

IN THE HIGH COURT OF TANZANIA

MTWARA DISTRICT REGISTRY

AT MTWARA

CIVIL CASE NO 5 OF 2021

EXPORT TRADING COMPANY..... PLAINTIFF

VERSUS

TANDAHIMBA NEWALA COOPERATIVE UNION LTD.....1ST DEFENDANT

TANDAHIMBA QUALITY CONTROL SYSTEM LTD.....2ND DEFENDANT

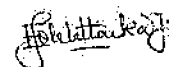
JUDGEMENT

18/8/2022 & 15/12/2022

LALTAIKA, J.

The plaintiff in this case is a Private Company established under the laws of Tanzania for the purpose of trading in commodities such as grains that include maize and wheat, pulses including pigeon peas. According to the plaint, the plaintiff also deals offers oilseeds such as soybeans and sesame, edible nuts and spices including cashewnuts and groundnuts, sugar, coffee, tea, fertilizer, and rice to mention but a few.

The plaintiff has instituted this case praying for Judgement and Decree against the defendants as follows:



- (i) *An order of payment of TZS 532,164,563/= (Say Tanzanian Shillings Five Hundred Thirty-Two Million One Hundred Sixty-Four Thousand Five Hundred and Sixty-Three only) being amount resulting from failure to deliver 332,843 kilograms of cashewnuts to the Plaintiff as per Mis-delivery claim Forms*
- (ii) *Interest thereof on (i) above at bank commercial rate of 21% per annum from June 2015 to the date of full recovery*
- (iii) *An order of payment of general damages as may be assessed by this court.*
- (iv) *Interests thereof at bank commercial rate of 21% per annum from the date of institution to the date of full payment*
- (v) *Costs of the suit*
- (vi) *Any other relief(s) and orders that this court may deem just to grant.*

Facts leading to this case may be summarized as follows: In the 2014/2015 crop harvesting season, the plaintiff was the successful bidder as a buyer of raw cashewnuts from the first defendant Tandahimba Newala Cooperative Union commonly referred to by its popular acronym TANECU, a cooperative union. As business arrangements for most cash crops in Tanzania dictate, TANECU collected the cashewnuts from Agriculture and Marketing Cooperatives (AMCOS) who, being closer to the farmers than TANECU had collected the same from individual farmers. The second defendant TANDAHIMBA QUALITY CONTROL SYSTEM LTD, on the other hand, was charged with storage of the cashewnuts and issuance of the same to the successful bidder upon production of proof of payment of the amount agreed upon with the first defendant.

In that season, the plaintiff allegedly bought a total of 18,054,168 kilograms of raw cashewnuts from the first defendant for TZS 30,083,150,218/=. Having paid the stated amount to the first defendant, the plaintiff asserted, he was instructed to collect the cashewnuts from the

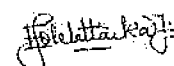
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second defendant. The plaintiff, however, could only collect 10,901,521 kgs valued at **TZS 18,407,201,257**. The rest of the cashewnuts that is **332,843 kilograms** valued at **TZS 532,164,563/=** was missing from the warehouse of the second defendant. Mis-delivery forms were filled thereafter several attempts were made to resolve the matter but in vain hence this suit.

Representation by counsel throughout the case was as follows: Mr. Hussein Mtembwa Learned Advocate (**HM Noble Attorneys, Mtwara**) appeared for the plaintiff. Mr. Robert K. Dadaya (**RD Law Chambers, Mtwara**) and Mr. Nehemia Gabo (**NEBO & Co. Advocates Dar es Salaam**), Learned Advocates represented the First and Second defendants respectively. I take this opportunity to register my appreciation to the Learned Advocates for their dedication and commitment. During the final Pre-Trial Conference (PTC) shortly before commencement of the hearing, the following issues were jointly agreed by the learned counsel and the court.

