

**IN THE HIGH COURT OF TANZANIA
(IN THE MWANZA SUB-REGISTRY)**

AT MWANZA

CIVIL CASE NO. 48 OF 2022

AUDACITY INTERCOM (T) LIMITED.....PLAINTIFF

VERSUS

BUKOMBE DISTRICT COUNCIL.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

JUDGMENT

Date of Last Order: 17/05/2023

Date of Judgment: 09/06/2023

Kamana, J:

This is an ex parte judgment following a lack of interest to file a written statement of defence by the defendants advocated by Mr. Joseph Komba, learned state attorney. On 8th February, 2023, during preliminaries, Mr. Komba informed this court that they do not intend to file the written statement of defence. He further beseeched the Court to give Bukombe District Council, the first defendant, a period of three months to settle the dispute out of the court room. His prayer was not objected to by Ms. Stella Sangawe, learned counsel for the plaintiff. Following that, the Court adjourned the case to 17th March, 2023 to allow the parties to settle the matter amicably.

On the scheduled date, Mr. Komba, learned state attorney, informed this Court that the first defendant has offered to settle the debt (Tshs.88,887,246/=) by paying the Plaintiff Tshs.2,000,000/- every month for 37 months. He further averred that the plaintiff has rejected the said offer. His averments were confirmed by Ms. Sangawe, learned counsel for the plaintiff. Mr. Komba implored this Court to guide him on the way forward as the funds that were allocated to pay the plaintiff in 2014 were used to pay the subsistence allowance to newly employed teachers. Ms. Sangawe implored this Court to hear and determine the suit *ex parte*. That prayer was granted.

At this point, I think it is relevant to reproduce the facts that led to this suit. On 13th November, 2014, the plaintiff entered into an agreement (Exh.ADAR-1) with the first respondent whereby the former was contracted to renovate the District Hospital Administration Block. The contractual sum was Tshs.63,970,000/-. On the same day, the parties entered into another agreement (Exh.ADAR-2) whereby the plaintiff was contracted to construct the General and District Vaccination Stores. The agreed sum for that project was Tshs.72, 907, 168.

The Plaintiff executed the contracts as scheduled and completed her obligations under the contracts at the end of the year 2015. During the implementation of the said contracts, the first defendant paid the plaintiff

Tshs.50,000,000/- only. Up to the time of drafting this judgment, a balance of unpaid Tshs.88,887,246/- formed the genesis of this suit as the plaintiff's efforts to claim the unpaid sum proved futile.

According to the plaint, the plaintiff alleges that the first defendant has breached the contracts for her failure to pay the outstanding amount within the scheduled time. Given that, the plaintiff claims from the first defendant the following:

1. Payment of the outstanding amount to the tune of Tshs.88,887,246/-.
2. Payment of commercial interest at the rate of 21 percent at the time of filing this suit or accruing or computed from the date of judgment on the sum itemized in paragraphs 1, 2 and 3 for such period as may seem to the Court to be proper and just.
3. For payment of interest of compound interest of 30 percent per annum computed on the outstanding amount being the current commercial rate interests as a result of the first defendant's failure to heed to the terms and conditions.
4. Costs of this suit.

5. Any other order(s) as the Court may deem fit and expedient to grant.

As I stated earlier, the defendants did not defend against the claims. In that case, the matter was heard *ex parte*. In her brief submission, Ms. Sangawe, learned counsel for the plaintiff reiterated what has been averred in the plaint. She further cited the contracts and other documentary evidence as proof of the plaintiff's claims against the first defendant.

Having gone through the plaint, annexed documentary evidence and the submissions by Ms. Sangawe, I am of the considered view that the plaintiff had entered into two contracts with the first defendant. I am further satisfied that the first defendant breached the terms of the contracts for her failure to pay the outstanding amount (Tshs.88,887,246/-). Suffice it to state that the plaintiff has proved her case against the defendants on the balance of probability.

The question, I now set to address is to what reliefs the plaintiff is entitled. Firstly, the plaintiff is entitled to be paid by the first defendant the sum of Tshs.88,887,246/- as an outstanding debt accrued from the two contracts.

Secondly, the plaintiff in her plaint claims to be paid interest at the commercial rate of 21 percent which prevailed at the time of filing the

suit. She further claims that she be paid interest at the commercial rate to be calculated from the date of this judgment on the sum of Tshs.88,887,246/- and on the compound interest. Besides, the plaintiff claims to be paid compound interest.

