IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CIVIL CASE NO. 1 OF 2023

ZANJ SPICE LIMITED..... PLAINTIFF

VERSUS

ZURI ORGANICS LIMITED .....1ST DEFENDANT

EMANNUEL CALVIN GODLOVE MAFIE.....2ND DEFENDANT (A.K.A. KEVIN)

JUDGMENT

18th May & 31th July, 2023

A.P.KILIMI, J.:

The plaintiff ZANJ SPICE LIMITED is a limited liability company registered in Tanzania with its registered offices in Forodhani, Zanzibar. The first defendant ZURI ORGANICS LIMITED is also a limited liability company registered in Tanzania with its registered offices in Shanty Town, Moshi. Kilimanjaro. And the second defendant one EMANNUEL CALVIN GODLOVE MAFIE is a natural person, a shareholder and the Managing Director of the first Defendant.

In this matter, the Plaintiff mentioned above has sued the first and second Defendants claiming for specific and general damages due to breach of contract entered between the Plaintiff and the first Defendant and guaranteed by the second Defendant. According to the plaint filed in this court on 11th January, 2023, the facts constituting cause of actions shows that; the business between them commenced on 30th day of November 2020, when the Plaintiff entered into an Agreement with the first Defendant to supply Bird's Eye Chilli hereinafter "Chilli" to the Plaintiff for export purposes. In supplying the same the Defendants used to breach most of the terms of the Agreement including failure to meet specifications since chilli were dirty and not of the agreed grade.

Later in August 2021, the Plaintiff ordered the Defendants to deliver grade A, 7t + 7t of Chilli. In the said agreement, the Defendants agreed to deliver the first 7t of Chilli by the end of August 2021, and the Plaintiff agreed to pay an amount of Euro 22,400 which was equivalent to TShs. 52,192,000/= as advance money to source the said Chilli. Then Plaintiff paid the said advance money to the Defendants. But, until the end of September 2021, the Defendants did not deliver the said Chilli despite receiving advance money as well as reminders from the Plaintiff. Therefore, Plaintiff has no

any option than to terminate the contract with the Defendants, hence this suit.

It is from above, the plaint instituted by the plaintiff contains the prayers for the following orders: -

a) Payment for specific damage from the advance Money paid to the Defendant to source Chilli = Euro 22,4001= which was equivalent to Tshs. 60,719,904/= in the day of payment (11.08.2021);
b) Payment for specific damage suffered due to following up on the debt equivalent to Tshs. 10,172,6001=;
c) Payment for specific damage suffered due loss of the direct business (7t) due to failure to export the sourced Chilli = Euro 14,080 which is now equivalent to Tshs 38,403,059.1=;
d) Payment for specific damage suffered due loss of the 2nd planned business (7t + 7t) t business due to failure to export the sourced Chilli = Euro 11,454 which is now equivalent to Tshs 29,595,532/=;
e) Payment for specific damage suffered due loss of profit from the date of the Defendant's refusal to source the Chilli to the date of judgment. This money would be used for other business = Tshs. 138,891,095 x 30% = 41,667,329 x 14 months from the date 'of default =Tshs. 583,342,599/=;
f) Payment for specific damage suffered due loss of good will from Clients Euro. 2600 per month x 14 months = 33,800 which is now equivalent to TShs. 94,640,0001=;
g) General damage to be assessed by this Honourable Court;
h) Payment of interest on the sums prayed above at the commercial bank rate (27% p.a) from the time of filling till judgment;
i) Payment of interest on the decretal amount from the time of judgment till payment in full;
j) Costs of this suit in favour of the Plaintiff;

k) Any other or further relief this Honorable Court may deem fit to grant;

This matter was heard exparte against defendants, after the plaintiff effort to serve the defendants was in vain, moreover, this court ordered of substituted service to the defendants by publication which was duly effected on 16th day of February 2023 but still they did not show up. Then, the Court after consultation with learned advocate for the plaintiff namely Patricia Erick, framed the following issues; -

1. Whether there was a contract between the plaintiff and the first defendant and guaranteed by the second defendant.
2. Whether there was breach of that contract.
3. And whether the plaintiff suffered damage out of the said breach.
4. What are the reliefs the plaintiff, entitled for.

