IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 105 OF 2015

H.H. HILLAL & CO .LIMITED .....PLAINTIFF

VERSUS

MEDICAL STORE DEPARTMENT .....1ST DEFENDANT

THE ATTORNEY GENERAL .....2ND DEFENDANT

12/12/2017 & 7/2/2018

JUDGMENT

I.P.KITUSI,J.

This suit is for payment of monies by Medical Stores Department, the first defendant, to H.H. Hilal & Co. Limited, the plaintiff, on the ground of an alleged breach of contract by the former. The first defendant, a government department under the Ministry of Health, and with statutory powers to procure medical supplies for redistribution to Government Hospitals in Tanzania, invited the general public to bid for supply of various medical supplies and equipment. The plaintiff was the successful bidder of this tender, with a code name No. IE-009/2011-2012/HQ/G/29.

Under this Tender, a contract, referred to as Framework Agreement was executed between the plaintiff, a private company registered under the laws of Tanzania and the first defendant. The Attorney General, the second defendant, has been impleaded by virture of its role as the Chief legal advisor of the Government.

Most of the relevant facts are uncontroverted both in the pleadings and evidence, so that the issue for determination is finally narrow, as I shall endeavor to demonstrate in due course.

According to one Ajit Kumar (PW1) the Chief Executive Officer of the Plaintiff Company, the tendering process involved a requirement for them to make submission (Exhibit P2) in which the bidder disclosed among other things, details of the manufacturer of the medical equipment. In this case the manufacturer of the supplies which the plaintiff was required to deliver to the first defendant was a China based company known as JIUJIANG HUADA MEDICAL-DRESSING CO, CHINA.

After signing the Framework Agreement, delivery of the supplies depended on what are referred to as call off orders. These were written instructions issued by the first defendant to the plaintiff requiring the latter to deliver a specified number of medical supplies on specified dates. There is no dispute that the first frame work Agreement for supply of 117,000 Gauze Rolls, that is Framework Agreement Number IE/009/2011-2012/HQ/G/29, was fully executed.

Realizing that more supplies were required, the first defendant prepared an Addendum to the existing Framework Agreement in which it demanded supply of 300,000/= units of Gauze Rolls more. This Addendum (Exhibit P7) was followed by a Call Off Order (Exhibits P8) and there is no dispute that the plaintiff discharged its duty under the Addendum by supplying the required 300,000 units of Gauze Rolls.

Another amendment to the Framework Agreement was made so as to require supply of more number of Gauze Rolls. This Amended Framework Agreement (Exhibit P9) specified the additional number of Gauze Rolls to be 525,242, worth 9,454,356 United States Dollars. For this Agreement a Call Off Order (Exhibit P10) was issued specifying delivery of the supplies in three lots. The first was 100,000 Rolls on 15th May 2013, the second was to be 200,000 Rolls on 15th September, 2013 and the third was to be on 15th January, 2014 supply of 225242 Rolls.

It is alleged that matters started to go astray from this point. According to PW1, the Plaintiff supplied the first lot of 100,000 Gauze Rolls in May as required, but as they were preparing to supply the second lot, the fist defendant asked them to defer the delivery. This request was initially made orally and later made in writing by a letter (Exhibit PII). PW1'S testimony was that the letter (Exhibit PII) did not state the reasons for defering delivery nor did it specify the date to which delivery had been deferred.

PW1 further testified that as a consequence of the deferment, the plaintiff had to incur storage costs, and raised this issue with the first defendant by a letter (Exhibit P12). The first defendant's position did not change as evidenced by letters (Exhibit P13 and p14) showing how the first defendant was pushing delivery of the supplies to an unspecified future date on the ground that they had too much of the supplies in stock, and the plaintiff protesting against the deferment.

In essence this part of the plaintiff's story is unchallenged.

Sako Mayrick Mwakalobo (DW1) the Acting Director of Finance and Planning of the first defendant blamed the procurement of the additional units on the Chief Executive Officer for going ahead with the idea despite being told by him that there was no budget for the same. He went on to state that the supplies purchased from the plaintiff were not fast moving because in the tender they had quoted a price higher than that on the market, which forced the first defendant to sell them at a price higher than the market price.

