

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TABORA DISTRICT REGISTRY)
AT TABORA**

CIVIL CASE NO. 05 OF 2021

IGUNGA DISTRICT COUNCIL PLAINTIFF

VERSUS

KAHAMA OIL MILLS LTD DEFENDANT

Date of Last Order: 05.06.2023

Date of Judgment: 06.06.2023

JUDGMENT

KADILU, J.

The plaintiff filed this suit claiming from the defendant for payment of Tshs. two hundred eighteen million sixty thousand (Tshs. 218,060,000/=) being cotton produce cess for the season of 2018/2019, statutorily payable to the plaintiff on purchased crops from its area of jurisdiction. In addition, the plaintiff is claiming for the payment of interest at 15% per month from the date of filing this suit to the date of judgment, payment of 7% interest on decretal sum from the date of judgment to the date of full payment, costs of the suit and any other relief(s) the court may deem just to grant.

The plaintiff's claim against the defendant is based on statutory entitlement of 3% of the farm gate price as produce cess upon transportation of business crops from the plaintiff's jurisdiction. The plaintiff alleges that for the 2018/2019 cotton season, cotton farm gate price was Tshs. 1,200/= per kilogramme (Kg). Therefore, its 3% is equal to Tshs. 36 per every

kilogramme of cotton cess purchased and transported by the defendant in that season. It is the plaintiff's further assertion that the defendant purchased and transported a total of 6,057,246 kilogrammes of cotton from various Agricultural Marketing Cooperative Societies (AMCOSs) within the jurisdiction of the plaintiff without making statutory payments to the plaintiff of Tshs. 218,060,856/= as cotton produce cess.

The defendant's account is that due to financial difficulties in the 2018/2019 cotton season, it bought only 77,140 kilogrammes of cotton from the plaintiff's jurisdiction worth Tshs. 92,568,000/= and not Tshs. 218,060,000/= as alleged by the plaintiff. It is however admitted by the defendant that according to the provisions of the Local Government Financial Act [Cap. 290 R.E. 2002], it was supposed to pay 3% statutory farm gate per each kilogramme of cotton purchased and transported from the defendant.

It is the defendant's explanation that in the said season, the Government issued directives to local government authorities with cotton produce that they should not take any legal action against cotton purchasers until further directives from the Ministry of Agriculture and the Bank of Tanzania (BoT). The defendant prayed the suit to be dismissed with costs.

When the case came up for hearing, the plaintiff was represented by Ms. Grace Mwema, the learned State Attorney and the defendant enjoyed legal services of Ms. Rose Suleiman, the learned Advocate. Before

commencement of the hearing, the court framed three issues namely, **first**, whether the defendant purchased and transported 6,057,246 kgs of cotton from different AMCOSs within Igunga District in 2018/2019 season. If the 1st issue is answered in affirmative, the **second** issue is whether the defendant paid the statutory cotton cess fee to the plaintiff. **Third**, to what reliefs are the parties entitled?

The first plaintiff's witness was the Head of Agriculture, Livestock and Fisheries Division at Igunga District Council, one Grace Mkunda Nyamwanji who testified as PW1. She informed the court that, the defendant was granted permit to purchase and transport cotton from Igunga District Council in 2018/2019 agricultural season. PW1 explained that in that season, the indicative price of cotton per kg was Tshs. 1,200/=. She added that, for each kg of cotton which the defendant had purchased and transported from Igunga, it was required to remit to the plaintiff Tshs. 36 which is 3% of 1,200/=.

PW1 testified more that in 2018/2019 season, the defendant purchased cotton from 28 AMCOSs in Igunga District Council with the weight of 6,057,246 kgs, for which the plaintiff was entitled to 3% of the price per kg that is, Tshs. 218,060,856/=. She said that the documents of purchases and transportation indicate the quantity of cotton and its value during that season. According to PW1, the defendant did not pay 3% cotton cess fee to the plaintiff as stipulated under the Local Government Finance Act. To support her testimony, PW1 tendered the purchase receipts and

consignment delivery documents used by the defendant in 2018/2019 agricultural season. The same were admitted by the court and marked collectively as exhibits P1.