When the matter came for hearing, to prove plaintiff's case, Ms. Patricia Erick called one witnesses namely Raphael Flury (PW1) who testified on oath and he also tendered seven exhibits. Briefly, the testimonies from this this witness were as follows:-

PW1 told this court that, he is a Chief Executive Officer and Managing Director of Zanj Spice Limited. on 30th November, 2020 he entered into agreement with Zuri Organics Limited (first defendant) for supply and purchase of Chilli. This agreement was guaranteed by the second respondent

as the Chief Executive Officer and Managing Director of Zuri Organic Limited. The said agreement had specific details about quality, price and timeline.

PW1 further said the agreement was signed by his company and himself also he request Defendants to sign after submission, the mode of transmitting the agreement was via Email, from his personal account which is Raphael.flury@1001organic.com to zuri@zurisafari.go.tz. The defendants received it and executed the agreement, to prove the authenticity, PW1 said the said email was sent from his email account which can only be accessed by him and it has secret password, but also his laptop is protected by password. The said agreement document attached was PDF and encrypted therefore cannot be tempered, and its copy was sent through WhatsApp. Also, he said, he has printed the said document by his own HP printer, PW1 then tendered the print out of the said agreement which was admitted and marked P1.

Being on the said agreement, PW1 said the business started, but plaintiff had complaints on quality, later they agreed to increase the quantity from 7,000 kg to 14,000kg, first PW1 sent condition and quality needed to the second defendant who accepted, this was done via email stated above. PW1 also said, he used his computer printer make HP, which was protected

and encrypted to his account, therefore, all document sent cannot be tempered. PW1 then tendered the print out of said document which was annexed to his plaint as 3(a) after showing original on his laptop screen, the same was admitted and marked exhibit P2.

PW1 also testified that, in the above email he attached prove of transfer for advance payment for chill Euro 22,400/= which approximately 62,719,904/= Tshs. the money was paid to Zuri Organic Limited, from KCB Bank to Equity Bank of Moshi, and he did it through internet banking, he got information from the bank that it is executed as sent. Then PW1 tendered a print out of the said transaction which was admitted and marked exhibit P3.

In respect another email, PW1 said the defendant confirmed via email that he can do better than previous, the said email was sent to his account stated above, PW1 then printed it using the same device, and since his email is encrypted cannot be tempered, the email was dated 9th August, 2021 showing first Defendant has received the money and started to work on it. PW1 tendered it in this court which was admitted and marked exhibit P4.

In respect to communication through WhatsApp message, PW1 told this court, he used his phone Iphone 11pro. with number 0776 148994 which

is linked to WhatsApp account, and communicated with second defendant through number 0767 900575. Then he printed their communication from his printer stated above in his office, He knew that second defendant has received his massage by blue ticks and reply. PW1 also said the relevant communication through WhatsApp was on 11 August, 2021 where he confirmed with second Defendant, that he has sent the advance money and the second defendant said he has already produced 3800 kg. PW1 tendered a WhatsApp print out named 3(a) as annexure in his plant which was admitted in this court and marked exhibit P5.

Being exhausted and lost hope for defendant to pay his money back on 14/11/2021 PW1 terminated the agreement, and requested his moisture machine back and his advance payment of 22,400/= Euro. To such effect he wrote to the second defendant a letter dated 11th January, 2022 informing to pay back money otherwise he will go to court, the letter was sent via email and WhatsApp. He also said, as usual his email is encrypted and the said document was having his signature and official seal. PW1 then tendered the said letter named 6(a) as annexure in his plaint, which was admitted by this court and marked exhibit P6.

