

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)
AT ARUSHA**

CIVIL CASE NO. 8 OF 2016

**BOX BOARD TANZANIA LIMITED PLAINTIFF
VERSUS
MOUNT MERU FLOWERS LIMITED DEFENDANT**

JUDGMENT

10/11/2021 & 14/12/2021

KAMUZORA, J

The plaintiff's claims against the defendant are based on the breach of supply agreement for the defendant's failure to comply to the terms of agreement that required paying for the invoice within 30 days from delivery of the goods called the single faced kraft (SFK)). On the basis of the breach, the plaintiff thus prays for the following reliefs; declaration that the defendant has breached terms of the supply agreement, payment of the principal outstanding amount of USD 70,439.45, specific damages of USD 20,000, general damages as may be assessed by the Court, interest of 25% from the date of default to the date of judgement, interest of 12% from the

date of judgement to the date of payment in full, cost of the suit and any other reliefs.

The Defendant on the other hand is contesting the claim and raised a counterclaim against the plaintiff claiming to have been undersupplied the boxes of single faced kraft (SFK) in terms of weight and quantity as well as being overcharged by the plaintiff contrary to the agreement. The defendant thus prays for the refund of the value of the overcharged goods and undelivered goods. The claim by the defendant is USD 68,877.00 as value for overcharged weight and overcharged price, USD 4,372.50 being the difference of the undelivered value plus VAT of the SFK. The defendant also claims for general damages, interest, costs of the suit and any other reliefs.

Briefly, PW1 Thobias Martine Lyewe, a Businessman residing at Lemara here in Arusha is the owner of the Company by the name of Box Board Tanzania Limited. He entered into a business of selling boxes for parking flowers. The package boxes were made by the use of a machine called Single Face Craft (SFK) thus the boxes were commonly referred to SFK. He claimed to have oral conversation with the Director of Mount Meru Flowers by the name of Herwig Tretter and his wife who was a procurement officer by the name of Hapyphania Vitalis to supply SFK to the defendant. After he had

sent them with the sample, they asked him to send them the terms of the supply by email. He issued the proforma invoice to the defendant indicating the terms and the purchase price of the SFK. The plaintiff then started supplying goods to the defendant based on the orders pressed by the defendant. Later, their relationship ended as the plaintiff was claiming for unpaid invoices and delay in payment. The defendant on the other hand claimed that, the plaintiff failed to supply the ordered goods and for those supplied they were of low quality and overpriced by the plaintiff. The plaintiff opted to file a suit to this court claiming for unpaid tax invoices but at the same time the defendant raised a counterclaim for undelivered goods and overpriced goods. When the matter was set for hearing the following were the agreed issues: -

1. Whether the Plaintiff and Defendant entered into an agreement for supply of single faced kraft.
2. Whether the defendant breached the terms of the agreement.
3. Whether the Plaintiff undersupplied the local purchase Orders in terms of quantity and weight.
4. Whether the Plaintiff suffered specific damages.
5. What reliefs are available to either party.

As a matter of legal representation, the plaintiff enjoyed the service of Mr. Agrey Kamazima while the defendant was well represented by Mr. Michael Lugaiya.

On the first issue on whether the Plaintiff and Defendant entered into an agreement for supply of single faced kraft, PW1 Thobias Martine Lyewe, the owner of the Company by the name of Box Board Tanzania Limited testified that, he entered into a business of selling boxes for parking flowers which are made using a machine called Single Face Craft (SFK). That, he had oral conversation with the Director of Mount Meru Flowers by the name of Herwig Tretter and his wife who was a procurement officer by the name of Happyphania Vitalis to supply SFK to the defendant. That after he had sent them with the samples, the defendant asked the plaintiff to send them the terms of the supply by email. That, Box Board Tanzania Ltd, the plaintiff sent proforma invoice through email to the director of Mount Meru Flowers, the defendant. The first email was on 03/06/2015, the 2nd email was on 09/06/2015 and the 3rd email was on 23/06/2015. That, the emails contained proforma invoice showing costs of SFK per kilogram. The Proforma Invoice and emails were admitted collectively as exhibit PE1.