- (i) *Whether the Plaintiff was entitled to 332,843 kilograms of cashewnuts valued at TZS 532,164,563 from the 1st and 2nd Defendants*
- (ii) *If so, who is liable between the 1st and 2nd defendant?*
- (iii) *To what relief(s) are the parties entitled to*

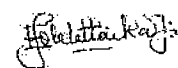
Pursuant to the principle obtained in our jurisdiction that **he who alleges must prove** (See **section 110 of the Evidence Act** Cap 6 R.E. 2019, as articulated by the Court of Appeal of Tanzania in **Berelia Karangirangi vs. Asteria Nyalambwa** Civil Appeal No 237 of 2017 (unreported) the ball was on the court of the plaintiff to prove existence of the facts alleged to enable this court to give verdict as prayed. In line with



the above, the plaintiff paraded one witness and tendered one exhibit. The plaintiff's case is summarized below.

PW1 was Ahmedi Omari Hassani a 49-year-old Logistics Officer of the Plaintiff. He testified on oath starting with his role in the company thus, whenever the company had purchased a consignment either through auction or directly from the farmers, to collect such a consignment on behalf of the company (meaning the plaintiff). It was PW1's testimony further that in the 2014/2015 cashewnuts season in Newala- Tandahimba area, his company bought "a lot of kilograms" of cashewnuts from the first defendant. PW1 prayed to read the figures because he could not recall the many digits. The prayer was granted. PW1 read from a piece of paper a total of **18,054,168 kilograms for** TZS 30,083,150,218. PW1 went on to testify that among these cashewnuts, his company **collected only 10,901,521 kilograms valued at 18,407,201,257** from the second defendant (the witness referred to the second defendant simply as "Tandahimba Quality").

Upon realizing that kgs 332,843 valued at TZS 532,164,563 were missing, PW1 asserted, his company made an inquiry, but no clear answer was obtained. It was PW1's testimony that a committee was established to find out why his company was not provided with the consignment paid for. The committee lasted for four to six months and concluded that indeed the consignment was not there. Consequently, Form Number 7 was filled jointly signifying consensus on what was missing as shown below:



Form Number	Amount in Kilograms	Value in TZS	Date Issued
Form NO1	115,823 Kg	TZS 180, 104,765	8th June 2015
FORM2	70698 KG	TZS 109,935,390	8th June 2015
FORM3	30499 Kg	TZS 47425945	12 June 2015.
FORM4	115823kg	TZS 194698463	13/6/2015.
		TOTAL 332843 KG	TZS 532164563

PW1 prayed that the Forms be admitted as part of the evidence of the plaintiff's case. There being no objection from either of the defendant counsel, **FORM NO 7 Mis-delivery Claim FORM were admitted and collectively marked as Exhibit P1.** Thereafter, PW1 testified further that the existence of the forms signified the end of the controversy on availability of the consignment or otherwise. He emphasized that in normal business practices, Form No 7 is not easily issued since as a buyer, upon being issued with the Forms, one would rest assured that they had proof of mis delivery as the form is filled jointly and is supposed to be binding. In conclusion, PW1 reiterated the prayers of the plaintiff for compensation of the uncollected cashewnuts 332843 kg valued at TZS 532164563 and general damages at the tune of TZS 200 million.

On cross examination by counsel for the first defendant, PW1 stated that it was a legal requirement that FORM No 7 must be accompanied by warehouse receipts. He stated further that the warehouse officials could not

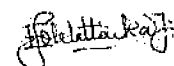
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fill in FORM7 without being provided with warehouse receipts, hence all forms he had tendered contained the number of warehouse receipts. Upon being further cross-examined, PW1 stated that the space available was insufficient to record the number of warehouse receipts.

In that season, stated PW1 further in cross-examination, the buyer was supposed to take out the consignment within 14 days of the receipt of the sales invoice. Upon expiration of the 40 days, one would have been considered to have failed to collect the goods. PW1 stated that the knowledge on existence or otherwise of the cashewnuts lied with the warehouses and that the board was merely the regulator of the warehouses. The board was responsible to ensure that one who didn't get the consignment is paid. In the matter at hand, PW1 stated, TANECU was "the boss" because he was the one who owned the property. He insisted that the filing of Form7 was equal to agreement or acceptance of the debt.