PW1 moreover said, after that letter, the second defendant returned the moisture machine but he did not return the money despite of his WhatsApp promise. On 19th September, 2022, he submitted to Defendants a Demand note using EMS sent to his Headquarters at Moshi. PW1 tendered EMS letter and the envelop used by EMS in its original which was admitted by this court collectively and marked exhibit P7.

In conclusion of his testimony, PW1 said he has suffered loss of 22,400 Euros which by then the exchange was Tshs. 2600 Tshs which approximately is a total of 61,000,000Tshs. He has paid legal fees 2240 Euros, equivalent Tshs.2.5 million. Then he has paid 672/= Us dollar equivalent to 1.5 million Tshs for following debts, He has used other 672 Us Dollars as for plaint, He has lost the profit of 14,080 Euros which was expected profit for first 7 tons of business, which is equivalent to 38,403,059/= Tshs.

PW1 further continued that, he has lost the second planned business of 7 tones which is 11,454 Euros equivalent to 29,595,532/= Tshs. Also, in addition he has lost opportunity of getting 41,667,329 per month and if multiplied for 14month delay brings 583,342,606/= which is the money he did not earn. He has also lost a good will and trust to his business which can amount to 2600 Euro per month multiply by 14 month is 36,400 Euros which

is equivalent to 94,700,000/= Tshs. Therefore, in total he has suffered more than 860,000,000/= Tshs. PW1 finally prayed to be awarded interest, court fees, general damage be assessed by the court and costs of this case.

Having summarized the evidence enunciated hereinabove, I am mindful, this being a civil matter, the Plaintiff has the duty to prove his case to the standard required, which should be within the preponderance of probability. (See the cases of **Silayo vs. CRDB (1996) Ltd** [2002] 1 EA 288 (CAT) and **Catherine Merema vs. Wathigo Chacha**, Civ. Appeal No.319 of 2017 (unreported), however, this being a case heard *ex-parte*, I think what is tendered to prove need to be clear and convincing evidence, this means the evidence presented should be highly and substantially more likely to be true than not, or should leave no doubt in the mind of the judge that the claims made by the presenting party are almost valid.

I wish to commence with the first issue which is Whether there was a contract between the plaintiff and the first defendant and guaranteed by the second defendant. And before I proceed with this issue, I find it is vital I should determine the kind and nature of the evidence tendered in this court. PW1 the only witness has tendered oral and documentary evidence.

However, all evidence tendered except only one P7 (demand note) were print out from electronic devices.

Taking regard this case was heard exparte, despite the fact that all of 6 exhibits were admitted as P1, P2, P3, P4, P5 and P6 respectively, since were generated electronically, the issue to be considered is whether there are reliable and authentic or trustworthy, this is because it is common that admissibility of document is one thing and its probative value is quite another thing.

The said documents tendered, I may divide them into two clusters, first those printed out from computer and one document printed out from phone. Starting from the first cluster, generally these kinds of exhibits are recognized by the law under section 18 (1) of the Electronic Transactions Act Cap. 442 R.E. 2022 which provides thus:-

> *"In any legal proceedings nothing in the rules of evidence shall apply so as to deny the admissibility of the data message on ground that it is a data message."*

Whereas section 3 of that Act defines data message as follows:-

> *"Means data generated communicated, received or stored by electronic magnetic, optical or other means in a computer*

system or for transmission from one computer system to another."

Nonetheless, the said data generated electronically need to pass some qualifications in order to believe that are authentic and reliable, in proving this the court requires to determine the weight of the said evidence, in our jurisdiction weight of electronic evidence are guided by section 64A (2) of the Evidence Act Cap. 6 R.E. 2022 read together with subsection (2) of section 18 of the Electronic Transaction Act (supra). Section 64A (2) of the Evidence Act provides thus;

"(2) The admissibility and weight of electronic evidence shall be determined in the manner prescribed under section 18 of the Electronic Transactions Act."