On his part, Christopher Kamugisha (DW2), the first defendant's Chief Legal Counsel brought in another dimension. He stated that the Amended Framework Agreement (Exhibit P9) for 525242 units of Gauze Rolls was misinterpreted by both the first defendant and the plaintiff. According to DW2 it was not the intention of the first defendant to procure 525,242 additional units but to add 108242 units to the previous 417,000 units.

However, both DW1 and DW2 admit that the last call off Order (Exhibit P10) for execution of the controversial Framework Agreement demanded delivery of a total of 525,242 units in three lots. DW2 stated that despite the mistake as to the number of Rolls the first defendant went out of its way by accepting deliveries of those units as and when it could.

Somehow giving credence to DW2'S version PW1 stated that the second lot of the third Call Off Order which was to be delivered on 15th September, 2013 was delivered in piece meals. There was a balance of 57504 units that remained undelivered, and further that by 15th January, 2014 the total number of undelivered

Rolls was 282746. After some pressure from the plaintiff the first defendant accepted 72,000 units on 24th January, 2014 and another 72,000 units on 16th June, 2014 Vide Delivery Notices Exhibit. P18 and P.19 respectively.

The total number of Gauze Rolls that remained undelivered as a result of first defendant's refusal was 138746 as of the date of filing this suit.

At this point let me bring in two other aspects that were testified to by PW1. The first is the fact that in order to fulfill its contractual obligation the plaintiff Company secured a loan in a form of overdraft of 6 million Us dollars from the Tanzania Investment Bank, hereinafter TIB. Part of the conditions for the facility was a requirement that payment by the first defendant to the plaintiff be effected through the said TIB bank. So the arrangement was that upon receipt of a Call Off Order the plaintiff would request the Manufacturer to raise a Proforma Invoice for the units specified in the Order. Then the plaintiff would present the invoice to the Bank on the basis of which the said Bank would pay the Manufacturer.

The other aspect is on delayed payments and the consequences thereof. According to PW1 item 1.3 of the Tender Document specified that payment for any deliveries would be made not later than 30 days from the date of the delivery. A penalty of 0.2% was payable by the first defendant for any payment made beyond 30 days. In this regard, payment of Us dollars 1,296,000 was required for each of the deliveries evidenced by Exhibits P18 and P19 mentioned but a while ago.

PW1 illustrated the numbers by referring to the days and total interest. He stated that 50% of payment in respect of Invoice Number 911 (Exhibit P18) was

delayed for 188 days and the remaining 50% was delayed for 81 days. The total interest claimed is 592272 Us dollars. Payment for Invoice No. 913 (Exhibit P19) had not been effected as of the date of filing the suit, a delay of 343 days, attracting interest of 889056 US dollars. The total interest for the two invoices comes up to 1,481,328 Us dollars.

These delays in payment allegedly affected the plaintiff in three ways namely soaring up of Bank interest, disturbing the Company's Cash flow and crippling the plaintiff's capacity to meet its contractual obligation with the manufacturer. The delays in accepting the supplies forced the plaintiff to incur storage costs by paying rent and hiring security guards, as well as paying for insurance. PW1 stated that US dollars 45,000 was paid for rent according to the Lease Agreement, Exhibit P20. The rental was calculated at 6 dollars per one square metre per month. With a total of 300 square meters hired from Phantom Modern Transport Ltd Us, dollars 1800 was payable per month, and 21600 dollars payable per year bringing a total of 64,800 Us dollars for the three year duration of the contract.

The plaintiff had to provide security, which they did by contracting Optima Aviation and Security Company Ltd. A total of Tshs. 13,983,000 was paid by the plaintiff to the security company, in proof of which PW1 tendered invoices, Petty Cash Vouchers and copies of Cheques for payments made on various dates as Exhibits P21(a) P21(b) P21(c) and P21 (d).

PW1 narrated further on the fact that the plaintiff had to recruit a lawyer to write a formal demand to the first defendant when the latter stood by its resolve

not to accept the remaining supplies. Negotiations were attempted but nothing useful came out of them, until when the suit was filed in June, 2015, that a settlement Deed (Exhibit P24) was signed by the parties. PW1's testimony was that at the time of filing the suit a total of 138,246 Rolls remained undelivered, part of it lying in the godowns hired by the plaintiff in Dar es Salaam and the other part lying in the Manufacturer's warehouse in China.