PW1 added that in the complained season, five (5) companies purchased cotton from Igunga, but it was the defendant alone which defaulted to pay the 3% fee. After the defendant had failed to pay, negotiations were initiated by the plaintiff and after having failed, a demand letter and notice of intention to sue was issued to the defendant, but all proved futile. PW1 prayed the court to order the defendant to pay to the plaintiff the claimed amount of money so that it may cover operational costs of the plaintiff and financing development activities.

Mr. Michael Japhet Mtaturo is the Cooperatives' Officer of the plaintiff and he testified as PW2. He stated that at the end of 2018/2019 agricultural season, he inspected AMCOSs documents within Igunga and realized that the defendant had not paid the 3% cotton cess fee as required. He reported the matter to the District Commissioner who is usually the one who issues purchase permits. The defendant promised to pay the claimed amount, but it did not honour its promise and that is why the present case was filed in this court. According to PW2, the defendant has been purchasing cotton from Igunga for a long time without defaulting to pay the fee except in the 2018/2019 season.

In defence, Mr. Issa Hamis Msagati who is the Administration Manager of the defendant testified as DW1. He said in 2018/2019 agricultural season, the Cotton Board announced the indicative price of cotton as Tshs. 1,000/= per kg, but before starting to purchase cotton from the AMCOSs, the Government announced the price of Tshs. 1,200/= per kg. He informed the court that the new price was a directive from the President so as to empower cotton farmers. According to him, most of the companies which had permits to purchase cotton got stuck and failed to purchase cotton at that price. Thereafter, a meeting was held between representatives from the BoT, Ministry of Agriculture, regional administration and the district authorities to discuss the way forward.

The companies were directed to purchase cotton from AMCOSs for Tshs. 1,200/= per kg, for the promise that the Government would refund Tshs. 200 per kg to the purchasers. DW1 informed the court that in the season in question, the defendant purchased about 45,000,000 kgs of cotton country-wide, but the promised Tshs. 200 per kg was never refunded as promised. According to DW1, several follow ups were made to the Government, but the purchasers were urged to be patient as the subsidy would be paid to them at any time. He said the delay to receive the said subsidy failed them in paying Government levy, union fees and AMCOSs expenses.

DW1 added that up to the present, the defendant is claiming about Tshs. 9 billion from the Government and out of that amount, Tshs. 4 billion

will be paid to AMCOSs, unions and service levy. He explained that the Government directed that companies which purchased cotton in that season should not be sued, but he is surprised to see their company being sued in this case. He urged the court not to order the defendant to pay anything to the plaintiff until the company is paid the money it is claiming from the Government. He explained that the court should consider that the defendant was requested by the then Regional Commissioner to purchase cotton from the AMCOSs which was being destroyed by rain at that time.

On 25/05/2023 when the defence side called its last witness, Mr. Silinde Gumada, the learned State Attorney joined efforts with Ms. Grace Mwema (State Attorney) for the plaintiff. Ms. Rose Suleiman, Advocate for the defendant issued a notice to file and rely on additional secondary documents which were not attached to the written statement of defence for the reason that the same were out of reach of the defendant as they are Government documents. The notice and prayer to rely on new documents were vigorously objected by the State Attorneys for the plaintiff on the ground that the documents sought to be filed and relied upon do not qualify as public documents under Section 83 of the Evidence Act.

Mr. Silinde submitted that the documents do not fulfil the conditions for the admissibility of secondary evidence as stipulated under Section 67 of the Evidence Act. He explained more that the defendant is not the addressee of those documents to make it the beneficiary thereof and there is no evidence that the defendant had applied to be supplied with original

documents, but was denied. The learned State Attorney urged the court not to admit such documents since the plaintiff's Attorneys were not aware about how the defendant obtained them.

Ms. Rose re-joined that she was not seeking to tender those documents, but just to file them as part of other documents filed in court earlier. She said that under Section 83 of the Evidence Act and Order XIII, Rule 1 and Rule 2 of the Civil Procedure Code, what she is seeking to do is justified. She stated that other grounds raised by the learned State Attorneys were premature as the documents were not yet received by the court. After considering the rival submissions by the learned minds for both parties, I withheld the defendant's prayer to file additional document because firstly, the notice to file additional documents was unreasonable.