In view of the above provision, it means section 18 (2) of ETA provides for criteria for consideration in order to know evidential weight electronic evidence presented before the court. And for easy reference I reproduce hereunder;

*"18.-(1) in any **legal proceedings**, nothing in the rules of evidence shall apply so as to deny the admissibility of data message on ground that it is a data message.*

(2) In determining admissibility and ***evidential weight of a data message****, the following shall be considered-*

a) the reliability of the manner in which the data message was ***generated, stored or communicated;***
(b) the reliability of the manner in which the ***integrity*** *of the data message was maintained;*

(c) the manner in which its ***originator was identified****; and*

(d) ***any other factor that may be relevant in assessing the weight of evidence."***

[Emphasis supplied]

From the above provision, my excerpts, is that the court must ensure that, the document generated electronically by the one, who is purported to have authored the document or own it. The electronic device used to store and to generate was working properly and he knows how to operate it correctly. Therefore, it is my view, authenticity of computer-generated records or any electronic evidence, generally depends to the testimony of a witness, who require to show his knowledge on how the data message was recorded, stored and generated. Then from his testimony, the court will evaluate and

come up with conclusion as to the reliability, integrity or authenticity of computer-generated evidence or data message.

Back home, in this case at hand, PW1, when testifying before me, he was having a laptop which he said is one used to communicate with the defendant all the time, he said the same is encrypted and is personally used by him only, he said their cause of communication with the second defendant was via email and WhatsApp, in some documents before he tendered them, he showed the court the original document in soft copy through his laptop screen. Moreover, he said on the model and function ability of the said laptop, he also said he used his own hp printer which is also encrypted to make print out from the said computer. Also, he said both two devices worked properly.

In my view, I have also ample time to assess the demeanor of this witness, indeed in my opinion I am satisfied that the sources of those documents tendered, method used to generate and ownership of them were intact and indicate the same are trustworthiness and authentic.

Nevertheless, according to the said testimony of PW1, I cannot hesitate to presume that the said documents generated electronically were

authentic. The court has this power by virtue of section 18 (3) of the Electronic Transaction Act (supra) which provides that;

> *"18 (3) The authenticity of an electronic records system in which an electronic record is recorded or stored shall, in the absence of evidence to the contrary, be presumed where-*
> *(a) there is evidence that supports a finding that at all material times the* ***computer system or other similar device was operating properly*** *or, if it not affects the integrity of an electronic record and there are no other reasonable grounds on which to doubt the authenticity of the electronic records system;*
>
> *(b) it is established that the electronic record* ***was recorded or stored by a party to the proceedings*** *who is adverse in interest to the party seeking to introduce it; or ;*
>
> *(c) it is established that an electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking, to introduce the record.*
>
> *(4) For purposes of determining whether an electronic record is admissible under this section, evidence may be presented in respect of* ***any set standard, procedure, usage or practice on how electronic records are to be recorded or stored****, with regard to the type of business or endeavors that used, recorded or stored the electronic record and the nature and purpose of the electronic record"*

[Emphasis supplied]

Expounding the above provision my learned Brother Mambi, J. in the case of **Mohamed Enterprises (Tanzania) Limited vs. Tanzania Railways Corporation and AG,** Civil Case No. 7 Of 2021 High Court at Dar-es-Salaam had this to say;

> *"In other words, the above section sets three presumptions on authenticity to be considered by the court. Those presumptions on the authenticity of electronic or digital evidence are; Firstly; the court need to satisfy itself from either the evidence of the witness or on its discretion that the* ***computer system or other similar device was operating properly*** *or, if not,* ***it did not affect the integrity of an electronic record*** *and there are no other reasonable grounds on which to doubt the authenticity of the electronic records system, Secondly, it must be established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it; Thirdly; It must be established that an electronic record was recorded or stored* ***in the usual and ordinary course of business..."***

[Emphasis supplied]