PW1 testified further that, they had oral discussion on the terms that were also indicated in the proforma invoices. That, they agreed for the first

order to be paid in full once the goods are delivered. That, the agreed price for the 1st and 2nd order was USD 1.05 per kilogram in exclusion of VAT. That, from the 3rd order the agreed price was USD 1.08 per kilogram. Other terms were that, after receiving the goods, the payment was to be done within 30 days. That, failure to pay within 30 days attracted penalty of 1% interest on the supplied goods. PW1 testified further that, after he had sent the proforma invoice to them, they accepted and agreed on the terms and price. On being cross examined PW1 insisted that, the business practice requires that if you issue proforma and other person respond by pressing order it means that, that person has agreed to the terms stipulated therein. That, through Exhibit PE1 which is the proforma invoice, the defendant pressed order through email on 24th meaning that they accepted the terms.

On the defense side, they did not deny doing business with the plaintiff. What was denied is the fact that there existed no written agreement between the parties. DW1 who is currently the Chief Executive Officer of the defendant testified that, he found the business already conducted and he found documents together with invoices. Through those documents he discovered that Mount Meru were issuing LPO and Box Board were issuing invoice and delivery notes that were signed by Mount Meru upon receiving

the products. That, he could not consider the existence of contract as there was no official document. On being cross examined DW1 added that, there was no written agreement/contract between the parties. That, he saw the agreed amount of USD 1.05 in the documents and while making follow up to his successors, he was informed that the plaintiff changed the price from what was agreed before.

From the above analysis of evidence, it is clear that, while the plaintiff claims to have entered into a contract of supplying SFK to the defendant, the defendant denies the existence of any contract between them. Reading through written statement of defense and evidence of DW1, the defendant does not deny having business relationship with the plaintiff except that there was no any written contract binding between them. For the defendant, the plaintiff was just like any other supplier who was supplying goods to them upon pressing the order.

In order to determine if there existed contract between the parties it is important to know the meaning of the contract under our laws. Section 10 of the **Law of Contract Act, Cap 345 R. E. 2002** provides as follows: -

"All agreements are contracts if they are made by free consent of parties competent to contract, for a lawful consideration and with a

lawful object, and are not hereby expressly declared to be void."
[Emphasis mine]

There is no dispute that the plaintiff and the defendant had business relationship in which the plaintiff in different occasion supplied SFK to the defendant and the defendant accepted and paid for the same. The business trend shows that, the plaintiff was issuing proforma invoice which contained the goods to be supplied plus the selling price. Upon receiving the proforma invoice, the defendant was pressing order by issuing Local Purchase Order (LPO) and upon receiving the LPO the plaintiff was producing the goods ordered and supplying the same to the defendant.

To my understanding a valid offer was made by the plaintiff through proforma invoice and the defendant upon issuing LPO implies acceptance of the plaintiff's offer. By signing the delivery note it means that the defendant had accepted the goods delivered hence responsible for payment of the same. The business arrangement between the parties indicates that there was agreement between the parties for the plaintiff to supply SFK to the defendant. That agreement was made by free consent of the parties and there was a lawful consideration with a lawful object as SFK were supplied and paid for thus creating contractual relationship between them. The fact

that there was no express written contract does not vitiate the business arrangement between the parties. The proforma invoice which clearly contains terms of the agreement and describes the goods to be supplied and looks to secure approval (acceptance from the other party) is a valid offer under the law and established contractual obligation to a party who accepts it. This is also supported by the Court of Appeal case cited by the counsel for the defendant in his final submission, the case of **AMI TANZANIA LIMITED V. PROSPER JOSEPH MSELE, Civil Appeal No. 159 of 2020 (Unreported)**; the Court from page 16 the Court had this to say: -

"Pro forma invoice is indeed no such evidence of payment or any form of actually incurring expenses rather, it is a mere offer only and no more."

