

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

CIVIL CASE NO 17 OF 2021

BETWEEN

BYTRADE TANZANIA LIMITED.....PLAINTIFF

VERSUS

BAJWA FARMERS & TRADERS LIMITED.....DEFENDANT

DEFAULT JUDGMENT

9/6/2022 & 30/6/2022

N.R MWASEBA, J.

The plaintiff herein has instituted this case against the defendant over the breach of contract and prays for the following orders:

- i. Declaration orders that the defendant has breached the contract.
- ii. Payment of Tshs 218,596,000.00 as payment of seeds supplied by the plaintiff
- iii. Payment of Tshs 343,806,834.39 as accumulated interest from date of contract
- iv. Further payment of interest at court's rate from the date of judgment until date of payment in full

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- v. Payment of general damages and
- vi. Cost of this be borne by the defendant

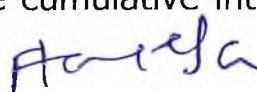
The brief facts of this case are summarised as follows: the plaintiff and the defendant entered into a contractual agreement whereby the plaintiff was to sell Hybrid seed maize variety Pioneer PHB3253, 30G19, P2859W, and P3812 to the defendant on consignment basis. Following the said agreement, the plaintiff on various dates supplied seeds to the defendant but the defendant defaulted to pay. The plaintiff's advocates and directors sent various letters and email to the defendant demanding payment and settlement of the debt. The defendant's advocates and directors have been admitting the debt and kept on giving empty promises. In their agreement they agreed to settle their dispute amicably or by arbitration save for payment issues.

In court the defendant was duly served but he neither entered appearance nor filed his written statement of defence. But Ibrahim E. Hemed and Ziad Bajwa come on diverse dates to notify the court that one of the directors is in India taking care of his sick mother. Ziad Bajwa introduced himself as a son of one of the directors of the defendant company who is a deceased. He informed the court that they wanted to settle the matter then he never came back in court. Thus, the plaintiff

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through the service of Mr Duncan Oola learned counsel was allowed to prove the suit exparte. Only one witness testified on his side.

The finance director of the plaintiff company one Farida Abbas Karimjee (PW1) testified in court that they entered a contract with the defendant company to purchase the plaintiff's seeds and sell them at Manyara. She tendered the certified copy of the said agreement and it was admitted as exhibit P1. She clarified that they agreed to supply the defendant with seeds during season so that the defendant sells it to farmers. The defendant was supposed to pay back immediately after selling the stock through the plaintiff's bank account which is stipulated in the contract. PW1 says at the end of season the defendant sold all the seeds but did not pay the plaintiff that's why they decided to sue him.

The principal sum that the defendant had to pay the plaintiff was 293,000,000/=. However, they have been paying and the outstanding balance is 218,596,000/=. She says their agreement with regard to interest is that if they default payment, they will have to pay 2% per month as specified in clause 15 of their sale agreement. She avers that up to the time she was instituting the case the cumulative interest was around 343,806,534/=. 

She claims that they wrote them a demand notice but they had been giving empty promises that they are disposing off their properties so that they settle the debt but in vain. The defendant replied to the demand note via email and the same was tendered in court as exhibit P2 in which they admitted that its company owes Bytrade Tanzania Limited.

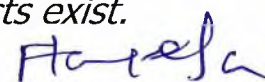
She prays before this court that the defendant pays them 500 million as a principal amount and accumulated interest up to July, 2021. She further prays that the costs of the case be paid by the defendant.

After having the evidence above the issue is whether the plaintiff has proved her case to the required standard.

It is a settled principle that in civil cases the onus of proof lies on plaintiff. However, the standard of proof is on the balance of probabilities. See **Section 110 of the Evidence Act**, Cap 6 R.E 2019.

The provision stipulates that:

"1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

The above principle was clarified by the Court of Appeal in the case of **Berelia Karangirangi Vs. Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 (CAT-unreported) at pg. 7 and 8, where the Court of Appeal had this to say:

*"... we think it is pertinent to state the principle governing proof of cases in civil suits. The general rule is that, he who alleges must prove. ...It is similarly that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on the balance of probabilities. See also the case **Godfrey Sayi Vs. Anna Siame Mary Mndoiwa**, Civil Appeal No. 114 of 2012 (unreported)."*

In discharging her duties, the plaintiff called one witness who tendered two exhibits to prove the alleged agreement between the plaintiff and the defendant. PW1 testified that they had agreement between them which the defendant failed to honour of selling the plaintiff's seeds since 2016. Her averments were supported by Exhibit P1 "Sales Agreement dated 5.9.2016". She added that on March 2020 they sent a demand notice to the defendant who reply via exhibit P2 which was an email sent to them by one of the directors of the Company that they are trying

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to dispose of their properties of the Companies so that they pay and clear all debts that the defendant company owe.

PW1 testified further that the said 500,000,000 they claim from the defendant includes Principal outstanding sum of Tshs. 218,596,000.00 and the interest at the rate of 2% according to article 15 of their Sale Agreement "exhibit P1" which is Tshs.343,806,834.39. She pleaded the court to enter judgment in plaintiff's favour as prayed in the plaint.

Thus, based on the evidence and exhibits adduced by the plaintiff this court is satisfied that the plaintiff did discharge her duty and the case was proved on the standard required by the law which is on the balance of probabilities.

Therefore, Judgment and decree is entered for the plaintiffs against the defendant since the claim under paragraph 11 of the plaint has been proved on the balance of probabilities. Following the breach of contract made by the defendant this court orders as follows:

- i) The defendant to pay the plaintiff Tshs. 218,596,000.00 as a payment for seeds supplied to him by the plaintiff.
- ii) The defendant to pay the plaintiff Tshs. 343,806,834.39 as accumulated interest from the date of contract.



iii) Payment of Tshs. 10,000,000/= as a general damage.

iv) Costs of the suit be borne by the defendant.

It is so ordered.

DATED at **ARUSHA** this 30th day of June, 2022.



N.R. Mwaseba
N.R. MWASEBA

JUDGE

30.06.2022