The second cluster regard to the document tendered as exhibit P5, this is the document generated via WhatsApp from PW1's phone. As said above, the Evidence Act, recognize a flash disk and mobile phone as tangible devices which can capture record, store electronic data on documentary account of memorable past events. Such electronic data must be permanent, readable and is admissible in evidence constituting electronic documentation. Section 3 of the act defines the word 'document' as follows; -

> *"Document mean- any writing, handwriting, typewriting, printing, Photostat, photography, computer data and* ***every recording upon any tangible thing, any form of*** *communication or* ***representation including electronic form,*** *by letters, figures, marks or symbols or more than of these means,* ***which may be used for the purpose of recording any matter provided that the recording is reasonably permanent and readable"***
>
> [Emphasis supplied]

In view of the above provision, any electronic device capable of capturing electronic data and store it electronically and print out when needed for record purpose, the law allows as said above in cluster one, be

used as evidence subject to pass the test above enunciated by the provision of section 18 of ETA. This section is a permissive section; it seeks to allow data messages and information stored in electronic gadgets to be tendered in evidence just as any other paper exhibits or documentary evidence. **Stanley Murithi Mwaura vs. Republic** Criminal Appeal No. 144 of 2019 CAT at Dar-es-Salaam.

Not only that, under section 64 (3) of Tanzania Evidence Act, (supra) in essence provides electronic evidence is any data or information stored in electronic form or electronic media or retrieved from computer system/ electronic device which can be presented as evidence. In view from above interpretation, WhatsApp data message stored in a mobile phone when it is printed out fall under electronic evidence as computer-print out or computer-generated document.

Now again back to the case at hand, the issue is whether such exhibit passed the test above as per requirements stated of section 18 of the ETA. PW1 when testifying said his phone is model known as iPhone 11pro, it is encrypted and is working properly, he has stated the same was used to communicate with the second defendant via WhatsApp number 0776 148994 while the second defendant used WhatsApp. Number 0767 900575. PW1

was in possession by the time he testified and actually showed it to the court, is the one he used to connect to his computer and printed out the said document. In view of the above, in consideration of the laws stated above, I am of considered opinion he has demonstrated enough the requirement of the law in proving integrity and authenticity of the said WhatsApp print out. Nevertheless, according to the evidence tendered on the above two clusters, the evidence of PW1 being the owner of the two devices and knows well how to operate them, is enough and in my opinion no need of affidavit or any endorsement by anyone to authenticate them. (See the case of **Ami Tanzania Limited vs. Prosper Joseph Msele** Civil Appeal No. 159 Of 2020 CAT at Dar-es-Salaam (unreported).

Now, coming back to the issue raised above, PW1 has tendered a memorandum of understanding which was admitted and marked P1, principally, a memorandum of understanding is generally not legally enforceable in a court of law. It is a non-binding agreement that outlines the intentions and understanding of the parties; therefore, it outlines the intent of the parties to work together towards a common goal or to establish a certain relationship. However, it can be used as a reference or basis for creating a legally binding contract in the future.

According to the evidence tendered by PW1, indeed shows the business between them started after this MOU. Exhibits P4 and P2 respectively, shows the facts that, the second defendant sent apologies to the plaintiff after a shortfall on quality to the supplied chilli he did to the plaintiff, and promised to do better in future, also urged the plaintiff to supply more to the extend of 14 tons.

PWI in his testimony said, he then communicated with the second defendant, and they agreed that, the first defendant should supply to plaintiff 14 tons of chilli, to affect the said agreement into motion PW1 sent the money to the first defendant on 11/08/2021 as advance payment. PW1 evidenced this by tendering electronic generated bank transfer which was admitted and marked P3. He also said after the said transfer he informed via WhatsApp and blue tick was bricked to show that he has received the said amount.