The notice was given at the very time when the last defence witness was about to start testifying hence, the plaintiff's Attorneys and the court were taken by surprise. Secondly, the record shows that when the first pre-trial conference was conducted, the defendant's Advocate was categorical that she would have neither an application to make nor additional documents to file. As such, the notice to file additional documents came as an afterthought which is not permitted in law. Had the plaintiff been given reasonable time to scrutinize the said documents, it could have wished to produce more documents in countering what was presented by the defendant. In the prevailing situation, such opportunity would not be available to the plaintiff as it had already closed its case.

After the ruling by the court, the defence case continued whereby the Zone Manager of the Cotton Board, one Mr. Johns Bwahama testified as DW2. He stated that one of his major duties is to administer all activities relating to cotton growth and business in the Western Zone of Tanzania. He stated that in 2018/2019 agricultural season, the indicative price of cotton per each kilogramme was Tshs. 1,200/= but immediately after the price was announced, there was the fall of cotton price in the global market. He said, following the drastic fall in the market price, most of the companies in Igunga failed to purchase cotton from the AMCOSs for Tshs. 1,200/= as announced earlier by the Board.

Likewise, the commercial banks withheld loans for the companies which were intended to facilitate the purchase of cotton in that season. According to DW2, the Prime Minister held a meeting with the Regional Commissioners of the regions cultivating cotton in the country, representatives of the BoT, commercial banks, the companies and other stakeholders to discuss about cotton price for that season. DW2 explained that up to that time, the cotton was still in the stores and the farmers had nothing to do with it. Consequently, the Government directed the companies to purchase cotton for Tshs. 1,200/= per kg then, the deficit would be covered by the Government by returning Tshs. 200/= per kg to the purchasing companies.

It was the further testimony of DW2 that the Government promised that payments to the AMCOSs and other dues would be borne by the

Government, not the companies which purchased cotton in that season. The BoT and commercial banks were advised to discuss with the companies about the possibility to obtain loans at affordable interests. The local government authorities through the Regional Commissioners were notified by the central Government that fees relating to purchase and transportation of cotton would be paid by the Government. He said that the Government never paid the fees to date although the claims have already been verified and he is optimistic that the same may be paid at any time from now.

DW2 informed the court that in 2018/2019 agricultural season, cotton purchasers in the Western zone were not supposed to pay cotton cess fees. He added that in other local Government authorities such as Serengeti, the companies were sued in respect of the claims like this, but after opinion was sought and obtained from the Cotton Board, the local government authorities withdrew the cases from the courts. According to DW2, the defendant has never defaulted to pay cotton cess fee to the plaintiff and even in 2022/2023 season, it paid.

Having presented evidence of both parties and considering the submissions of the learned State Attorneys and Counsel for the defendant, I now determine the issues formulated for determination in this case. I will be guided by the principle set forth in civil litigations under Section 110 of the Evidence Act, [Cap.6 R.E 2019] which places the burden of proof on the party wishing the court to believe his testimony and pronounce judgment in his favour. The Section provides:

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist."

Similarly, in the case of ***Hemedi Said v Mohamedi Mbilu*** [1984] TLR 113, it was held that *"he who alleges must prove the allegations."* From the foregoing, let me now confront the first issue as to whether the defendant purchased and transported 6,057,246 kgs of cotton from different AMCOSs within Igunga District in 2018/2019 agricultural season.

It is the contention by the plaintiff that the defendant purchased 6,057,246 kgs of cotton from 28 AMCOSs and its value was Tshs. 218,060,856/= . The assertion was proved by purchase receipts and delivery notes which were admitted as exhibit P1. DW1 testified that during 2018/2019 season, the defendant purchased about 45,000,000kgs of cotton from the countrywide, but he could not tell the exact quantity which was purchased and transported from the plaintiff's jurisdiction. There was no single defence witness who stated a specific quantity of cotton which was purchased from the plaintiff's area of jurisdiction during the season in question. Therefore, the plaintiff's assertion that the defendant had purchased and transported 6,057,246 kgs of cotton in the 2018/2019 agricultural season has not been contradicted by the defendant. As such, the first issue has been answered in affirmative.