On cross examination by counsel for the second defendant, PW1 maintained that the plaintiff had submitted the invoice, release warrant and warehouse receipt to the second defendant in the 2014/2015 cashewnuts season. PW1 admitted that the plaintiff was supposed to fill in FORM7 and return it to the board within 30 days but the same was filled five (5) months later.

On reexamination, PW1 clarified that the first defendant was dragged to court because the plaintiff is convinced that he is the one who received the payment thus the owner of the property and the one who sold the same to the plaintiff. PW1 insisted that the plaintiff received all the information from TANECU's catalogue, the auction was called on by TANECU and who supervised/administered it and declared the plaintiff winners of the bid. As



far as storage fees to the second defendant were concerned, PW1 stated, he was aware that the same had been fully paid. Pursuant to the prayer by counsel for the plaintiff, the plaintiff's case was marked closed. Upon commencement of the defense case, learned counsels for the defense announced that they all had one witness each.

DW1 was Mohamed Nassoro Mwingu, 43-year-old Resident of Newala who testified on oath introducing himself as the General Manager (GM) of TANECU Limited (the first defendant) since 2016 having also worked as the Chief Accountant of the first defendant since October 2008. It was DW1's testimony that in the 2014/2015 cashewnut season TANECU issued a sales invoice to the plaintiff (referring to it simply as Export Trading) who confirmed that he had made the payments as per the invoice. Nothing happened thereafter on the part of the first defendant, stated DW1, emphasizing that he had no memory of any communication between the plaintiff and his institution, namely TANECU.

DW1 stated further that he was unaware of any records on a committee that investigated absence of a consignment in the warehouse. All that he could remember, DW1 averred, was that in October 2019 his institution received a copy of a Demand Notice from the [plaintiff] Export Trading Company and the same was on compensation for mis-delivery of cashewnuts stored in Tandahimba under a warehouse under Tandahimba Quality.

Having received such a Demand Notice, DW1 recalled, he wrote to the **Warehouse Receipts Regulatory Board** seeking for explanation on the demand notice he had received to which the board replied that the demands of Export Trading "did not qualify" [for consideration] because Export

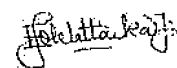


Trading did not follow the procedure available for dealing with mis delivery. Such failure, averred DW1, was inability to fill in Form No 7 within thirty days of the auction and receiving the sales invoice.

DW1 recalled further that the auction took place on 9/1/2015 meaning the 30 days' deadline had lapsed on 9/2/2015. He emphasized that the buyer was supposed to collect the raw cashewnuts within 14 days from the date of receipt of the sales invoice as per the procedure provided by the **Raw Cashewnuts Sales Guidelines No 5 of 2014/2014 issued by the Warehouse Regulatory Receipt Board** adding that such guidelines had a legal force. The witness prayed to tender the letter as an exhibit. After a few legal exchanges, the court ruled in favour of admissibility. *The letter TANEUCU/ TWLB/Vol. IV/09 dated 10/10/2019 addressed to Mkurugenzi Mkuu Bodi ya Usimamizi wa Stakabadhi za Ghala S.L. P. 38093 Dar es Salaam* was admitted as an **Exhibit D1**

It was DW's averment that the demands of the plaintiff were not genuine because the first defendant was not a custodian of the consignment of the mis-delivered goods and also that the regulator had stated categorically in the letter that the demands were not legal. DW1 emphasized that the board had indicated that Export Trading contravened the procedure firstly, for failure to fill in Form No 7 within 30 days and secondly, for failure to collect the goods 14 days after receipt of the invoice.

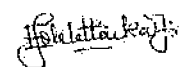
DW1 testified that in case the court accepts the plaintiff's demands, the responsible entity should be the Warehouse Operator namely **Tandahimba Quality** (second defendant) because he was the one who was charged with storing the raw cashewnuts and deliver them to the buyer in the quality and quantity received. DW1 averred that nowhere in the



directives could it be inferred that TANECU was responsible for refunding the buyer reiterating that the warehouse operator was responsible for compensation. He prayed that the first defendant is excluded from liability over a transaction involving the plaintiff and the second defendant.