I have considered the incident above, it has resorted me to peruse the admitted document, In fact it is true that, exhibit P3 indicate bank transfer from account name ZANJ SPICE LIMITED with account no. 3301093256 of KCB Bank to defendant account name ZURI ORGANIC LIMITED account no. 3012211477982 of Equity Bank, the transferred amount from the plaintiff

was EURO 22,400/=, and since it was done via electronic banking transfer details shows status completed (20008791648/FT21223DXL8DX), reference number 20008791648 and Bank reference number FT21223DXL8DX.

As stated above, they said was due to the offer sent via exhibit P4 by the second defendant which in reply the plaintiff accepted and sent the above amount to the first defendant, in view thereof the contract was completed and acknowledged electronically as stated above. In our jurisdiction the electronic contracts are recognized. According to section 21 of the Electronic Transaction Act (supra) provides; -

"21. (1) For avoidance of doubt, a contract may be formed electronically unless otherwise agreed by the parties.

(2) Where an electronic record is used in the formation of a contract, that ***contract shall not be denied validity or enforceability on the ground that an electronic record*** *was used for that purpose.*

22.-(1) Information in electronic form is dispatched when it ***enters a computer system outside the control of the originator*** *or of the person who sent the electronic communication on behalf of the originator.*

(2) .....

(3) Where the addressee has designated a computer system for the purpose of receiving electronic communication, that information is received at the time when the electronic communication ***enters*** *the designated computer system.*

(4) Where the electronic communication is sent to an information system of the addressee that is not the designated computer system, that information is communicated-

(a) at the time when the electronic communication is capable of being ***retrieved by the addressee*** *at that address; and*

(b) the ***addressee becomes aware*** *that the electronic communication has been sent to that address.*

(5) Where the addressee has not designated an information system, receipt occurs when the electronic communication is ***retrieved by the addressee, or should reasonably have been*** *retrieved by the addressee.*

23.-(1) Acknowledgement of receipt of an electronic communication may, where the originator has not agreed with the addressee on the form or method, be given by-

(a) Any ***electronic communication by the addressee, automated or otherwise****; or*

(b) Any ***act of the addressee****, sufficient to indicate to the originator that the electronic communication has been received."*

[Emphasis supplied]

As said above, the evidence of PW1 through exhibit P5 informed the second defendant completion of said contract on 11/08/2021 at 10:49:16 and the second defendant did not object but merely insisted to accelerate the business. In view thereof, I am of considered opinion the contract was completed electronically and acknowledged by the defendants.

In the second part of the first issue is that, whether the first defendant was guaranteed by the second defendant. In my view, no evidence was tendered to commit the second defendant to that effect, A guarantor is a person or entity who provides a guarantee or promise to be responsible for obligations, or performance of another individual or party. By agreeing to be a guarantor, means to step in and fulfill the commitments of the primary obligated party if they fail to do so. Essentially, the guarantor acts as a backup or secondary source of payment or performance in case the primary party defaults or fails to meet their obligations. And in normal circumstances there must be a guarantee deed. In this matter, it seems that second defendant was the Managing Director and a leader of first defendant, moreover, the money completing the said contract was sent to zuri organic Ltd as a company, even MOU stated above was between Plaintiff and first defendant only, and no term of having a guarantor to the upcoming agreements stated therein. Therefore, since no evidence showing that the second defendant was also a guarantor, I am not in a position to hold so. It is therefore my considered opinion the first issue is answered in affirmative partly as shown above.

The next issue is whether there was breach of the above proved contract. It is settled law that a breach occurs in contract when one or both parties fail to fulfill the obligations imposed by the terms of contract. (See the case of **Nakana Trading Co. Limited vs. Coffee Marketing Board** [1990 - 1994] 1 EA 448 cited in **Legend Aviation fpm Limited t/a King Shaka Aviation vs. Whirlwind Aviation Limited,** Commercial Case No. 61 of 2013 High Court Commercial Division (unreported).

