

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

**AT DAR ES SALAAM**

**CIVIL CASE NO. 178 OF 2018**

**DPI SIMBA LIMITED.....PLAINTIFF**

**VERSUS**

**EXCESS CONSTRUCTIONS COMPANY LIMITED.....1<sup>ST</sup> DEFENDANT**

**ERICK RICHARD SUMA.....2<sup>ND</sup> DEFENDANT**

**RICHARD SUMA.....3<sup>RD</sup> DEFENDANT**

**RULING.**

**MRUMA,J.**

The plaintiff DPI Simba Limited instituted a suit against three defendants namely Excess Construction Company Limited, Erick Richard Suma and Richard Suma being the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants in that order claiming against them jointly and severally for payment of Tshs 289,339,470.00, plus interest at the rate of 2% per month as at 31<sup>st</sup> August 2018 to the tune of Tshs198,168 ,810.10 being outstanding debt on the goods (UPVC and HDPE pipes) supplied as per agreement.

The plaintiff also claimed further interest over the decretal sum at the bank rate of 24% from 22<sup>nd</sup> December 2016 to the date of judgment,

interest at court's rate of 12% from the date of judgment to the date of final payment, general damages and costs of the suit.

When the case came for hearing of defence case on 21.4.2022 court was informed that the third Defendant. Richard Suma had passed away on 5.1.2021 and no legal representative had been joined as a party in these proceedings. Court made an order to the effect that case against the third Defendant had abated.

On 25.4.2022 counsel for the Defendants informed the court that his clients were admitting the principle sum of Tshs 289,338,470.41 but they dispute the interest. Court entered judgment on admission and directed counsel for the parties to address it on the issue of interest. On that issue the court was addressed by way of written submissions. Submitting in support of the claims of interest, counsel for the plaintiff submitted that his clients are claiming interests because in the process of producing the pipes for huge projects like the one that the first Defendant was dealing with, they had to secure loans from National Bank of Commerce to facilitate production, therefore the interest claimed will assist to offset the interest chargeable by the bank. The learned counsel submitted further that the agreement between the parties had nothing to do with the agreement between the claim that 1<sup>st</sup> Defendant and RUWASA

therefore the Defendants' cannot be heard saying that the plaintiff should waive the agreed interest because of RUWASA's delay in paying them.

It is the contention of the counsel that; that such argument of the counsel the Defendant should not be allowed as they may open Pandora box.

In reply counsel for the Defendants contended that the defendants failure to pay for the goods supplied and honour the debt which resulted to the interest claimed was caused by the 1<sup>st</sup> Defendant's client RUWASA who was supposed to pay after first defendant had raised certificate for payment and upon completion of project. Accordingly the learned Counsel submitted that court should waive the interest for that reason.

I have carefully considered the pleadings together with their annexures, the submissions of the parties and the law particularly section 29 of the Civil Procedure Code [cap 33 R.E. 2019]; Section 29 of the Civil Procedure Code provides that;

*"The Chief justice may make rules prescribing the rate of interest which be carried by judgment debts, and without prejudice to the power of the court to order interest to be paid upon to date of judgment at such rates as it*

*may deem reasonable, every judgment debt shall carry interest at the rate prescribed from the date of the delivery of the judgment until the same shall be satisfied."*

I am not aware of any rules made by the Chief Justice prescribing interest payable. Generally interest is the money paid regularly at a particular rate for the use of the money lent or for delaying the repayment of debt. In the present case the provision to clause 3 of the parties agreement provides that;

*"..... the tax invoice will be raised upon the purchaser being paid by the client. However if payment from the client is withheld for any reason relating to the performance of the works, the seller will nonetheless be entitled to payment under this agreement, and in any case not later than ninety (90) days from the date of delivery of the pips. Any delay, after clasped of the period will attract interest of 20% per annum accruing daily on the outstanding amount."*

From the above quoted clause, payment of interest was agreed by the parties and the agreed interest rate was agreed by the parties and the agreed interest rate was 20% per annum. The duty of the court is to enforce parties' agreements which are legal.

In the case at hand parties had agreed that any delay after elapse of the period will attract interest at the rate of 20% per annum. I therefore find and hold that the plaintiff is entitled to 20% interest per annum on the decretal sum chargeable from the date of filing the suit to the date of judgment. The plaintiff is also entitled to further interest at court's rate of 7% per annum from the date of judgment to the date of full payment of the decretal sum.

  
**A.R.MRUMA**

**JUDGE**

**22/8/2022**

**22/8/2022**

Coram: Hon. A.R. Mruma,J

For the Plaintiff: Ms. Said Nyawambura

For the 1<sup>st</sup> Defendant


For the 2<sup>nd</sup> Defendant

For the 3<sup>rd</sup> Defendant

Mr. Flavian A. John for all Defendants

Cc: Delphina

Court: Ruling delivered.

  
**A.R.MRUMA**

**JUDGE**

**22/8/2022**