On cross examination by counsel for the plaintiff, DW1 conceded that it was TANECU that prepared catalogues and sent them out to the licensed buyers. He added that during the 2014/2015 cashewnuts season, Export Trading [plaintiff] had bid, was the successful bidder and was issued with the invoice, paid for the same and was given the warehouse receipts and warrant. On further cross examination, DW1 recalled that in 2019 he received demand notice from the plaintiff demanding compensation for mis-delivery from a warehouse in Tandahimba. Upon receipt of such a letter, DW1 stated, he wrote to the board accordingly and the board replied that the demands were baseless. DW1 conceded that he never asked the Warehouse Board what they thought about this court case.

On cross-examination by counsel for the second respondent, DW1 stated that he was unaware of who was supposed to kickstart the process for filling in Form 7. However, he conceded that the purpose of the form was to confirm that there was mis-delivery but quickly added that the warehouse operator was best suited than him, to answer issues related to Form No 7. He emphasized that he was told by the warehouse board that the demands of plaintiff were not genuine for failure to fill in FORM NO 7 on time. There being no re-examination by counsel for the first defendant who asserted that his witness had not been shaken, the defense case on the side of the 1st defendant was marked closed.

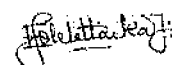


DW2 was Juma Salum Mkata, a 61-year-old resident of Tandahimba. DW2 took oath and introduced himself as the Executive Director of Tandahimba Quality Control Systems Ltd a company established in 2012/2013 and fully registered with the Business Registration and Licensing Agency (BRELA) with its headquarters in Tandahimba. DW2 testified that in the 2014/15 cashewnuts harvesting season, while trading as **Tandahimba Quality Systems** he received raw cashewnuts from different cooperative societies totaling some **32,000 tones**.

The procedure for receiving raw cashewnuts in the warehouse, DW2 stated, was that the cooperative societies would bring their stocks through trucks (automobiles commonly used in the crop transportation business). Once the truck was in the warehouse, it would be weighed, and the quality of the consignment or load (in this case cashewnuts) tested using laboratory equipment located in the warehouse.

Having determined the quality of the cashewnuts, DW2 went on sharing his vast knowledge of the business, the same are accepted and the truck would proceed to the weighing machine. The weight of the truck with the load would be taken first then the empty truck would also go through the weighing machine to calculate the weight of the consignment more accurately. DW2 explained that the next step would then be issuance of a warehouse receipt to the representative of the cooperative society. Warehouse receipts, DW2 remarked, were obtained from the Warehouse Board, and contained information on the quality and weight in kilograms of the cashews.

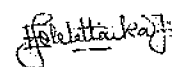
Having explained the business process with some painstaking details, DW2 asserted that claims by Export Trading [the plaintiff] were not true



because, their claims were supposed to be accompanied with original copies of the warehouse receipts and release warrant. DW2, a senior citizen whose lawyer had alerted the court that he had health challenges and could only testify for a given time before taking a break shared his part of the story as summarized below.

When the plaintiff went to his warehouse, he (DW2 speaking on behalf of the second defendant) fulfilled his obligation by giving them their consignment. Upon receipt of the information that Export Trading (the plaintiff) had tendered Form NO 7 to the warehouse board, DW2 instructed his lawyer to make a follow-up. The lawyer wrote a letter to the board. The board replied to the Advocate's letter stating that the claims by **Export Trading** were time barred and therefore could not be acted upon. For the Form 7 to be legitimate, DW2 asserted it must be accompanied by a warehouse receipt and release an original copy of the warrant to prove the claim. The warehouse receipt proves the legitimacy of the claim. If a FORM NO 7 is submitted without such documents, DW2 reasoned, it means the buyer had collected his cashewnuts. DW2 asserted that he received the reply from the Board in the form of a letter. The Letter with Ref. CB.59/294/116/03/87 dated 13th June 2022 from the Warehouse Receipts Regulatory Board (WRRB) addressed to the Managing Partner, NEBO, and Co. Advocates, Garage Street House No 37, P.O. BOX 54821 Dar es Salaam **was admitted as Exhibit D2.**