In my view, the proforma invoice will remain offer until accepted by the other party and upon being accepted it becomes a valid offer and the acceptance of the same creates legal relationship between the parties. It is also an explicit fact that both the Law of contract Act Cap. 345 RE: 2002 and even the Sale of Goods Act Cap. 214 RE: 2002 provides for oral or written contract. The sales of Goods Act have gone further by providing for an implied contract under Section 5(1) which read: -

"Subject to any other written law in that behalf, a contract of sale may be made in writing (either with or without seal) or by word of mouth or partly in writing and partly by words of mouth or may be impliedly from the conduct of the parties".

It was contended by the plaintiff's witness PW1 that, they had oral discussion of the terms that were also indicated in the proforma invoices. In his final submission, the counsel for the plaintiff also insisted that, the evidence of PW1 indicated that there was an agreement through emails and orally. He referred proforma invoice and emails (Exhibit PE1 collectively) as containing the description of the items to be supplied (SFK) as well as the terms of the agreement. I would like to refer exhibit PE1 that was also referred to by the counsel for the plaintiff in his final submission. The same reads: -

"Dear Michael,

Thank you for your email

Kindly note the terms stipulated at the "NOTE" Section in the attached offer, as we also sent to Mr Tretter please do not hesitate to negotiate as we shall highly consider your proposal, if any"

From that wording, no one can state that there were no terms of agreement that were notified to the defendant. Defendant accepted the said offer by sending an order through Local Purchase Order as it reads here under:-

*"Hello Thobias,
Attached please find the Order
Regards,
Lugano."*

I agree with the counsel for the plaintiff that there existed agreement between the parties. Based on the evidence on records it is in my view that, even in the absence of any written or oral contract, by pressing order after receiving the proforma invoice, the defendant was impliedly accepting the terms under the proforma invoice. The defendant also raised a claim of breach of express terms of the agreement in the counter claim which also suggest that the defendant agree to the existence of an agreement between parties. In that regard, the first issue is answered in affirmative.

On the second issue as to whether the defendant breached the said agreement, the plaintiff claimed breach of the terms of agreement. PW1 testified that they had oral discussion of the terms that were also indicated in the proforma invoices. That, they agreed for the first order to be paid in full once the goods are delivered and the sale price for the 1st and 2nd order was USD 1.05 per kilogram in exclusion of VAT. That, from the 3rd order the agreed price was USD 1.08 per kilogram. Other terms were that, after receiving the goods, the payment was to be done within 30 days and failure

to pay within 30 days attracted penalty of 1% interest of the supplied goods. That, in the due cause of performing the contracts parties herein orally agreed to charge 1% interest of the outstanding amount after expiry of 30 days of unpaid invoices after delivery of goods. That, this is evidenced from uncontradicted testimony of PW1 as well as the fact that all invoices raised with 1% have never been rejected by the Defendant by the reason of a dispute with 1% interest. The proforma invoice (exhibit PE1) contained the following terms on the NOTE Section: -

"NOTE:

- ❖ *This offer applies to the first two (2) Orders from Mount Meru Flowers limited: our first and most esteemed reputable Customer*
- ❖ *The very first Order shall be paid in full once the goods have been delivered and accepted by the MMF LTD*
- ❖ *As from the second Order onwards, payment shall be effected 30 days upon delivery of goods*
- ❖ *From the third Order onwards, fixed price shall be USD 1.08 per Kg."*

As submitted by the counsel for the plaintiff, the note clearly stipulates that from the second order onwards the defendant was supposed to make payment within 30 days from the date of delivery. But going through the tax invoice, exhibits PE4 in line with their respective delivery notes, Exhibit PE3, by the time of filing of this case all the invoices raised were due more than

30 days from the date of delivery. However, I do not agree with the claim of 1% interest for the delayed tax invoices. I say so because, there is no express term imposing 1% interest on the delay and if that was so intended, it could have featured in exhibit PE1 which stipulates other terms. I do not see why the period of 30 days for payment was stipulated in the proforma invoice only leaving the penalty of 1% interest to be stipulated orally. I therefore find that, there was a fundamental breach of the supply agreement and thus the second issue is as well answered in affirmative save for the 1% interest.