Before the settlement Deed, the plaintiff's monetary claim was for US dollars 4713,852 but after and as a result of the settlement, the monetary claim stood at Us dollars 2,048,500. Regarding the undelivered supplies, it was agreed for the same to be accepted by the first defendant in January and March 2016. Further to that it was promised that payment for the delivered goods would be effected within a short time and that another tender would be awarded to the plaintiff by the first defendant so as to mitigate the losses that had been incurred by the latter. However neither the payment nor the award of the tender were effected even after the plaintiff successfully challenged the award that had been given to another person.

The plaintiff decided to institute this suit, initially claiming a good range of reliefs. It sought for an order directed to the first defendant to immediately collect the remaining 138,746 units of Grauze Rolls and 41,240 units of Diapers, payment of USD 4,715,852 and some interest. However a major part of this suit was determined by the settlement reached at the Mediation centre of the High Court. The settlement order a copy of which is exhibit P24 states in relevant parts;

" 1.That, the Defendant to effect payment of all pending invoices worth USD 448,000.00 by 31/12/2015 or upon release of next (immediate) government disbursement (whichever comes earlier)

2. That, delivery and payment by the defendant, for uncollected 138,746 units of gauze Rolls worth USD 2497 428 and 41,240 units of adult diapers worth Tshs 680 Million be effected as follows;

(a) Delivery for 36,000 units of gauze rolls already in the country shall be done in December, 2015 and payment in respect thereof be effected within 90 days from the date of delivery.

(b)For 102, 746 units of gauze rolls still with the manufacturer, first delivery of 51,373 units shall be done in January 2016 and payment be effected within 90 days thereafter, and the second delivery of 51,373 units be done in March 2016 and payment to be effected within 90 days of the said delivery.

(c) Uncollected 41,240 units of diapers shall be delivered in December 2015 and payment in respect thereof be effected within 30 days after delivery.

3. NA

4. That, parties shall continue to litigate on the issue of compensation for loss suffered by the plaintiff which the parties are still at variance while attempts for an out of court settlement thereof are underway.

5. That in the event of default, the usual default clause shall apply"

Following the order, the plaintiff presented an Amended Plaint narrowing down the scope of the claims to seeking the following orders;

1. A declaration that the defendant is in breach of the supply agreement executed by the parties.
2. Payment of the sum equal to USD 2,048, 500.00 being special damage payable as compensation to the plaintiff.
3. Interest in (2) above at the rate of 0.2% per day as provided under the supplier's Bid and Price schedule document from the date of filing the suit to the date of judgment.
4. Interest of the decretal sum at the rate of 7% court's rate, from the date of judgment to the date of full satisfaction of the Decree.
5. General damages to the time of USD 500,000.00 or such other sum as shall be assessed by the court.
6. Costs of this suit.
7. Any other relief.

The plaintiff was represented by Mr George Nyangusu, learned advocate as Ms Hellen Rwijage, learned State Attorney represented the Defendants. They made oral closing submissions addressing the issues that were framed at the

commencement of the trial although it has occurred to me that based on the Amended Plaint, the scope is much narrower.

So these were the issues that were agreed immediately before trial took off.

1. Whether delivery of the goods by the plaintiff as agreed by the parties in Framework Agreement No. IE – 009/ 2011 – 2012/HQ/G/29/01 was deffered by the first defendant.
2. Whether payment for the goods delivered under the contract were delayed by the first defendant.
3. If the answers to issues No. 1 and 2 are in the affirmative, whether such acts constituted breach of contract.
4. Whether the plaintiff suffered loss as a result of the breach, if any.
5. To what reliefs are the parties entitled.

Mr. Nyangusu for the plaintiff submitted that delivery of the supplies was deferred at the instructions of the first defendant, and cited Exhibits P11, P13 and P14 and the testimony of Pw1 as sufficient to incline the court to answer the first issue in the affirmative.

On her part, Ms. Rwijage learned State Attorney submitted that the contract was void on account of the parties to it acting under a mistake. It must be recalled that this aspect was testified to by DW2 who stated that the intention was not to order 525242 additional Rolls but 108,242 units. The learned State Attorney submitted that the plaintiff cannot rely on the void contract to make the present claims citing section 20(1) of the Law of Contract Act Cap 345.

