

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 165 OF 2016

OLAM TANZANIA LTD.....PLAINTIFF

VERSUS

KALPESH YAYSINH ASHER.....DEFENDANT

JUDGMENT

2 & 4 May, 2018

DYANSOBERA, J.:

The plaintiff claims against the defendant for payment of Tshs. 64,500,000/= being a total amount due and owing to the plaintiff from the defendant on account of loan facilities extended to the defendant for purchase of sesame together with interest and other charges thereon, payment of Tshs. 40,000,000/= being payment of special damages and /or costs the plaintiff incurred in recovery of the said outstanding amount, interest on the sum of Tshs. 64,500,000/= at 21% per annum

from the date it was due to the date of judgment, interest on the decretal sum at the court's rate of 7% from the date of judgment until payment in full, payment of general damages to be assessed by the court, a declaration that the defendant is in breach of the agreement made with the plaintiff and costs of the suit.

Upon the defendant's request, to be an agent of the plaintiff to purchase sesame crops upcountry, the plaintiff and defendant executed a sesame sale agreement on the 12th May, 2015 and a certain amount of monies was paid by the plaintiff to the defendant. The defendant failed to deliver the sesame in the quantity required by the plaintiff as the result the defendant was indebted to the plaintiff since then as evidenced by Ann. OTL-1 (a) and (b). The plaintiff communicated with the defendant who in turn acknowledged the debt to the tune of Tshs. 64,500,000/= and promised verbally and in writing to repay the monies and / or deliver the sesame to the plaintiff in lieu of the said monies. In particular, the defendant requested the plaintiff to extend recovery period for year 2015/2016 to be at the end of 2015.

Contrary to the agreed terms of the loan facility and despite repeated demands by the plaintiff requiring the defendant to settle the


said outstanding liability, the defendant has failed, neglected and /or ignored to repay the outstanding hence making the plaintiff to incur loss for recovery of the said outstanding amount from the defendant.

This suit was filed under Order XXXV: "SUMMARY PROCEDURE." The defendant was given a period prescribed by law to seek leave to appear and defend the suit pursuant to Order XXXV rule 2 (1) of the Civil Procedure Code [Cap.33 R.E.2002]. He had failed to apply for leave to defend despite being duly served by normal procedure and substituted service by publication in the "Daily Newspaper" of May 20th 2017. On 2nd day of May, 2018 Mr. Gabriel Masinga, learned counsel for the plaintiff prayed the court to enter summary judgment under XXXV rule 2 (2) of the Civil Procedure Code. I, therefore, in terms of XXXV rule 2 (2) (a) of the Civil Procedure Code [Cap.33 R.E.2002] enter judgment in favour of the plaintiff as follows:

1. That the defendant pays the plaintiff the sum of Tshs. 64,500,000/= being the principal sum
2. The defendant to pay the plaintiff Tshs. 40,000,000/= being special damages as professional fees paid to M/s Vam, money

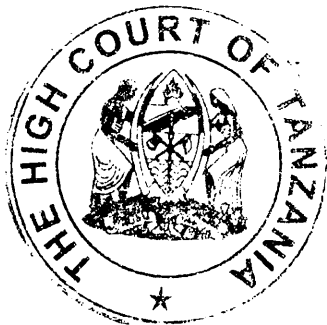
paid to the recovery agent and management and follow up costs.

3. The defendant to pay the plaintiff Tshs. 20,000,000/= being general damages assessed by this court.
4. The defendant to pay the plaintiff interest at commercial bank rate of 21% per annum from the date it was due to this date of judgment
5. The defendant to pay the plaintiff interest at court's rate of 7% from the date of judgment to full payment
6. The plaintiff is also awarded costs of this suit.

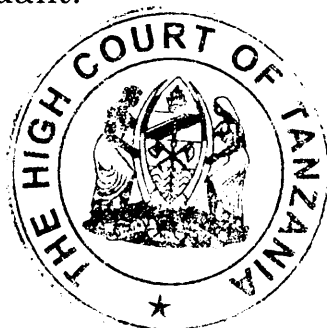

W. P. Dyansobera,

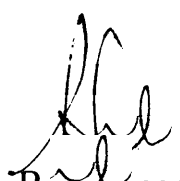
JUDGE

4.5.2018



Delivered this 4th day of May, 2018 in the presence of Mr. Malamba Dennis, learned counsel for the plaintiff but in the absence of the defendant.




W. P. Dyansobera, J.