

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF DAR-ES-SALAAM

AT DAR-ES-SALAAM

CIVIL CASE NO 157 OF 2019

BETWEEN

USANGU LOGISTICS TANZANIA PLAINTIFF

VERSUS

TANZANIA FERTILIZER COMPANY LTD DEFENDANT

RULING

MRUMA J

In civil case No 157 of 2019, the Plaintiff herein instituted a suit claiming for among other reliefs, general and special damages against the Defendant. On 16th June, 2022 when this matter came for hearing the Defendant admitted the Plaintiff's claim as far as the principal sum of TZS 337,109,950.00= / was concerned. The court without ado proceeded to enter judgment on admission as per rule 14 Order XII of the Civil Procedure Code. The Plaintiff disputed interest claimed

therefore court invited parties to address it on the interest claimed by way of written submissions.

Parties were represented in these proceedings. The Plaintiffs were represented by Mr Eric Kamala learned advocate while Defendants was represented by Mr. Stanley Mahenge learned State Attorney.

Counsel for the Plaintiff contended that following the defendants admissions, Plaintiffs were entitled to costs and interest under the provisions of section 29 and Order XX rule 21 (1) of the Civil Procedure Code. Section 29 of the Civil Procedure Code provides as follows:-

The Chief Justice may make rules prescribing the rate of interest which shall 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.

And under Order XX rule 21(1) of the same code the law says:-

The rate of interest on every judgment debt from the date of delivery of the judgment

until satisfaction shall be seven per centum per annum or such other rate, not exceeding twelve per centum per annum, as the parties may expressly agree in writing before or after the delivery of the judgment or as may be adjudged by consent

Plaintiff's counsel argues that the above cited provisions give courts discretion to award interest which should be carried by judgement debts from date of delivery of judgement and hence their claims for interest rate at a commercial rate of 30% per annum on the specific damages of TZS 347,109,950.00=/ that was admitted by Defendant after the lapse of four years. He submitted that the said interest is being claimed as compensation for the loss of earnings and profit that his clients suffered. To support his argument, he refers the case of; **Saidi Kibwana and General Tyre E.A Ltd Vs Rose Jumbe (1993) TRL 175** where it was held that court has discretion to award interest for the period before the delivery of judgement only in special damages.

In reply the learned State Attorney for the Defendant submitted that the cited provisions of the law were extensively expounded by the Court of Appeal in the case of **Saidi Kibwana and General Tyre E.A Ltd vs Rose Jumbe [1993] TLR 175** where it was held that:

The rate of interest prescribed under the powers conferred on the Chief Justice by section 29 vide G/N 410/1964 are the same as those prescribed under order XX rule 21 namely between the minimum of 7% and maximum of 12% per annum from the date of delivery of judgement until satisfaction.

He contends that Plaintiff's claims of interest at commercial rate of 30% is not justifiable by any and therefore do not have any legal basis. The learned State Attorney contende further that the aim of awarding damage is restore the person who has been wronged to his original position and tthey, cannot be awarded simultaneously as the essence is not to enrich the effected person. To support his argument he referred this court to the case of **Zanzibar Insurance Corporation vs Suleiman Mohamed Mallilo and 3 Others, Civil Appeal No. 122 of 2022 H.C DSM (Un-reported)** where it was held that:-

It is trite law that the award of general damages is not an enrichment scheme. Its aim is to compensate the victim not to enrich him.

I have carefully considered the parties' submissions in respect of this issue. Undisputed is the fact that by admitting the principle sum the

defendant admits to have breached their business agreement. What is disturbing is that this obvious fact is being admitted four years after the claim was instituted in court. There can be no dispute that the Plaintiff suffered loss for non-use of her monies for a period of four years without any justification. Apart from getting what is her dues from the contract she is entitled for compensation for non-use of her monies for that period of time.

As regard to the rate of 30% per annum claimed the claimed rate cannot be justified anyhow. In ordinary business and commercial bank interest banks charge interest of between 10% per annum to 18% per annum. I thus, in the circumstances of this case I think interest rate of 16% per annum would be reasonable. I accordingly award interest on the decretal sum at the rate of 16% per annum payable from the date of institution of the suit to the date of Judgment and further interest at the court's rate of 3% per annum from the date of judgment to the date of payment if full of the decreed amount.

It's so ordered.



A handwritten signature in blue ink, appearing to read "A.R. MRUMA", is written over a horizontal line.

A.R MRUMA

JUDGE

05/10/2022.