

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE SUB-REGISTRY OF MWANZA)

AT MWANZA

CIVIL CASE NO. 26 OF 2021

HAMISI MAGANGA KILONGOZI..... PLAINTIFF

VERSUS

BAHATI MOSHI MASABILE

T/A NDOÑO FILLING STATION..... DEFENDANT

SUMMARY JUDGMENT

24th & 31st October, 2022

Kahyoza, J.:

The plaintiff herein instituted a suit by way of summary procedure under Order XXXV of the Civil Procedure Code, [Cap. 33 R.E 2019] (the CPC). On his part, the defendant applied for leave to defend but I dismissed the application for there was no triable issue for consideration.

The plaintiff in the plaint had seven prayers, to wit:

- a. A declaration that the defendant breached fundamental condition of the agreement to pay debt;
- b. Payment of special damages to the tune of TSHS. 388,428,931/= being the debt balance;
- c. Interest at commercial rate of 23% on (sic) the decretal sum from the contractual date up to the date of full payment;

- d. Further interest on (b) above at the court's rate per annum from the date of judgement up to the date of full settlement thereof;
- e. Payment of general damages to be assessed by the court;
- f. Costs of the suit be provided for; and
- g. Any other relief at the whim of the court.

Consciously that this is a summary suit and the leave to defend was not granted, I was enjoined to grant the relief sought in the plaint without the plaintiff adducing any evidence. However, I ordered evidence by way of affidavit to prove the suit be filed. The evidence of Hamis Maganga Kilongozi (**Pw1**) and Mary Merichiory (**PW2**) was accordingly filed.

The evidence of the plaintiff, albeit shortly, was that, as per oral agreement between the parties, the plaintiff supplied fuel to the defendant's fuel filling stations at Rumasa-Katoro and Bwanga in Chato District on credit. Upon their dealings, the debt of the defendant accumulated to Tzs. 474,428,931/=. They entered to a written contract on 23/9/2019 whereby the outstanding debt was to be paid in two instalments. On that undertaking, the defendant drew two post-dated cheques, No. 237044 of Tzs. 120,000,000/= payable on 23rd December, 2019 and no. 237045 of Tzs 354,428,931/= payable on 23rd September 2020.

Later, the defendant by three instalments paid only a total of Tzs. 86,000,000/= through the plaintiff's CRDB bank account No. 0152301198100. Upon assurance and request by the defendant, the plaintiff presented the said cheques to the bank for payment on 16/6/2022 and 16/11/2020 respectively. The Bank endorsed on both cheques 'refer to drawer' for the defendant's account had no sufficient funds to effect payment. Several demands proved failure, therefore, the plaintiff opted to institute this case.

From the evidence of the plaintiff, it was proved that the suit falls under Order XXXV rule 1 (a) of the CPC. The court remained only with one issue to decide that is to what relief is the plaintiff.

What reliefs are the plaintiff entitle to?

It is settled that reliefs prayed for in a summary suit must be reliefs available under summary procedure as decided in **Paul Massawe and two Others vs. Access Bank Tanzania Limited, Civil Appeal No. 39 of 2014 (Unreported)** where the Court of Appeal quoted the script at page 3311 of Mulla, the Code of Civil Procedure, thus,

"The reliefs prayed for in a summary suit must be reliefs available under summary procedure, that is based on a written agreement or

a negotiable instrument or as otherwise provided by O. 37 of the court of civil procedure (equivalent to our order XXXV)."

The CPC, Order XXXV rule 2 (2) (a) provides for the following reliefs under summary procedure-

(2) ... plaintiff shall be entitled-

*(a) where the suit is a suit, referred to in paragraph (a), (b) or (d) of rule 1 or a suit for the recovery of money under a mortgage and no other relief in respect of such mortgage is claimed, **to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith**" (emphasis added)*

Guided by the above authorities, I conclude that, the plaintiff is entitled specific damages to the tune of Tzs. 388,428,931/= being the debt balance and which the defendant acknowledged. The plaintiff is not entitled to the interest at commercial rate of 23% from the contractual date up to the date of full payment as prayed under paragraph (c) of the plaint. He is only entitled to court interest at the rate of 12% per annum under Order XX, rule 21 (1) of the CPC, from the date of delivery of the judgment until satisfaction.

This being a summary suit, I find no good reason for granting general damages to the plaintiff.

In the upshot, this Court grants the plaintiff the following reliefs;

- a. The defendant is ordered to pay the plaintiff specific damages to the tune of Tzs. 388,428,931/= being the debt balance;
- b. The plaintiff be paid interest of 12% per annum of (b) above from the date of delivery of this judgment until satisfaction thereof; and
- c. Costs of the suit be borne by the defendant.

It is so ordered.

Dated at Mwanza, this 31st day of October, 2022.



J.R. Kahyoza

Judge