In determining this issue, I consider that as a general principle, the Court may grant interest accrued before the delivery of the judgment if the parties in their agreement have agreed that interest shall accrue in case of default before the delivery of the judgment. If that is not provided in the agreement, the Court is not in a position to grant interests that were not part of the agreement unless there are circumstances that dictate otherwise. The Supreme Court of India in the case of **Mahabir Prasad Rungta v. Durga Datta**, AIR 1961 SC 990 stated clearly that when the agreement is silent as to the accrual of interest before the commencement of the suit, courts should not award interest for such period unless the usage of trade, statutory provisions or equity demands that the interest be awarded. The Supreme Court of India had this to state:

'...Interest for a period prior to the commencement of the suit is claimable under an agreement, or usage of trade or under a statutory provision or under the Interest Act, for a

sum certain where a notice is given. Interest is also awarded in some cases by Courts of Equity.'

I have gone through the two agreements entered into by the parties. None of them bears a clause that provides for the accrual of interest before the delivery of judgment in case of a default to settle the contractual sum. However, fortified by the decision of the Supreme Court of India in **Mahabir Prasad Rungta v. Durga Datta** (Supra), I consider it just and equitable for the plaintiff to be awarded interest for the period from 1st January, 2016, considering that the plaint states that the construction and rehabilitation under the agreements completed at the end of 2015, to the date of this judgment. The plaintiff claims that the interest should be calculated at the commercial rate at the time of filing the suit which was 21 percent. I am not prepared to award interest at that rate.

It is trite law that the rate of interest claimed for the period before the delivery of the judgment is awarded at the discretion of the Court. This position was accentuated by the Court of Appeal in the case of **Anthony Ngoo and Another v. Kitinda Kimaro**, Civil Appeal No. 25 of 2014 where it was held that:

'The rate of interest to be awarded for the period prior to the delivery of judgment is set at the discretion of the court.'

See: **Engen Petroleum (T) Limited v. Tanganyika Investment Oil and Transport Limited**, Civil Appeal No. 103 of 2003 and **Ashraf Akber Khan v. Ravji Govind Varsan**, Civil Appeal No. 5 of 2017.

That being the case, I have considered the circumstances of this case and formed an opinion that the 21 percent claimed by the plaintiff is on the high side. In the interest of justice, I award the plaintiff the simple interest on the awarded amount (Tshs,88,887,246/-) at 8 percent per annum from 1st January, 2016 to the date of this judgment.

Regarding the interest from the date of the judgment, without much ado, I grant the same from the date of this judgment to the date of satisfaction. The rate of interest as per Order XX Rule 21 is seven percent per annum.

Concerning compound interest, it does not arise automatically unless the agreement expressly or impliedly provides for the same. In this regard, I am persuaded by the decision of the Supreme Court of South Africa in the case of **Land Agricultural Development Bank of South Africa v. Ryton Estates (Pty) Ltd and Others (460/12) [2013] ZASCA 105** where it was stated:

'...it is helpful to keep the following principles in respect of interest in mind. Interest remains interest and no method

of accounting (such as capitalisation) can change its nature. Contractual interest may be compound interest or simple interest. Compound interest is interest on capital plus accrued interest. If compound interest is not provided for in an agreement, only simple interest on the capital will be payable in terms of the agreement.' **See: Petrofuel (T) Ltd v. Grand Confectionary's Bakery Ltd**, Commercial Case No. 46 of 2016.

I have keenly gone through the agreements and am satisfied that no clause indicates that the issue of compounding interest was agreed to by the parties. Given that, the compound interest is not awarded.

From the above considerations, therefore, this Court settles for the following orders:

1. The first defendant is ordered to pay the plaintiff a sum of Tshs.88,887,246/- being the outstanding amount arising from the rehabilitation of the District Hospital Administration Block and construction of the General and District Vaccination Stores.
2. The first defendant is ordered to pay 8 percent interest per annum on the decretal amount from 1st January, 2016 to the date of this judgment.

3. That the first defendant is ordered to pay 7 percent interest per annum on the decretal amount from the date of this judgment to the satisfaction.

4. in the circumstances of this case, I make no order as to costs as each party shall bear its costs.

It is so ordered. Right To Appeal Explained.

DATED at **MWANZA** this 9th day of June, 2023.



KS KAMANA

JUDGE