Regarding the third issue on whether the Plaintiff undersupplied the SFK in terms of quantity and weight, it was contended by DW1 that, the agreed sale price was USD 1.05 but Box Board issued invoice for the price of USD 1.08 and the same were paid by Mount Meru and some of the orders were not delivered. DW1 tendered documents showing transactions between the plaintiff and the defendant and the same was admitted as exhibit DE1. The documents contain the invoices issued by Box Board and the amount for payment. DW1 contended that, under exhibit DE1 the invoices issued exceeded the agreed price as the first invoices contained the price of USD 1.05 but other invoices were issued at the price of USD 1.08. He alleged

that the defendant suffered loss of USD 68,877 being the costs for the material that were incomplete in which the principal amount is USD 58,370.34 in exclusion of VAT.

The plaintiff's side insisted that the agreed price was clear under the first invoice which is exhibit PE1. PW1 testified that the agreed price for the 1st and 2nd order was USD 1.05 per kilogram in exclusion of VAT and from the 3rd order the agreed price was USD 1.08 per kilogram.

As prior discussed, much as the terms in exhibit PE1 binds the parties, the same reflect what is suggested in the plaintiff's evidence and supported by the counsel for the plaintiff in his final submission. It is without doubt that exhibit PE1 indicated the price to be USD 1.05 for the first and second order and the following order was to be charged at USD 1.08. By continuing to press orders without requesting the validation of the price, it means the defendant agreed to pay the price prescribed under exhibit PE1. Thus, the claim that the plaintiff overcharged the SFK is unsubstantiated.

Regarding the third issues on whether the Plaintiff undersupplied the local purchase orders in terms of quantity and weight. He tendered exhibit DE1 to support the argument that the weight and quantity of the SFK supplied by the plaintiff was underrated. However, upon being cross

examined DW1 revealed that there was no joint measurement conducted between Box Board and Mount Meru Flowers. In his final submission, the counsel for the defendant explained that the Defendant noted in January 2016 that its costs of purchasing the single-faced kraft from the Plaintiff were increasing at the same time the rolls delivered wrapped fewer flowers, raising suspicion about the rolls of SFK purchased, which led the Defendant officials to weigh the last consignment of the rolls of SFK delivered. That, the result was that all the rolls weighed between 5 and 5.5 kg per roll instead of the 10 kg indicated in the Delivery Notes, or about 45% less than what is shown on the Delivery Notes. The counsel for the defendant added that, the Defendant was forced to conduct a forensic audit which established that the through the delivery of underweight SKF, the Plaintiff had caused a loss of USD 68,877 to the Defendant and a loss through overpricing of some of the invoices amounting to USD 4,372.50.

With due respect to the counsel for the defendant, I think he had assumed the role of a witness by introducing issues not testified upon by the defense witness. In his evidence DW1 claimed variation in terms of weight but did not mention the exact variation. That was so mentioned by PW1 in his evidence and he precisely stated time the variation may occur. As well

captured by the counsel for defendant in his submission the official of the Plaintiff's Company PW1 admitted that there is always a variation in the weight of the rolls at the time of production due to the shrinkage of the papers as the glue dries up. This was however explained by PW1 who stated that the measurements were done after the cooling down of the papers to allow the glue to dry in order to attain the correct weight. It is also in evidence that, the last order of SFK from Mount Meru Flowers Ltd were not collected by the defendant thus were kept at the plaintiff's factory and after 1 $\frac{1}{2}$ years, they were still with the same quality and they were sold to Arusha Bora Company who in turn, sold the same to Mount Meru Flowers Ltd. That, the defendant received the same and agreed that they have good quality and proper weight. The sale proof of the SFK to Arusha Bora which are delivery note dated 04/08/2017, scale confirmation from Monabarn Trading & Farming and the agreement of SFK purchase were admitted collectively as exhibit PE10. This was also confirmed by Yusuph Seleiman, PW2 who was an employee of Arusha Bora Limited, the company that purchased the remained SFK from the plaintiff.

