

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAM**

AT DAR ES SALAAM

CIVIL CASE NO. 145 OF 2021

COSTNEY COMPANY (T) LIMITED PLAINTIFF

VERSUS

POLLO ITALIA (T) LIMITED DEFENDANT

EX- PARTE JUDGMENT

5th May & 3rd June, 2022

KISANYA, J.:

This suit is based on breach of supplies contract. It is alleged in the plaint that, on 3rd January, 2016, Costney Company (T) Limited (the plaintiff) and Pollo Italia (T) Limited (the defendant) entered into a supplies contract, in which the plaintiff was to supply to the defendant 1,022 tons of dry maize at a price of Tshs. 406,358,000/=. It is further stated that the parties agreed that the plaintiff would be paid through his designated account within seven days after delivery of the consignment and its respective invoice.

The plaintiff avers that 1,022 tons of maize were duly supplied to the defendant and the invoice of each consignment served to the latter.

According to the plaintiff, the sum of money raised in the invoices and served to the defendant is Tshs. 406,358,000.

It is the plaintiff's case, that after supplying the said tons of maize and serving the invoices to the defendant, the latter failed to make payment in accordance with the supplies contract. This drove the plaintiff to first serve the defendant with the demand notices dated 29th June, 2016 and 25th July, 2016. She then proceeded to institute the suit at hand because the defendant failed to respond to the demand notices. The plaintiff is praying for judgment and decree against the defendant as follows: -

- 1. An order directing the Defendant to pay the Plaintiff the sum of Tshs. 406,358,000/= (Four Hundred Millions, Six Hundred Thousand, Three Hundred Fifty Eight Thousand only) being the contractual value of all the dry maize supplied and not paid for by the Defendant herein.*
- 2. An Order for the payment of Punitive Damages to the tune of Tshs. 40,000,000/= (Forty Millions Only) for the willful neglect to pay the owed contractual.*
- 3. An Order for the payment Tshs. 100,000,000/= (One Hundred Millions Only) being for the loss of income.*
- 4. An order for general damages by the Defendant.*
- 5. Interest on prayer (A) above at the commercial rate of 21 % per annum from the date of judgment till payment thereof in full.*

6. Costs of this suit.

7. Any other reliefs which this Honorable Court may deem just and equitable to grant in such circumstances.

As the defendant failed to appear after being served through substituted service, the plaintiff was called upon to prove his claim ex-parte. The issues framed for determination of this suit are:

1. Whether the plaintiff and defendant entered into a supplies contract.

2. Whether the defendant breached the supplies contract with the plaintiff.

3. To what relief(s) are the parties entitled.

At the hearing of this suit, the plaintiff enjoyed the legal services of Mr. Godfrey Ambete, learned advocate.

In a bid to prove her claims against the defendant, the plaintiff marshaled one witness namely, Muganyizi Mwijage Mushumbuzi (PW1). He introduced himself as a businessman and owner of Costney Company Tanzania Limited. His oral testimony was supported by three documentary evidence to wit, Supplies Contract between Costney Company (T) Ltd and Pollo Italia Ltd (Exhibit P1), Five Invoices issued by the plaintiff (Exhibit P2 collectively) and Two Demand Letters for payment of Tshs. 406,358,000 (Exhibits P3 and P4).

Having gone through the pleadings and the evidence adduced by PW1, I will proceed to determine the above stated issues.

The first issue is whether the plaintiff and defendant entered into a supplies contract. PW1 testified that the plaintiff and defendant signed the supplies contract in January, 2016. He tendered in evidence a supplies contract for supplies of 1,022 tons of dry maize (Exhibit P1). The said supplies contract was signed by the plaintiff and defendant on 3rd January, 2016. In view of the evidence on record, I am satisfied that the plaintiff and defendant entered into a supplies contract. Thus, the first issue is answered in affirmative.

Next for determination is whether the defendant breached the terms of supplies contract. Before tackling this issues, I find it apposite to point out some of the terms of the supplies contract. It is gathered from the testimony of PW1 and Exhibit P1 that the plaintiff agreed to supply the defendant with 1,022 tons of dry maize grain at Tshs. 398,000/= per ton. Therefore, PW1 testified that the total price in respect 1,022 tons of maize supplied to the defendant is Tshs. 406,358,000. His evidence is also supported by Clause 3 of Exhibit P1.

It is also gleaned from Exhibit P1 that the plaintiff and defendant agreed that the defendant would pay the purchase price within seven days after issuance of invoices of each consignment.

In his evidence, PW1 testified that the plaintiff supplied the defendant with 1,022 tons of dry maize grain as agreed to in the supplies contract. He went on to state on oath that an invoice was also issued against each consignment, and served to the defendant. PW1 supported his evidence by tendering in evidence five tax invoices (Exhibit P2 collectively). Each tax invoice bears the particulars as to the tons of grain maize supplied to the defendant, the driver who supplied and the amount invoiced. It is in evidence that each tax invoice was served to the defendant who affixed her stamp thereon.