DW2 went on to testify that the assessment of the warehouse board indicated that his company was required to pay more than TZS 170,000,000 to different companies that had complained of receiving less kilograms of



to Meneja Mkuu Tandahimba Quality Control System Ltd. S.L.P. 93
Tandahimba was **admitted as Exhibit D6.**

DW2 prayed that claims by the Plaintiff Export Trading be dismissed as they were not genuine. He also prayed for costs of the case to be borne by the Plaintiff. On cross-examination, DW2 reiterated that AMCOS used to bring raw cashewnuts to his warehouse using track lorries but not necessarily their own tracks. He admitted that his warehouse would then wait for TANECU to market and sell the raw cashewnuts. On further cross-examination, DW2 stated that Form No7 was jointly filled by the buyer and warehouse operator whenever the two had agreed that the warehouse had not supplied the cashewnuts as required. The form would be signed and stamped by both parties and supported with original receipts.

DW2 distanced himself from having ever come across purported Form 7 tendered by the Plaintiff (Exhibit P1 collective) saying the same had never been a part of the documents from this court that were brought to his attention.

On further cross-examination, DW conceded that he knew Simon Nkana and Abdulkarim Swalehe Masudi who were his Manager and Assistant Manager respectively but strongly denied ever been aware that the dual had signed any document on behalf of his company Tandahimba Quality. He insisted that although the pair was his staff, they had limitations on what they could do. For example, DW2 stated they could not sign any document or write anything without his consent, and he never left the stamp for them. Having denied so many things, DW2 concluded by asserting that he had.




come to court to testify for Tandahimba Quality Control System Ltd his company and not otherwise. That marked the closure of the defense case pertaining to the second defendant.

Appreciably, pursuant to the order of this court dated 18th day of August 2022, counsel discharged their obligations for final written submissions as scheduled. Needless to say, such submissions were highly insightful and have greatly added value to this judgement.

Having recorded both the plaintiff and the defendant's version of the story with the highest possible precision, it is now upon me to consider, evaluate and analyze both oral and documentary evidence adduced and arrive to a reasoned decision in the light of the principles of law, relevant statutes, and case law. I will confine my analysis to the three issues raised and agreed upon by both parties. It is noteworthy that parties agree that they have a business relationship with one another. It is common ground that they, at some point, interacted in a business environment. Consequently, the analysis herein will be inclined to established principles and best practices in business relations. The most relevant statutes are, in no particular order, the Law of Contract Act Cap 345 RE 2020, the Warehouse Receipt Act No 10 of 2005, The Evidence Act Cap 6 RE 2022 to mention but a few. Case law at the disposal of this court for consideration includes those cited by learned Advocates in their final submissions.

The first issue for our determination is whether the plaintiff is entitled to 332,843 kilograms of cashewnuts valued at 532,164,563 from the first and second defendants.

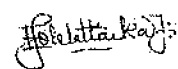
As alluded to, parties herein operate in the business world. From the mercantile era to the present, business relationships are maintained based



on trust. In a business environment players are supposed to say what they mean and mean what they say. The common law principles of contract law which later on found their way into statutory provisions including Tanzania's Law of Contract Act (supra) are meant to enforce such an atmosphere characterized with mutual trust. In the instant case PW1 testified that the Plaintiff won the bid and was selected as a buyer of raw cashewnuts in the 2014/2015 cashewnuts season.

PW1 testified that a total of Tanzanian Shillings 30,083,154,218 was paid by the plaintiff as per copies of invoices attached to the plaint and marked ETCL-1. Neither the first nor the second defendant disputed this claim. As a matter of fact, Mr. Mohamed Nassoro Mwingu, General Manager for TANECU (DW1) confirmed that TANECU issued a sales invoice to the plaintiff who confirmed that he had made the payments as per the invoice. The Director of the second defendant, likewise, although his testimony can be characterized as blowing warm and cold rather haphazardly, is in agreement that the plaintiff was his customer and that he discharged his obligation of serving him (the plaintiff).