It is obvious that the issues whether the contract between the parties was valid or not, presents itself for determination ahead of all others. To start with, the alleged invalidity of the contract was not pleaded by the defendants as a result of which this issue was not among the agreed issues shown but a while ago. I think the principle that parties are bound by their pleadings is very common and relevant for this purpose. Mr. Nyangusu reffered to the cases of **Makusi Kwasaga V Joshua Mwaikambo** & Another [1987] TLR 88; **Tanganyika Bus Services Limited V. KAMATA** [1986] TLR 204. The other cases restating this principle are **Kassim Kolla Abdallah V NBC Limited** Civil Case No. 174 of 2015 High Court, Dar es Salaam Registry (unreported) in which the case of **Peter Karanti & 48 others V. The AG & 3 others,** Civil Appeal No. 3 of 1998 CAT(unreported) was cited.

It is my conclusion from the pleadings and the foregoing principle that the issue of the contract being void was not pleaded and it does not qualify to form a basis for my decision in this case. Even if I had to induige and address the alleged mistake, I still find DW2'S testimony inconsistent with that of DW1 and Exhibit P10. Dw1 stated that it was an error of judgment on the first defendant's Chief Executive Officer who took it upon himself to order additional supplies of 525242 units notwithstanding the fact that there was no budget for the same. That is purely an internal matter that would not affect the contract.

Yet there is the fact that execution of the contracts was being triggered off by call off orders. In this case the call off order (Exhibit P10) demanded delivery of all 525 242 units in three lots. This conduct by the first defendant is not consistent with the contention that they were acting under a mistake.

My finding on this issues is that it was not pleaded and does not merit consideration, but even if it were, I would, on the basis of the available evidence, be inclined to hold that the contract was valid.

Now back to the first and second issues which will be dealt with simultaneously. I propose to deal with these two issues together because they are hardly disputed. The evidence of PW1 and Exhibits P11 P13 and P14 referred to by Mr. Nyangusu in his submissions sufficiently prove that delivery of supplies was delayed at the instance of the first defendant. The second issue poses no difficulty also because 50% of Invoice No. 911, for instance, was paid after a delay of 188 days.

After raising the issue of mistake Ms. Rwijage did not make specific submissions on issues No.1 and 2, not surprisingly of course, because even D1 and DW2 did not controvert the alleged delay. The learned State Attorney was wiser than try to swim against the current. My answer to the first and second issues is in the affirmative.

The third issue is; having answered the first two issues in the affirmative, whether the first defendant's acts constituted breach of contract. Mr Nyangusu, learned counsel submitted briefly that the contract had the approval of the first defendant's Tender Board and the Chief Executive Officer. He also pointed to the fact that it was signed by the first defendant's Principal Legal Officer, all these, according to him making the contract binding on the first defendant.

With respect, I accept Mr. Nyangusu's submission that the contract was binding on the parties. I think the learned counsel did not need to cite any law

for the time - tested principle regarding sanctity of contracts. The case **A bualy Alibualy Alibhai Azizi V. Bhatia Brothers** Limited [2000] T.L.R 288 restates that principle in our jurisdiction.

It follows therefore that since the call off order which was part of the contract specified dates and quantities of delivery of supplies, the alterations by the first defendant, of the quantities and dates of delivery were a breach of the contract on the part of the said first defendant. It occurs to me that even the consent or settlement order(ExhibitP24) in which the first defendant undertook to accept the undelivered goods and effect payment, is evidence in favour of the fact that there was breach. My answer to the third issue is, for those reasons, in the affirmative.

The next issue is issue No. 4 regarding whether the plaintiff suffered loss as a consequence of the breach. Mr Nyangusu, learned advocate submitted that the plaintiff suffered loss while Ms Rwijage, learned State Attorney maintained that there was no loss. Mr. Nyangusu reffered to a number of exhibits which he wants taken into account in determining the issue, because they are proof of there being bank interests, storage costs and charges from the Manufacturer of the supplies for delayed acceptance of the goods.

The learned counsel submitted that Exhibits P15, P16 and P17 are proof of the existence of a bank loan which attracted interest of 9%. He then referred to Exhibit P30, a Bank statement which was tendered by one Dharmendra Melita(Pw2) the plaintiff's operations Manager. The claim is based on an overdraft of USD 1,296,000.00 relevant for invoices 911 and 913, and that the delay in paying the plaintiff caused the latter to pay interest to the bank

the plaintiff rent a godown in January 2013 while the first defendant 's letter of suspending delivery came on 28th November 2013, and the supplies were dispatched from China on 25th January 2014. DW1 wondered how goods dispatched from China on 25/1/2014 could have been in stores on Plot No. 14 Sinza Mori, Dar es Salaam on 15/1/2014.

