

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

**AT DAR ES SALAAM**

**CIVIL CASE NO. 177 OF 2008**

**COMMUNITY FOOD LTD.....PLAINTIFF  
*VERSUS***

**QUALITY FOOD AND BEVERAGES LIMITED.....DEFENDANT**

**JUDGMENT (EXPARTE)**

**Date of Last Order: 11/06/2021**

**Date of Judgment: 14/06/2021**

**E. B. LUVANDA, J.**

The plaintiff above mentioned is suing the defendant mentioned above for an order that the defendant is in breach of the memorandum of understanding and that the plaintiff is discharged by such breach; in the alternative to the above, for an order for specific performance for payment of USD 120,000.00 being principal sum; interest at commercial rate from the date of filing the suit to the date of judgment; payment of general damages for breach of contract; interest at the court rate from the date of judgment to the date of payment in full; cost of the suit and any other relief the court may deem fit to grant.

This suit proceeded *ex parte*, after the defendant had defaulted to appear for mediation and consequently her written statement of defence was struck out by my predecessor, under Order VIII rule 29 of the Civil Procedure Code, Cap 33 R.E. 2019.

The plaintiff is represented by Mr. Eustance Rwebangira learned Counsel.



Issues framed at the commencement of hearing: one, whether the defendant is indebted to the plaintiff under the memorandum of understanding; two, what reliefs parties are entitled to.

This is a straightforward case, it was the testimony of James Mizanza (PW1) that on 19/2/2003 they were awarded tender for purchasing an industry valued USD 210,400 but failed to run or pay, hence sold it to the defendant for USD 150,000 under the memorandum of understanding exhibit P1. That a sum of USD 150,000 ought to be paid in three instalments. The first instalment a sum of USD 30,000 which was wrongly paid to an individual the managing director one Amri Suleiman. The second instalment USD 45,000 ought to be paid after forty-five days, after installation of equipment but was not paid. The last installment was USD 75,000 which ought to be paid after twenty-one days, but was not paid. PW1 tendered various correspondences (exhibit P2, P4, P5) asking the defendant to make good for payment of remained two instalments a total sum of USD 120,000; a response from the defendant promising to sort out the matter exhibit P3, without avail, including a demand letter for a claim USD 120,000 exhibit P6. But still the defendant remained adamant.

From the evidence presented as per recap above, it is vividly clear the defendant had failed to discharge his obligation to make good the outstanding liabilities a sum of USD 120,000. The evidence above indicate that the defendant had only paid one instalment of USD 30,000, which according to PW1 was wrongly paid to an individual the managing director one Amri Suleiman (as he then was). It was the contention of PW1 that the defendant should also be held liable to pay this sum to the plaintiff, as no acknowledgment was made and was not credited into the accounts of the plaintiff. However, PW1 did not state if it was among the covenant that the instalment ought to be paid into the accounts of the plaintiff. Essentially

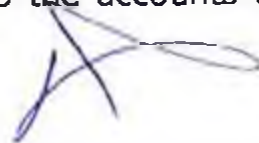


exhibit P1 is silent as to the mode of payment. However as much in the said demand notice including previous correspondences mentioned above, depict that throughout the plaintiff was claiming for a balance of USD 120,000 alone, a relief for payment of USD 30,000 cannot be entertained for obvious reason that it is an afterthought. This is because, paragraph five of the plaint, by implication the plaintiff recognized an amount of USD 30,000 which was paid to one Amri Suleiman Rweyemamu, as did not query it to have been paid to a wrong person, neither avered that it was not accounted to the company. More important the defendant cannot be penalized for internal mismanagement on the part of the plaintiff or misdeed committed by scrupulous directors of the plaintiff

In view of the above, it suffices to rule that the plaintiff has proved a claim on a preponderance of probability in respect of a sum of USD 120,000 being unpaid balance in respect of two instalments. However, a claim for general damages which PW1 stated is due to the breach of contract, succumb for want of justification as to how and why the plaintiff is entitled to the same. This is because a mere breach of contract is not a warrant for an automatic award of general damages. There must be proof by way of explanation on why the plaintiff is entitled to the same. The adjudged sum will attract interest at the rate of 15% from the date of filing to the date of this judgment and interest at the court rate of 7% which will accrue from the date of judgment to payment in full.

The defendant is therefore hold liable to pay the plaintiff a sum of USD 120,000, which will attract interest at the rate of 15% per annum from the date of filing to the date of this judgment and interest at the court rate of 7% per annum from the date of judgment to payment in full. The plaintiff is also entitled to costs.





E.B. Luvanda  
**Judge**  
14.6.2021