Having examined PW1's evidence and all 5 tax invoices, I am satisfied 1,022 tons of maize were supplied to the defendant and that the total amount which was required to be paid by the plaintiff is Tshs. 406,358,000/=

Now, in terms clause 7 of Exhibit P1, the defendant was required to pay the amount stated in each consignment within seven days after issuance of tax invoice. PW1 stated on oath that the defendant had not

paid the amount raised in all invoices. He also tendered in evidence the demand letters (Exhibit P3 and P4) which were served to the defendant requiring him to make payment of Tshs. 406,358,000/=. Having considered further that the first tax invoice was served to the defendant on 15 April, 2016 and the last tax invoice served to her on 27th May, 2016, the defendant has failed to pay for the dry maize supplied to her and thus, she is in breach of the supplies contract which she entered with the plaintiff.

Last for consideration is the reliefs to which the parties are entitled to. Having decided herein that the defendant is in breach of contract, this Court is guided by the provision of section 73 of the Law of Contract, Cap. 345 R.E. 2019. In terms of the said provision, the plaintiff is entitled to compensation after the defendant breached the supplies contract. The question to what extent is the plaintiff is entitled to compensation can be discussed by looking at the reliefs sought for by the plaintiff.

The first prayer is for payment of Tshs. 406,358,000/= being the contractual value of the dry maize supplied to the defendant and not paid for. It is my considered view that these reliefs are in form of specific damages. In that regard, the settled position in this jurisdiction is to the

effect that such damages must be strictly proved. See for instance, the case of **Zuberi Augustino vs Anicet Mugabe** [1992] TLR 137 and **Harith Said Brothers Company vs Martin Ngao** [1987] TLR 327.

In the present case, the plaintiff has proved how she supplied the defendant with 1,022 tons of dry maize grains in terms of the contract. The plaintiff further proved that the value of 1,022 tons of maize grains supplied to the defendant is Tshs. 406,358,000/= and that the defendant has defaulted to pay the same. That being the case, I am satisfied that the plaintiff is entitled to payment of Tshs. 406,358,000/= being the contractual value of the dry maize supplied to the defendant but not paid for by the latter.

The plaintiff claims further for punitive damages to the tune of Tshs. 40,000,000. It is an established position that damages for breach of contract may be either specific or general and not exemplary or punitive. See for instance, the case of **Evarist Peter Kimathi and Another vs Protas Lawrance Mlay**, Civil Appeal No. 3 of 2000, CAT at Arusha (unreported) where it was held that:-

"It is common knowledge that damages for breach of contract being pecuniary compensation which the law awards to a person for injury or loss sustained

through the act or default of another may be either general or specific but not exemplary or punitive.”

In the light of the above position, the plaintiff's claim for punitive damages lacks merit because her suit is based on breach of contract.

The relief for loss of income is also in form of general damages. It is trite law that general damages are granted at the discretion of the court where the injuries suffered cannot be assessed in a monetary term. PW1 told the court that he was forced to sell his house in order to pay the loan advanced to the plaintiff for purposes of supplying the dry maize to the defendant. However, he produced no evidence to prove that fact in evidence. Nevertheless, it is in evidence that the defendant has defaulted to pay the money for the dry maize supplied to her for more than six years now. In that regard, I am of the view that the plaintiff is entitled to general damages arising from the money withheld by the defendant. In my considered view, general damages to the tune of Tshs. 25,000,000 will meet the ends of justice of this case. It is accordingly awarded.

Other relief prayed by the plaintiff is interest on decretal sum at the commercial rate of 21 % per annum from the date of judgment till payment thereof in full. In terms of Order XX, Rule 21(1) of the Civil

Procedure Code (CPC) (Cap 33, R.E 2019), this Court is enjoined to award interest at the rate of 7% per annum from the date of judgment until satisfaction of the decree or such other rate not exceeding 12% agreed upon by the parties before or after the delivery of judgment. The supplies contract (Exhibit P1) suggests that no interest was agreed upon by the plaintiff and defendant. Therefore, I award interest on the decretal sum, at the rate of 7% per annum from the date of judgment until satisfaction of the decree.

With regard to costs of the suit, section 30 of the CPC is to the effect that costs follow the event. Considering that the plaintiff has proved that the defendant breached the contract, the defendant is ordered to pay costs of this suit.

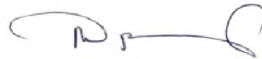
All said and done, the suit succeeds as demonstrated afore. I accordingly enter the judgment and decree in favour of the plaintiff as follows:-

1. *The Defendant shall pay the Plaintiff the sum of Tshs. 406,358,000 /= being the contractual value of all the dry maize supplied to her.*

2. *The Defendant shall pay the plaintiff general damages to the tune of Tshs. 25,000,000.*
3. *The defendant shall pay interest on the decretal sum in paragraph 1 herein at the rate of 7 % per annum from the date of judgment till payment in full.*
4. *The defendant shall pay costs of this suit.*

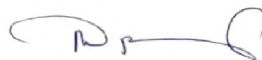
It is so ordered.

DATED at DAR ES SALAAM this 3rd day of June, 2022.



S.E. Kisanya
JUDGE

Court: Judgment delivered this 3rd day of June in the presence of Mr. Godfrey Ambete, learned advocate for the plaintiff and in the absence of the defendant. B/C Zawadi present.



S.E. Kisanya
JUDGE
03/06/2022

