

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

CIVIL CASE NO. 243 OF 1994

UBUNGO FARM IMPLEMENTS PLAINTIFF
versus
NYANZA COOPERATIVE UNION DEFENDANT

JUDGEMENT

KALEGEYA, J.:

The plaintiffs, Ubungo Farm Implements Ltd.; In December 1994, sued the Defendants, Nyanza Cooperative Union, for Shs. 21,216,800/=, being a balance due and payable to them as at 31st December, 1992, for goods supplied and delivered. Prayers included,

- (i) Judgement against the Defendant in the sum of Shs. 21,216,800/=
- (ii) Interest at 31% per annum on the principal amount from 31st December 1992 until the date of judgement
- (iii) Interest at 12% per annum on the decretal amount from the date of judgement until payment in full
- (iv) Damages in the sum of Shs. 15,000,000
- (v) Costs, and
- (vi) Interest at 7% per annum on the costs from the date of judgement until payment thereof in full.

In June, 1995 the Defendants filed a written statement of defence in which they disputed receiving the goods (para 2), qualifying in para 3 that even if they did they have fully paid; in para. 4, taking the matter further, that there was no express or implied agreement on interest regard being had to the mercantile custom prevailing among the trading communities in Tanzania and finally (para. 6), that plaintiffs were not entitled to damages whatsoever as the damages are too remote to any default on the part of the Defendant.

After numerous adjournments, on 21.4.98, the matter came before me for mediation. Though served the defendants did not turn up. Mr. Luoga, Advocate, for plaintiffs then informed the court that the Defendants had already paid up the principal sum and that the matter was coming for mediating on other prayers. As the Defendants had been served almost a month before and considering the status of the dispute then, the court proceeded to act under O.viii, Rule 5 CPC, and gave order to the plaintiff to prove the other claims ex-parte by affidavit which they did hence the present judgement.

In their affidavit the plaintiffs established that the defendants had paid the principal sum, (when the case had already been filed) in three instalments as follows:

- (a) Shs. 6,000.000/= on 5/1/95 as per Receipt No. 13483
- (b) Shs. 12,150,538.70 on 18/4/95 as per receipt No. 13736, and
- (c) Shs. 4,000,000/= on 13/2/95 as per receipt No. 13596 (all totalling to Shs. 22,150,538.70 (In excess of the principal sum claimed which stood at Shs. 21,216,800/= as per plaint).

The plaintiffs then went on to argue that they should be paid further Shs. 18,955,732.74 as accumulated interests arrived at as follows:-

- (a) Shs. 18,955,732.74 as accumulated Interests at 31% on the principle sum as under:-
 - 1993 Shs. 21,216,800/= = 6,577,208.00
 - 1994 Shs. 27,794,008/= = 8,616,142.48
 - 1995 Shs. 36,410,150.96 = 3,762,382.26
- (b) Shs. 15,000,000/= as damages because the failure to pay the principal sum constrained the plaintiff's business by reducing their capacity to secure supplies of inputs which led to decline in production and earnings, and that the defendants neglect, silence and lack of cooperation to secure a re-arrangement agreement for repayment of the debt entitled them to such modest payment of damages as it is envisaged by parties in any commercial transaction.
- (c) Instruction fees (3% of the total claim) - Shs. 1,655,175.96
- (d) Shs. 750/= per attendance in court by counsel as shall be determined by the court record
- (e) Shs. 960/= due to counsel for preparation of pleadings at Shs. 80/= per folio.
- (f) Court fees.
- (g) Shs. 1,500/= being costs incurred on photocopy (50/= x 30 pages)
- (h) Shs. 3,500/= being costs on posts and sundry
- (i) Shs. 30,000/= on transport charges.

On full consideration of the matter at hand, guided by the fact that though they disclaimed liability in their written statement of defence the defendants finally succumbed

to truth by paying the principal sum as demonstrated above hence proving that the plaintiffs had all along been treading on a just course, I hereby grant plaintiff's prayers for payments as anumerated in (a), and (c) to (l) above without any reservation.

The only item to consider is (b), damages of Shs. 15,000,000/=. It will be noted that although plaintiff suffered loss of circulation in business of Shs. 21,216,800/= for approximately 2 years and five months, under (a) I have already awarded a compound interest: that is, interest has been granted on the principal sum as well as the accrued interest itself. This has totalled to Shs. 18,955,732.74 which sum is not small by any standards. Also it will be noted that the plaintiff has paid Shs. 933,738.70 in excess of the principal sum (Shs. 22,150,578.70 - 21,216,800/=). While conceding that indeed the plaintiff must have suffered some damages in parting with the otherwise cash it was entitled to, the sum of Shs. 15,000,000/= claimed is on the higher side. Taking into consideration what I have stated above I award just quarter of the sum claimed - Shs. 3,750,000/= as damages.

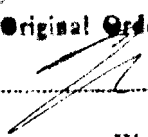
On the whole, judgement is hereby entered in favour of the plaintiff in terms as expressed above.

KALEGEYA
JUDGE

Delivered on

6/8/98

KALEGEYA
JUDGE

I certify that this is a true and correct of the Original Order/Judgment/Ruling	
 District Registrar High Court of Tanzania Dar es Salaam	
Dated 6-8-	at 98