Thus, the contention that the SFK delivered were under the agreed weight, in my opinion is unsupported. DW1 tendered Exhibit DE1 to justify

the fact that the deliveries were underweight. But the same does not clearly reflect the order that was underweight. While the plaintiff claim that they usually conducted joint measurements before the defendant could receive the goods, DW1 upon being cross-examined he admitted that the defendant only measured single delivery and in doing so the plaintiff was not involved. I therefore agree with the submission by the counsel for the plaintiff that the claim is based merely on assumptions.

In that regard, I do not agree with the contention that the Plaintiff undersupplied the SFK in terms of quantity and weight as so alleged by the defense side. If that was the case, the defendant was at liberty to refuse the goods for not meeting the specification so stipulated in their order. See Section 32 (1) of the Sales of Goods Act which provides as follows: -

"Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered, he must pay for them at the contract rate."

As the defendant accepted the goods delivered by the plaintiff impliedly, he was satisfied with the quality and weight of the goods so delivered. He was therefore bound to pay for the same.

As this issue touches the counterclaim raised by the defendant, I also made assessment to the defendant's evidence to see if the defendant established the claim against the plaintiff. DW1 testified that when the defendant showed the interest to file the case, Mount Meru also showed interest to a claim against Box Board the sum of USD 68,877 being the costs for the goods that were incomplete. That, the defendant also complained that the agreed sale price was USD 1.05 but Box Board issued invoice for the price of USD 1.08 and the same were paid by Mount Meru. DW1 tendered documents showing list of transactions between the plaintiff and the defendant and the same was admitted as exhibit DE1. The documents contain the list of invoices issued by Box Board and the payment. For the defense side, exhibit DE1 shows that, the invoices issued exceeded the agreed price as the first invoices contained the price of USD 1.05 but other invoices were issued at the price of USD 1.08. Based on that, the defendant is also claiming from the plaintiff the amount of USD 68,877 including VAT for goods not supplied and for the overpriced goods.

For the goods not supplied, the defendant did not show if they paid for the goods and the same were not supplied. Exhibit DE1 tendered shows the order, the supplied goods and unsupplied goods plus the purchase price.

The said document does not reflect if the unsupplied goods were paid for by the defendant.

For the claim on the change of price/overpricing of goods, this was well covered in the first issue. The first invoice, exhibit PE1 indicated clearly the price to be charged per order. The terms indicated in that exhibit shows that the price of USD 1.05 was to be charged for the first and second order and the rest of the orders were to be invoiced at USD 1.08. Thus, if the defendant accepted and paid for the order at the price of USD 1.08 then she was aware of the price and agreed to the same. She cannot then turn back and claim that the goods were overpriced. The counterclaim is therefore not proved.

The fourth issue is whether the Plaintiff suffered specific damages. PW1 listed down the damaged and loss suffered after the defendant refused the goods ordered and for delay in paying the tax invoice raised by the plaintiff. He claimed that the plaintiff suffered loss for the unpaid tax invoices and plaintiff is indebted to TRA for the unpaid tax together with interest. He also claimed that the plaintiff was forced to take loan to pay for invoices raised by its suppliers of raw materials.

Regarding the claim of loss for unpaid tax invoices PW1 explained that, after supplying goods to the defendant they issued tax invoices but the defendant delayed in paying some of the invoices and other invoices were not paid to date. He referred tax invoices that were admitted as exhibit PE4. That, the amount claimed for the 1st tax invoices is USD 11,040.73 with reference to LPO No. 4574. The 2nd tax invoice shows the amount of USD 9,949.17 with reference to LPO No. 4574. The 3rd tax invoice is for claim of USD 12,402. 39 with reference to LPO No. 4681. The 4th tax invoice is for the claim of USD 11,175.78 with reference to LPO No. 4681 the 5th tax invoice is for the claim of USD 7,407. 98 with reference to LPO No. 4681. The 6th tax invoice is for the claim of USD 5,662. 23 with reference to LPO 60027. He explained further that, when issuing tax invoice, they agreed that the defendant will be paying within 30 days of issuing the tax invoice. That, the tax invoices referred to were not paid until to-date.