On the claim for security DW1 testified that the payment vouchers in respect thereof show that the stores were on Plot No. 57 at Mwenge area, not at Sinza Mori, and that the same are dated 19th March 2013 even before the supplies had been received. Dw1 further pointed to the contradiction in the dates by comparing that of the Receipt and its corresponding payment voucher. He cited the example of Exhibit P21(a) with the Receipt showing the date as 19/3/2013 and the voucher is dated 10/10/2014. Dw1 mentioned an investigation conducted by TFDA a Government Agency that deals with Food and drug which reported to the first defendant that the plaintiff had not stored the supplies in Tanzania.

Regarding the bank interest DW1 blamed it on the plaintiffs for not paying the debt with the bank even when they received funds from them, first defendant. In reference to the Bank statement, DW1 stated that there was nothing to show that the interests were being caused by the first defendant's delayed payments. Ms. Rwijage submitted that the interest rates appearing on the bank statement are the same before and after delayed payments.

The learned State Attorney further submitted that the Bill of Lading tendered by the plaintiff is merely proof of the fact that goods were shipped to Tanzania but does not prove that they were stored.

My deliberations on the fourth issue begins with an observation that a good deal of what has been testified and submitted on relates to whether or not there is proof of the specific claims for bank interest, storage costs by the supplier in Tanzania and by the Manufacturer in China, and security costs. These testimonies and submissions will be handy when the time comes for me to determine reliefs if any.

At the moment the fourth issue is confined to determining whether the breach of contract established in the third issue had consequences on the plaintiff. The answer to this question lies in the Law of contract Act Cap 345 section 73 of which providers;

> *" (1). When a contract has been broken the party who suffers by such breach, is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arise in the usual course of things from such breach or which the parties knew, when they made the contract to be likely to result from the breach of it."*

In an old case whose facts somehow makes it relevant to the present case, a Manufacturer (appellant) refused to deliver more goods to the buyer(respondent) because payment for the same was not done in time.**[Mersey Steel & Iron Co**. Vs Nay/or Benzon & CO. (1884), 9 App. Cas 434] CASES ON

THE LAW OF CONTRACT 5TH EDN Cheshire G.S at page 444. The House of Lords observed in part,

> *" A contract of the kind now sued on is made on the assumption that the parcel already delivered will be paid for punctually and in time to put the manufacture in funds to provide for the manufacture and delivery of the next parcel"*

In this case the contract was such that it did not need an assumption that payment would be promptly forth coming rather it was an express term.

It has also long been decided that there cannot be a wrong without a remedy.[See **China Henan International Co – operation Group Co Limited V. Salvand K.A Rwegasira,** Civil Appeal No. 57 of 2011, CAT (unreported)]

For the foregoing reasons I answer the fourth issue in the affirmative.

In determining the fifth issue regarding the reliefs to which the parties are entitled, I shall rely on and refer to the evidence and submissions already alluded to. As a starting point I wish to pronounce myself on some facts that are material to the determination of this issue.

The first is that the call off order (Exhibit P10) for the last contract specified dates of delivery as May 2013, September 2013, January 2014 and the quantities to be delivered on each date. It is reasonable to accept as true, the plaintiff's version that this call off order authorized him to instruct the manufacturer to produce those goods in the specified quantities. The fact that delivery of these goods was deferred is undisputed, and therefore it is my

finding that there would be natural consequences for the deferment , including costs of storage.

Secondly it was an understanding common to the plaintiff and the defendant that the former was using a loan to execute his contractual obligations. This is evident in the written communications between the bank (TIB) and the first defendant, concerning the plaintiff, Exhibit P25. Since the fact that payment to the plaintiff for goods delivered to the first defendant was delayed, it is highly probable and a common consequence that interest was charged by the bank against the plaintiff.

What calls for a painstaking evaluation in my view is the proof of these costs and charges bearing in mind the household principle that these are specific claims. This is the position in **Zuberi Augustino V. Anicet Mugabe** [1992] TLR 137; in **James Funke Ngwagilo V. Attorney General** [2004] 161 and in many other cases.

