

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

AT DAR ES SALAAM

CIVIL CASE NO 74 OF 2019

OCEAN LINK INTERNATIONAL LIMITED..... PLAINTIFF

VERSUS

BOYA BUILDING CONTRACTORS CO. LTD.....DEFENDANT

EXPARTE JUDGEMENT

9th June & 8th August 2021

Rwizile, J

Parties to this case are companies running their business in Tanzania. They happened to be in business relations. Where the plaintiff supplied iron steel bars and cement on credit, the defendant was to pay the plaintiff upon use and utilization of goods supplied. It seems, they had no written agreement to stating the terms through which business could be conducted but it is shown that their relationship did not last for more than 3 years. The plaintiff had agreed to supply iron steel bars in tons and each ton was to cost 541.66 USD. When the plaintiff supplied 346.3 tons, valued at 187,578.17 USD, the defendant paid the sum of 20,000USD. Despite several demands, the balance of 167,578.17 USD was not made as agreed. In the interpretation of the plaintiff, this amount to breach of their terms of business. She therefore commenced this action praying for judgment and Decree against the Defendant as follows:

- (i) That this Court be pleased to expedite this proceeding by not subjecting the parties to an unnecessary mediation;

- (ii) That this Honourable court be pleased to order the Defendant to pay the Plaintiff a sum of USD 187,578.17 being a specific amount owed to the Plaintiff for breach of the Agreement;
- (iii) That this Honourable court awards the Plaintiff punitive damages against Defendant's dishonourable fraudulent behavior to the Tune of TZS 50,000,000;
- (iv) That this Honourable court be pleased to order the Defendant to pay TZS 20,000,000 as General Damages;
- (v) Interest at Commercial rate of (ii) above from the date of breach to the date of judgment.
- (vi) Interest at Court Rate on the decretal amount from the date of Judgment to the date of full payment;
- (vii) Costs of the suit to be provided for;
- (viii) Any other relief or orders this court deem fit and just to grant.

The defendant upon due service filed a Written Statement of Defence on 16th July 2019 disputing the claims and asked for strict proof of the same. On 9th July 2019 and days that followed witnessed, Mr. Mussa Lilombo a company secretary for the defendant appearing to defend the case. It is the same officer who signed upon admission the WSD which disputed all claims against the plaintiff. It is unfortunate that his last appearing for the defendant was on 1st October 2019.

The patient court, adjourned the matter for the whole year of 2020. It was ultimately decided that before going exparte, at least a notice be published in the daily circulation newspaper. This was done on 11th March 2020 in Mwananchi Newspaper Issue No.7157 at page 29. As if that was not enough

one year later, the same publication was done in the Mwananchi Newspaper, dated 13th March 2021, issue No. 7524, at page 25. Despite these warning signs, the defendant did not attempt to appear again and defend his case. When this court was no longer at ease, it ordered an ex parte proof under order IX Rule 7 of the CPC.

Mr. Tumwesige Evance Lushakuzi, learned counsel of KW Kapinga and Partners appeared for the plaintiff. He tendered one witness going by the name of Han Xuehui (Pw1). He was of the evidence that being an overall supervisor of the plaintiff, which is a subsidiary company of sunshine group of companies. He had an oral agreement with the defendant to supply her iron steel bars and cement on credit. Payment was in terms of tons supplied and upon use. The amount supplied to the defendant was 346.3 tons of iron steel bars. It was his evidence that the same the amount payable to the plaintiff was in total of 187,578.17 USD. Out of it, it was testified, 20,000USD was paid. To prove what he testified, he tendered a proforma invoice and a demand note as P1 and P2 respectively.

On his party, Mr. Tumwesige, made closing submissions. He was of the submission albeit brief that the plaintiff had a business deals with the defendant. it was his argument that since the plaintiff was paid the sum of 20,000USD out of the whole sum claimed, then the amount remaining is 167,578.17 USD. In essence, he asked to hold that terms of the agreement were breached by the defendant as in terms of section 73(1) of the Law of Contract Act. It was his view that amount claimed has been proved and the same should be paid as held in the case of **Zuberi Augustino vs Anicet Mugabe** [1992] TLR 137.

As to the claimed general damages, he asked this court to follow the decision of the case of **Kibwana and Another vs Jumbe** [1990-1994]1EA 223.

The evidence and submission were in an attempt to answer two key issues, running as *whether the defendant defaulted the terms of payment as per the agreement* and *to what reliefs are the parties entitled to*.

The defendant filed WSD as I have shown before. In his defence she did not dispute having been in contact with the plaintiff to execute the stated business. I therefore have no doubt that there was a deal between the two parties. The plaintiff's case has been explicit that there was no written agreement. I agree, both oral and written agreements have the same status. What is important is to prove the terms of the same in court.

I have examined exhibit P1 and I am convinced that there was supply of the goods stated in the plaint. The volume and an amount worth are well stated therein. In the absence of any evidence to the contrary, I take it that the plaintiff had supplied 346.3 tons of iron steel bars to the defendant at the considered amount of 541.66 USD per ton. The plaintiff testified and submitted that the defendant paid 20,000USD. This means the remaining sum is 167,578,17 USD. The first issue is therefore answer in the affirmative. It follows therefore that terms were breached and the amount claimed is due to the plaintiff.

In the event the plaintiff has succeeded in proving the first issue, it goes without saying that the plaintiff having supplied goods was entitled to payment. Since payment was not made until this time.

The same should be compensated adequately. In fine therefore, judgement is entered for the plaintiff as follows;

- (i) That the Plaintiff be paid sum of USD 167,578.17 being a specific amount owed
- (ii) That the Plaintiff be paid general damages at the Tune of TZS 50,000,000;
- (iii) Interest at Court Rate on the decretal amount from the date of Judgment to the date of full payment and
- (iv) Costs of the suit

 Recoverable Signature

X 

Signed by: A.K.RWIZILE