The evidence is clear that the Defendant requested for the supply of SFK through the Local Purchase Orders (exhibit PE2). The same were delivered to the defendant in six different instalments as per delivery notes and dispatch sheets (exhibit PE3). The plaintiff raised tax invoices (exhibit PE4) which are unpaid until to date. There is no evidence from the defendant

proving that after those tax invoices were raised, the defendant paid for the same. Based on those tax invoices, the total amount of unpaid tax invoices for the supplied SFK is USD 57,638.28 as opposed to the claim of USD 757,971.05 shown in the statement of Account for the summary for sale (exhibit PE11) and the amount of USD 70,439.45 claimed in the plaint.

Regarding the claim for unpaid tax plus interest PW1 explained that, at the time of delivery of the goods, among the documents forwarded to the defendant were EFD receipts showing the amount as per each invoice. A total number of 23 EFD receipts were admitted collectively as exhibit PE5 and exhibit PE9. PW1 added that, by issuing EFD receipts and tax invoice, they suffered loss because the EFD receipts reflected the government revenue. That, Mount Meru Flowers were supposed to pay the tax invoices raised by the plaintiff for the plaintiff to remit tax to TRA within 30 days. That, due to the defendant's failure to pay on time, the plaintiff Box Board Tanzania Ltd was charged by TRA compound interest for almost 5 years. He insisted that, the tax is charged every month until paid in full together with interest accrued. That, the last time when he was called by TRA tax force on December 2019, the amount of tax was Tshs. 166, 000,000/= but he has not asked for the current outstanding tax.

It is unfortunate that the plaintiff apart from raising orally that there is claim for tax and interest from TRA no evidence was brought to support such allegation. As a matter of law and practice, the tax claimed here is VAT which was to be computed based on sales. In the recent matter, the tax invoice raised by the plaintiff under exhibit PE4 included 18% as tax rate to be paid out of each transaction. Thus, if the tax invoice raised is paid, the same will include tax as well.

It was however contended by the plaintiff that by delaying to pay the tax invoice raised, the plaintiff suffered loss as the defendant was issued with EFD receipts as evidenced under exhibit PE4 and PE9. That, this has led for plaintiff to be owed tax and interest on VAT by the Tanzania Revenue Authority amounting to Tshs. 166,000,000/= as of 2019.

I do not agree with the plaintiff's contention in this matter for the following reasons: - **First**, a total number of 23 EFD receipts were tendered and admitted as exhibit PE5 and PE9, but the plaintiff did not bother to explain their connection to the unpaid six tax invoices that were admitted as exhibit PE4. I expected the witness to explain the amount contained in those receipts in connection to amount claimed under tax invoices.

Two, the transaction between the plaintiff and the defendant suggests that there were no cash sales as between the parties rather credit sales. As well testified by PW1, after the defendant had pressed the order through LPO, the plaintiff was supplying goods and raising tax invoice which upon receiving the tax invoice, the defendant was responsible to pay. EFD receipts are usually issued upon receipt of cash payment and not on credit sales to which tax invoice is issued waiting for the payment.

Three, there is no evidence proving the existence of outstanding tax plus interest or penalty raised by TRA on the claim for unpaid tax. Tax is usually assessed by the Commissioner General of Tanzania Revenue Authority (TRA) and for purpose of Value Added Tax (VAT), the Value Added Tax Act and the Tax Administration Act are the applicable laws. I expected the plaintiff to bring the assessment by the Commissioner General or demand notice for the unpaid tax from TRA as evidence to prove that there was claim for unpaid tax plus interest. I cannot rely on the plaintiff's verbal assertion for something that can be proved by document as it is hard to assess how the amount of Tshs. 166,000,000/= was derived; what is the principal tax and what is interest. In that regard therefore, I find that the plaintiff was

unable to prove the claim of Tshs. 166,000,000/= claimed for tax and interest to be paid to TRA.

