

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL CASE NO. 10 OF 2016

LANCET LABORATORIES LTD.....PLAINTIFF

VERSUS

**AFRICAN MEDICAL INVESTMENTS
TANZANIA PUBLIC LIMITED.....1ST DEFENDANT**

LAWRENCE ACHOLA.....2ND DEFENDANT

EX PARTE JUDGMENT

10 & 28 May, 2018

DYANSOBERA, J.:

The Plaintiff has filed a suit against the defendants jointly and severally claiming for prompt payment of Tshs.152, 850,030/= being outstanding amount emanating from medical laboratory services provided to the 1st defendant by the plaintiff. She is also claiming interests, general damages and costs of the suit. The suit was filed on 21st January, 2016 and the defendants were duly served on 1st day of February, 2016 but they neither appeared in court nor filed written statements of defence. So, upon the prayer by the plaintiff, I ordered the suit to proceed ex parte by oral evidence.

In a bid to prove her case the Plaintiff produced one witness Nassoro Ally Salim (PW1). His evidence is to the effect that he works with the plaintiff, a laboratory operator, since

2013. He deals with the daily financial matters and administration. The 1st defendant is the Hospital and their customer while the 2nd defendant was the 1st defendant's Manager and the plaintiff's contact person. The plaintiff deals with laboratory services and it had various stations including Dar es Salaam and its Headquarters is situated at Morocco. As to how the plaintiff was transacting with the defendants, it is the evidence of PW 1 that the latter would give the former specimen/samples and then deal with them. Then the replies would be sent physically and electronically and the payment schedule was ninety (90) days. The reason for this period of ninety days is that most customers were insured. PW 1 recalled that they started business with the defendants in August, 2012. He asserted that the first invoices had small amount but the payments were not being made in full. As to the documents, PW 1 stated that the plaintiff was sending to the defendants invoices and proof of delivery and the defendants were remaining with the invoices while the plaintiff was getting stamped proof delivery forms. After the defendants defaulted payment, the plaintiff made several follows ups by phone calls, physical visits or even through e-mails. In proof, PW 1 produced in court the statement and proof of delivery which were admitted as Exh.P1 collectively. On a further follow by e-mails, the 2nd defendant was promising that he would pay but the cheques were being dishonored. A proof of communication was produced through documents signifying

communication between the plaintiff and the defendants-
Exhibit P. 2.

According to PW 1, despite all efforts, the plaintiff could not recover the money until the plaintiff saw a notice that the 1st defendant was no longer there. It was in the evidence on part of the plaintiff that by 12th day of March, 2017 the claims amounted to shs. 152,000,000/=. It is on that basis that this suit has been filed so that the plaintiff recovers the money. Prayed also is the interest of 4% per month 12th day of March, 2017 of the said amount from 12th day of March, 2017 to the date of judgment, interest on the decretal amount from the date of judgment to the date of full payment thereof at the rate of 15%, general damages to the tune of shs. 100,000,000/= on account of having spent much time to make a follow up of the recovery of the money and some services were being sought from other sources and costs of the suit.

In evaluating the evidence, it has been amply proved that the plaintiff entered into an agreement with the defendants on laboratory services. The plaintiff performed her obligation and is supported by both oral evidence of PW 1 and documentary evidence which are exhibits P 1 and P 2. The defendants did not seek to controvert the claims either orally or by way of written statement of defence.

On the evidence on record, I am satisfied that the plaintiff has proved her case on a balance of probabilities. I would accordingly enter judgment for the Plaintiff as follows:

1. Payment of Tshs.152, 850,030/=
2. Interest on the said sum at the rate of 4% per month from 12th March, 2015 to the date of judgment
3. Interest on the decretal sum at the rate of 7% from the date of judgment to the date of full payment
4. General damages to the tune of Tshs. 100,000,000/=, and
5. Costs of the suit

Order accordingly.

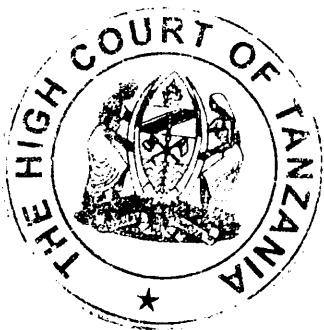



W.P DYANSOBERA

JUDGE

28.5.2018

Delivered ~~this~~ 28th day of May, 2018 in the presence of Mr. Benjamin, learned counsel for the plaintiff but in the absence of the defendant.




W.P DYANSOBERA

JUDGE