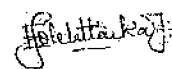
The journey got tougher though, on the side of the plaintiff as he embarked on the exercise to prove that the 332,843 of raw cashewnut valued at TZS 532164563 remains uncollected from the defendants. PW1 led by Counsel for the Plaintiff Mr. Mtembwa prayed to tender four (4) Mis-delivery claim Forms (Commonly referred to as Form No7). Hell was let loose as soon as the forms were admitted collectively as Exhibit P1. PW1 stated that it was not easy to have the forms filled. Nevertheless, the forms were jointly filled in and appears to be the plaintiff's silver bullet. During cross examination and also in his final submission, Mr. Dadaya, Advocate for the



first defendant, strongly opposed the validity of Exhibit P1 for failure by the plaintiff, to attach Warehouse receipts. On further cross examination, PW1 clarified that the space available in the forms was too small to fill in the numerous digits that make warehouse receipt numbers.

The second defendant was even more critical of the evidentiary value of P1. DW2 the General Manager of the 2nd Plaintiff (the 62-years-old *Mzee* Mkata) tendered a letter from the **Warehouse Receipts Regulatory Board** dated 13th June 2022 (Exhibit D2) allegedly denying validity of P1 collectively because the claims "were time barred". This court took keen interest in Exhibit D2 as a part and parcel of its duty to consider, evaluate and analyze the evidence of both parties. The Warehouse Receipts Regulatory Board (herein after WRRB) is a government agency under the Ministry of Investment, Industry and Trade. Exhibit D2 signed by one Sura Ngatuni (Acting Managing Director) intrudingly provides in part that "...in the event of a mis-delivery at the warehouse the warehouse operator and the buyer are required to fill in form n.7 and submit the same to the Board for verification and approval...we acknowledge the forms attached with your letter were submitted to us for verification by Export Trading Company Limited. However, the Board declined to approve the said forms for being submitted out of the prescribed time."

As much as the above opinion of the Acting Director does not in any way affect the evidential value of Exhibit P2 there is probably something to learn from the same. Regulatory bodies such as the WRRD need to know that enabling our country to climb a few more steps in the "ease of doing business index" requires collective efforts. Doing away with unnecessary bureaucracy is a continuous process for governments worldwide. Blatant




dismissal of genuine claims while fully aware that in practice it takes a "fight" to get form no 7 filled in the first place does not sound, in my opinion, business friendly. The WRRB should strive to promote out of court settlement and build a culture of win-win among business players.

As a general rule, parties to a commercial transaction are entitled to the goods and services they paid for. In the premise I hold that the Plaintiff is entitled to 332,843 kilograms of raw cashewnuts valued at TZs 532,164,563.

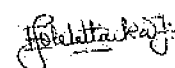
As the first issue has been replied in the affirmative, the second issue who is liable between the first and second respondent? In his final submission, counsel for the plaintiff Mr. Mtembwa insists that both the first and second respondents are responsible for compensation. He explained that the dual worked together to attract the plaintiff to what would occasion him a loss. Mr. Mtembwa was categorical that the contract was initiated by the first respondent who had issued catalogues. To support his argument, Mr. Mtembwa made reference to the holding of this court in **River Valley Food (T) Ltd V. TANECU**, Commercial Case No 6 of 2009, High Court of Tanzania (Commercial Division) at Dar es Salaam where His Lordship Mruma J. held, inter alia *"By issuing sale catalogue the defendant [TANECU] intended to be bound by it as soon as it was accepted by the Plaintiff or whoever."*