Having answered the first issue in affirmative, the second issue is whether the defendant paid the statutory cotton cess fee to the plaintiff during 2018/2019 agricultural season as required by the law. This point is not in contention between the parties. After admitting that the fee was not paid, the defendant has raised a defence that the Government agreed to pay the said fee after cotton price had declined in the global market during that season. In the written statement of defence, the defendant attached a letter from the Minister of Agriculture addressed to the Minister, President's Office, Regional Administration and Local Government (PO-RALG) indicating the Government's commitment to subsidize the cotton price in that season.

However, the said letter was neither tendered by the defence witnesses during the trial nor was it admitted by the court as an exhibit. Therefore, since such annexure was not admitted in evidence, it cannot be acted upon to decide the present case. It is trite law that a document that is not admitted in evidence cannot be treated as forming part of the record even if it is found among the papers in the court's record. That was the decision of the Court of Appeal in the case of ***Chantal Tito Mizary & Another v. Ritha John Makala & Another, Civil Appeal No. 59 of 2018***. In the case of ***Shamsa Khalifa & Two others v. Sulemaim Hamed Abdallah, Civil Appeal No. 82 of 2012***, the court observed thus:

"We are of the considered opinion that, it was improper and substantial error for the High Court and all other courts below in this case, to have relied on a document which was neither

tendered nor admitted in court as exhibit. We hold, this led to a grave miscarriage of justice.”

In view of this, I disregard the letter which was attached to the defendant’s written statement of defence. Having disregarded the said letter, I would rule that the defendant had defaulted to pay the cotton cess fee to the plaintiff as stipulated under the Local Government Finance Act. Nevertheless, evidence of DW2 who is the Zonal Manager of the Cotton Board is to the effect that, the payment is supposed to be paid to the plaintiff once the Government has paid the agreed subsidy to the defendant.

DW2 told the court that the Government had directed the Local Government Authorities including the defendant not to take legal actions against cotton purchasers who have not yet paid cotton cess fee for 2018/2019 agricultural season. It is a long established principle of law that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing the witness. See the case of ***Goodluck Kyando v R.***, [2006] TLR 363.

Evidence of DW2 was not cogently contradicted by the plaintiff’s witnesses. I should state here that, in terms of Section 143 of the Evidence Act, [Cap. 6 R.E. 2019], evidence is usually weighed, not counted. It means that, no particular number of witnesses is required in order to prove certain facts. Even the evidence of one witness may be sufficient to establish some facts in dispute between the parties if that witness is found by the court to

be credible. In the case at hand, I am persuaded by the evidence of DW1 and DW2 that the defendant did not default to pay the cotton cess fee as claimed by the plaintiff, but non-payment was justified as shown in evidence which I have endeavoured to analyse. By necessary implication, the plaintiff still has business trust on the defendant and that explains the reason why the defendant has continued to be granted permits to purchase cotton from the plaintiff's jurisdiction and he never defaulted to pay the fees except in the season under enquiry.

The last issue is about the reliefs to which the parties are entitled. The plaintiff is claiming Tshs. 218,060,856/= from the defendant as cotton cess fee, interests and the costs of this suit. The defendant does not dispute to be indebted by the plaintiff. Nonetheless, the defendant has expressed that it intends to settle the debt immediately after the money it is claiming from the Government is received. In that situation, I do not find it wise to order the defendant to pay to the plaintiff the said fee and other dues plus interests and costs of the suit at the moment. The finding of this court is that the plaintiff has managed to establish its claim against the defendant. Notwithstanding, the time for payment of that debt depends on the fulfilment of Government's promise to pay to the defendant its debt for 2018/2019 agricultural season which is allegedly Tshs. 9 billion.

For the aforesaid findings, I declare that the plaintiff is entitled to the payment of Tshs. 218,060,856/= by the defendant as cotton cess fee for 2018/2019 agricultural season. The defendant is however, ordered to pay the above sum of money to the plaintiff once the debt owed to it by the

Government is cleared. Given the existing business relationship between the parties and the background of this dispute, I order each party to bear its own costs.

It is so ordered.



KADILU, M.J.,

JUDGE

06/06/2023

Judgment delivered in Chamber on the 6th Day of June, 2023 in the presence of Mr. Issa Hamis Msagati and Mr. Ally Maganga (Advocate) holding brief for Ms. Rose Suleiman, Advocate for the respondent.



KADILU, M.J.,

JUDGE

06/06/2023.