For the defence it was testified and submitted in relation to the storage that the Lease Agreement suggests that the godown was hired even before delivery of the goods had been deferred.

I have examined Exhibit P20 the said Lease Agreement and quickly seen the defendants' point. The first Lease covers the period from 15/1/2013 to 14/1/2014. Since the first lot of the last call off order was expected in May 2013, there was no basis for the plaintiff to assume that it was going to be deferred unless they did so from the previous experience. However this explanation regarding their previous experience was not raised.

The second Lease Agreement also part of Exhibit P20 covers the period from 15/1/2014 to 14/1/2015 which is a relevant period for determination of this issue. The defence has not raised any rebuttal in respect to this except an assertion by DW1 that there were no medical supplies in the plaintiff's godowns. This assertion that the medical supplies were not in the plaintiff's godowns is inconsistent with the fact that the same had been ordered from China and delivery dates had been pushed to unspecified future dates.

It is my finding that the Lease Agreement dated 15/1/2014 to 14/1/2015 supports the plaintiff's claim but only to the extent of one year. Thus USD 21,000.00 is awarded as storage costs for one year covering 15th January 2014 to 14th January 2015.

The claim for security is disputed on the ground that the invoices show that the service was going to be rendered at Mwenge site as opposed to Sinza Mori where the godowns were allegedly located. The other point raised is that the Petty Cash vouchers indicate that payments were in respect of Security Guards at Plot No. 57.

It is true that the Petty Cash Vouchers for whatever they are worth are inconsistent with the plaintiff's story. However there are invoices that were raised by Optima Aviation and Security Co. Limited and copies of cheques drawn by the plaintiff in favour of that security Company for the amounts shown in the invoices. In my judgment these are sufficient proof that those payments were indeed made. As per exhibits P21 (a), (b), (c) and (d), the total amount paid was Shs 13,983,000/= which I grant as proved.

Next is the amount claimed by the plaintiff as having been paid to the Manufacturer after the latter raised Debit Notes. The Debit Notes (Exhibits 31(a) (b) (c) are relevant here. They suggest that a demand for payment of 138, 500.00 USD was made by the Manufacturer Jiujiang Huada Medical Dressing Co. Limited. The Debit Notes cited damages for storage and non-acceptance of goods as the basis for the demand.

In defence DW1 stated that never in the experience of the first defendant has it ever occurred that a manufacturer would charge for storage. However given the unchallenged evidence of Pw1 that the medical supplies relevant to this case were uniquely for the first defendant , bearing its logo, it can hardly be surprising that the non-acceptance by the said first defendant was unwelcome because the Manufacturer could not sell the supplies to other buyers. In any event the first defendant's experience with other manufacturers could not deny the present Manufacturer from demanding what they considered their right.

The total amount claimed under this category, that is 138, 500 and 71,500 and 66,500 USD is 276 500 USD but I cannot conclude this issue until after I have dealt with the next item.

The next item is the claim for payment of 1,481328 USD arising from a condition expressed in the contract in which 0.2% is payable for any payment effected after 30 days. This claim has been established by evidence and it forms part of the breach complained of. My finding now and before, based on the undisputed evidence and the Tender Document is that payment was

delayed in respect of invoices 911 and 913. This claim is therefore granted as prayed.

However, after awarding the penalty of 1,481,328 USD for delayed payments, I cannot grant the whole of 276500 USD Claimed as Debit Note for delayed payment and storage. The amount claimed under the Debit Notes being omnibus does not quality to be segregated. Since this claim is specific but lacks itemization, it cannot be granted.

Last is the prayer for general damages. I am aware of the principle that;

> *" The court, in granting damages will determine an amount which gives the injured party reparation for the wrongful act and for all the direct and unnatural consequences of the wrong".*

[**Kibwana and Another V. Jumbe** [1990 - 1994] 1EA 223]. That case was cited in the case **Adam Rashid Chochora V. Knight support (T) Limited Commercial** Case No. 88 of 2013 (unreported).

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Considering all the Circumstances of this case fifty million shillings in general damages will meet the justice of the case. I award that amount for general damages.

Thus judgment is entered for the plaintiff with interest and cost as prayed except for the payment to the Manufacture's Debit Notes which has been rejected.

I.P.KITUSI

JUDGE

7/2/2018