Counsel for the first defendant Mr. Dadaya, on his part, as if he had predicted that the first issue would be decided in the affirmative, strongly distanced his client from any liability. In the exact words of Mr. Dadaya "Your Lorship, we humbly submit that should this Court find the Plaintiff incurred loss due to miss-delivery; the same should be borne by the 2nd Defendant because she was the one licensed to keep the cashew nuts the subject of this suit." The Learned Counsel went on to cite Section 50(1) of the



in improving the business environment in Tanzania, I think cooperative societies have an equally vital role. It should be wired deep in the mind of every cooperative society leader that the fast-moving business environment we are in requires proactivity and problem solving rather than escapism. No cooperative society leader should think that somehow the government or someone else will chip in to remedy the losses occasioned either directly or otherwise. In the case of **River Valley Food (T) Limited v. TANECU (supra)** only the cooperative union was sued. I agree with Mr. Mtembwa that both the first and second respondents are, "in for it". The second issue is therefore answered in the affirmative.

This brings me to the third and last issue, namely to what relief(s) are the parties entitled to. I am not going to spend much time here. It is already clear from the discussion above which of the parties is entitled to a relief. Nevertheless, in the spirit of encouraging improvement of the business environment alluded to above, I am inclined to provide, albeit in passing, that the cashew nuts sub sector is one of the most precious resources and the backbone of the economy of Mtwara and southern Tanzania in general. The role of law in building a transparent, competitive, and law-abiding marketplace cannot be overemphasized. The entire supply chain, including, most importantly, the farmers, stand to benefit if courts of law play an active role in maintaining sound business practices through both proscriptive and prescriptive measures. The law must inspire confidence among players in the market including small and medium size enterprises (SME's) and the private sector in general to cast their nets wider to ensure a reliable market in and outside the country. This Court had the following to say on the importance of the private sector in **PRUDENCE ALIBALIO KATANGWA**



Vs. EQUITY BANK TANZANIA LTD CIVIL APPEAL NO. 226 OF 2019 HCT,
Dar es Salaam (Unreported)

The... private sector, often referred to as the engine of the economy of this country... has been praised for the role it plays in employment creation and diffusion of technology, innovation, and entrepreneurship in our country. Members of the private sector...struggle a big deal to keep their business (often small to medium sized) running. In so doing, they provide employment to our young people while paying taxes. I am not an economist, but I believe that inability to protect our small and medium sized businesses and the private sector in general is tantamount to shooting oneself in the leg.

In the context of the above preambular account, I divide the reliefs into two: costs and damages. I subdivide the latter into two further categories namely specific damages and general damages. The plaintiff is entitled to and hereby awarded costs for this suit as per the settled principle of law in our jurisdiction that costs follow the event (See **Mohamed Salmini v. Jumanne Omary Mapesa** Civil Appeal No 4 of 2014 CAT Dodoma (unreported). I do not entertain any doubt that the plaintiff is entitled to and is hereby awarded **TZS 532,164,563/= (Say Tanzanian Shillings Five Hundred Thirty-Two Million One Hundred Sixty-Four Thousand Five Hundred and Sixty-Three only)** being amount resulting from failure by the first and second respondents to deliver 332,843 kilograms of cashewnuts as discussed at length in this judgement. The same should be paid with interest at bank commercial rate of 21% per annum from June 2015 to the date of full recovery. It is also obvious to me that the plaintiff's business has suffered as a result of the loss occasioned by the defendants. Liability in taxes, staff salaries and other utilities did not stop because the defendants had failed to deliver a part of the consignment he paid for. My assessment



of the general damages for this purpose stands at **TZS 150,000,000/-** The 21% interest rate will not apply to the general damages awarded.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**JUDGE
15.12.2022**

Court:

Judgement delivered this 15th day of December 2022 in the presence of Adv. Rose Ndemereje for Counsel for the Plaintiff, Mr. Robert Dadaya Counsel for the first Respondent and holding brief for Mr. Nehemia Gabo, Counsel for the second defendant.



E.I. LALTAIKA

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**JUDGE
15.12.2022**

Court

The Right to appeal to the Court of Appeal of Tanzania fully explained.



E.I. LALTAIKA

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**JUDGE
15.12.2022**

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