completed in that the laptops could not be delivered because it was frustrated by the outbreak of the Covid-19 pandemic.
7. The defendant is now the appellant before the Court of Appeal. The same argument before the Magistrate Court and the High Court were advanced before the Court of Appeal.
8. The appellant's main contention is that it performed its part of the contract in that it sent the \$4,950.00 to the supplier company in the United States of America (US) for the supply of the 5 laptops computers.

9. It further contends that it was the responsibility of the laptop supplier and the transport company to deliver the laptops to Kiribati.
10. The KAO contracted with the Appellant to supply 5 laptops and paid the full purchase price for the laptops. The KAO did not contract with the supplier in the US. The Appellant contracted with its supplier in the US. The supplier in the US contracted with the transport company to deliver the goods to Kiribati.
11. The Supplier in the US supplied the 5 laptops to the transport company for transportation to Kiribati. The Covid-19 epidemic virus caused closure of borders in the US and in Kiribati and the 5 laptops could not be delivered. They were instead stored in the stock yard of the Transport Company. The storage cost at the Transport Company was \$20.00 per day per laptop attracting a storage fee of \$100.00 per day. The supply company in the US was informed by the Transport company that it would auction the laptops if the laptops were not removed to recover their storage cost. After some time, the transport company auctioned the laptops resulting in no laptops to deliver to KAO.
12. The appellant contends that on those facts it is not responsible for the 5 laptops not reaching the KAO. Instead, it blames the supplier in the US and the Transport Company. Moreover, it argued that the delivery of the laptops was frustrated by the outbreak of the Covid-19 pandemic which led to the closure of all borders worldwide including the US and Kiribati. The reason for the loss of the 5 laptops was not the closure of the borders, rather they were auctioned off after the appellant and the computer supplier in the US failed to remove the laptops from the transport company storage yard.
13. The appellant relied on the two authorities in support of its case namely:
 - i) *Davis Contractors Limited v Fareham UDC* (1956) AC 696 and
 - ii) *Etuati Corrie v Captain Cook Hotel Limited* (2010) KHC, Civil Case 208 of 2010

These two cases define the principle of frustration.

14. The *Davis Contractors Limited* case (supra) says:-

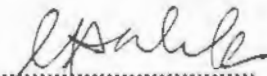
"Frustration occurs whenever the law recognizes that without the default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract."

15. The local case of *Etupati Corrie* (supra) discussed where the principle of frustration was successfully argued in relation to supply of electricity. A generator was purchased for the supply of electricity. The generator broke down and the supply of electricity stopped. The breaking down of the generator affected the supply of electricity and the Court there ruled the contract was frustrated by the generator breaking down.
16. The factual circumstances are different in this case. The evidence from the KAO is that upon repeated requests from KAO for updates of the arrival of the laptops in Kiribati the appellant misled and lied to them that the laptops were on the way to Kiribati. Even after the laptops had been auctioned, the appellant kept informing the KAO that the laptops would be delivered.
17. The Magistrate ruled that the contract was never frustrated by the advent of Covid-19 or for the border closures. The Magistrate found not enough was done by the appellant to stop the auction. The High Court of Kiribati made the same finding. This court makes the same finding.
18. The other ground of appeal was that the decision of the High Court was against the weight of the evidence. We beg to differ, in that, the decision is consistent with the evidence.
19. In these circumstances we dismiss civil appeal No. 10 of 2024 in its entirety and affirm the decision of the High Court given on 20 June 2024.
20. Costs are awarded to the respondent to be taxed if not agreed.
21. The formal Orders of the Court are:
 - i) Civil Appeal No 10 of 2024 is dismissed in its entirety
 - ii) Costs are awarded to the respondent to be taxed if not agreed.
22. Orders accordingly.

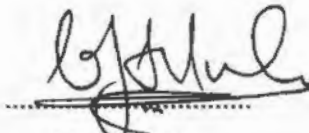
Lawyer for the appellant – Patili Lawyer Firm

Lawyer for the respondent – Attorney General

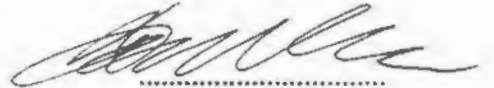
DATED this 13 day of December 2024



Sir Salika, JA



Nelson, JA



Khan, JA

