

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

AT DAR ES SALAAM

CIVIL CASE NO. 23 OF 2017

SIMBA MTOTO TRANSPORT Co. LTD.....PLAINTIFF

VERSUS

PAN AFRICAN LOGISTICS LTD.....DEFENDANT

JUDGMENT (EXPARTE)

The plaintiff above mentioned is suing the defendant mentioned above for unpaid invoices amounting to USD 63,056.47 and bounced cheques of USD 71,969 making a total sum of USD 135,023.47 which the plaintiff crave for, plus commercial interest of 31% per annum from April 2015 to the date of judgment, court interest on decretal sum from the date of judgment to the date of full settlement, general damages, costs and other reliefs.

This was an *exparte* proof. PW1 Badi Mohamed Mungia a long serving transport manager of the plaintiff, explained that they had worked with the defendant for a considerable period. Thereafter arose problem in payment. They embarked into discussion, but were abortive. That

before suing, the defendant had issued post dated cheques exhibit P1 collectively. When the said cheque were presented to the bank, they were returned (referred back to the drawer). That in the written statement of defence, the defendant admitted a claim of USD 135,023 and promised to pay in instalments.

In this suit, the plaintiff who is represented by Mr Deogratius Ogunde learned Counsel, took a ride *ex parte* after the defendant had defaulted to appear.

The issue is whether the defendant issued bounced cheques to the plaintiff; secondly whether the defendant is liable for payment of USD 135 023.47; finally, what relief parties are entitled.

The above issues cannot detain me. As stated by PW1 that in the written statement of defence, the defendant had admitted a claim. I reproduce paragraph two of the written statement of defence signed by the principal officer of the defendant, I quote in verbatim for appreciation,

“That the Defendant does not deny the Plaintiffs claim of USD 135,023.47 (United States Dollars One Hundred Thirty Five Thousand and

Twenty Three and Forty Cents) as specified in paragraph 3 of the plaint. The Defendant proposes to settle the claim by an immediate payment of USD 23,000.00 followed by another payment of USD 32,000.00 in the month of April 2017 and a final payment to liquidate the sum of USD 71,968.00 represented by unpaid cheques. The Defendant proposes to pay the remained balance by instalments to be agreed upon by both parties with the approval of this Honorable Court".

The defendant's written statement of defence was filed on 31st March 2017, but the defendant did not make good to pay a debt and later opted to shun away without appearance on a considerable number of no-shows. Actually the defendant went missing for the whole year 2019, even after they were served by substituted service in Mwanachi gazette dated 5th March 2020, they did not show up. It can be said that the defendant was making empty promises by issuing post dated cheques which were dishonored by the bank. Equally made admission in court as vowed in the written statement of defence, which did not

work. His plea into the written statement of defence that he was coerced by the plaintiff into issuing the cheques, cannot distance him from liability. Essentially the defendant failed to discharge his obligation to pay the plaintiff a sum of USD 135,023.47 which she vowed to settle with immediate payment of USD 23,000.00 and USD 32,000.00 in April 2017 and a balance of USD 71,968.00 in unspecified instalments.

The adumbration above take into board the first and second issues, which are ruled in affirmative.

The defendant is therefore hold liable to pay the plaintiff a sum of USD 135,023.47 with interest at a court rate of 7% from the date of judgment to a date of full payment.

A suit succeed to the extent depicted above with costs.



E.B. Luvanda
Judge
27.3.2020

27.3.2020

Coram: E.B. Luvanda, J

For the Plaintiff: Mr Deogratius Ogunde Advocate

For the Defendant: Absent

B/C: Zawadi

Court: Judgment ~~ex parte~~ delivered at chamber court.



E.B. Luvanda
Judge
27.3.2020