Regarding the claim that the plaintiff suffered loss as they were forced to take loan to pay for the supplied raw materials, I find this claim weak. PW1 claimed that as they were being supplied raw materials by other companies, they were forced to take a loan in order to pay for amount raised by their suppliers. PW1 testified that, the defendants delay resulted to the plaintiff failure to pay their suppliers on time who in turn, threatened to file a case against the plaintiff. That, one of the plaintiff's suppliers was Mufindi Paper Mills Ltd (Mgololo) who used to supply them with paper rollers used to produce FSK. That, Mufindi was claiming USD 20,000 from the plaintiff that was not paid on time. That, the plaintiff was forced to take loan through Meshack, the director of Seneto Microfinance Ltd so as to pay that amount. As a result of that, they were forced to pay back the loan of more than 100million plus interest of 8%. The tax invoices from Mufundi Paper were admitted collectively as exhibit PE 8.

Apart from the evidence showing that Mufindi paper mills raised invoice to the plaintiff, no evidence was presented proving that the plaintiff processed for the loan for purpose of paying for the same. I agree with the

submission by the counsel for the defendant that specific damage must be specifically pleaded and strictly proved. See also the case of **Ami Tanzania Limited V. Prosper Joseph Msele, Court of Appeal, Civil Appeal No. 159 of 2020 (Unreported).**

In this present matter the plaintiff pleaded specific damage of USD 20,000 as loss of expected profit and income as a result of defendant's acts of failing to make the outstanding amount from the supply of SFK by the plaintiff to the defendant. There is no evidence brought to prove loss of expected profit and income instead the plaintiff testified on loss of Tshs. 166,000,000/= resulting from taking loan to pay the suppliers of raw materials, Mufindi Paper Mills. However, the plaintiff was unable to prove that he paid the invoice raised by Mufindi paper mills by using the loan that was obtained through a third party. He neither brought any document showing that he entered any agreement with that other party to process loan on his behalf, nor did he bring any evidence showing that the loan was obtained and used to pay the supplier's claim raised under exhibit PE8. It is evident therefore that, the amount of Tshs. 166,000,000 was not pleaded in the plaint and not proved before this court. The plaint shows the claim of

USD 20,000 as specific damage which was also not proved before this court. That being the case, this claim fail.

On the last issue for the reliefs parties are entitled, it is my settled mind that there was legal agreement as between the parties regarding the supply of SFK. Exhibit PE1 is clear that the parties agreed for the payment for each invoice within thirty days. As there is proof that the defendant was paying beyond the agreed period and even the tax invoices under exhibit PE4 are yet to be paid to date, it becomes obvious that the plaintiff suffered damage. This court in considering the circumstance of this case and in considering that the plaintiff was disturbed by the delay in payment leading to the slowdown of the production and later the close of the business, I find it reasonable to award general damage at the tune of Tshs. 10,000,000/=.

In the upshot, it is my conclusion that the defendant was unable to prove the counterclaim in the required standards in civil cases. The counterclaim by the defendant is therefore dismissed. For the plaintiff's case, the plaintiff was able to prove against the defendant the claim of USD 57,638.28 being the principal sum of unpaid tax invoices. The same is therefore awarded. The plaintiff is also awarded general damages at the tune of Tanzanian Shillings ten million (10,000,000/=), interest of 12% per

annum on the decretal sum from the date of default to the date of judgement and interest of 3% per annum on the decretal sum from the date of judgement to the date of payment in full. The defendant shall also pay for cost of the suit.

DATED at **ARUSHA** this 14th Day of December, 2021




D. C. KAMUZORA

JUDGE