PW1 evidence apparently showed that the first defendant did not deliver to the plaintiff the consignment as they agreed in time, according to exhibit P6, PW1 stated therein that, the two agreed via email and WhatsApp the first consignment of 7 tons of chili to be delivered at the end of August, 2021. The same was not done, this caused the plaintiff on 11th January 2022, which is four months later, PW1 opted to email the second defendant informing him he has breached the contract and thus he should pay his money back. This is also evidenced in exhibit P6 which was communicated to the second defendant.

In view of the above, I am enforced to seek the refuge of Section 19 of the Sales of Goods Act, Cap 214 R.E. 2019 which provides:

"19. (1) Where there is a contract for the sale of specific or ascertained grounds, the property in the goods is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case".

Therefore, the facts no any defense communicated from the defendants that there were factors proved which hindered the said performance of the contract, I am of the considered opinion the issue is answered in affirmative that the said contract was breached.

The third issue is whether the plaintiff suffered damage out of the said breach. It is a trite law, where two parties have entered into a contract which one of them has broken, the damages which the other party should be entitled to receive in respect of such breach of contract should either be deemed to have arisen naturally, fairly and reasonably, i.e., according to the usual cause of dealings, from such breach of contract itself, or as might reasonably have been deemed to have arisen in the contemplation of the contract. (See **Tanzania Saruji Corporation vs. African Marble**

Company (2004) TLR 155 and persuasive case of **Hadley v. Baxendale,** 1854 EWHC Exc. 70).

The plaintiff has claimed for special damage and general damages, unlike general damages, special damages must be strictly proved. The court cannot allow the claim for special damages on the basis of the party's bare assertion, this may possible, if the claim is well founded easily and corroborated with some documentary evidence. (See the case of **Harith Said Brothers Company vs. Martin Ngao** [1981] T.L.R. 327)

This is different with the general damages, which are awarded at the discretion of the court after the plaintiff has averred that he has suffered such damage of the act he is complaining of and that wrong must be caused by the defendant but the quantification of such damage is upon discretion of the court. (See the case of **Finca Microfinance Ltd. vs. Mohamed Omary Magayu,** Civil Appeal No. 26 of the 2020).

In this matter, as analyzed above, the contract entered was for business, and there is no dispute that any business aim to make profit if not super profit, in this regard and for what the first defendant did of not honoring his obligation, I am settled it suffice to hold which I do, that the

plaintiff must be awarded damage. However, I have passed through his relief sought, notwithstanding my assessment which will purely base on the above cases law cited, the plaintiff should know that in any business or commercial undertakings like of this kind, there are chances of making profit and also those of making loss. It will be unrealistic to assume the projects would earn maximum profit always.

The last issue is to what are the reliefs the plaintiff is entitled for. The plaintiff has prayed to be paid specific damage from the advance Money paid to the Defendant to source Chilli = Euro 22,4001= which was equivalent to Tshs. 60,719,904/= in the day of payment (11.08.2021), there is no doubt the plaintiff has managed to prove the same by exhibit P3 that he advanced the same through first defendant. I grant this amount as paid.

Next to be assessed is general damage, I have considered the plaintiff expectation he had and the trustworthy to the business, I have no flicker of doubt that the plaintiff invested the said amount of money aiming to make profit, however, being in a business, fellow traders did not get what they expected thus might have discredited him by then. In view thereof and having considered all the circumstances of this case including the refund

awarded above, I think the sum of Tshs. 40,000,000/= will meet the justice of this case. Thus, I award him that sum as general damages.

The plaintiff has also prayed for specific damages on the following; First, specific damage suffered due to following up on the debt equivalent to Tshs. 10,172,6001=; Second, specific damage suffered due loss of the direct business (7t) due to failure to export the sourced Chilli = Euro 14,080 which is now equivalent to Tshs 38,403,059.1=; Third, specific damage suffered due loss of the 2nd planned business (7t + 7t) t business due to failure to export the sourced Chilli = Euro 11,454 which is now equivalent to Tshs 29,595,532/=; Fourth, specific damage suffered due loss of profit from the date of the Defendant's refusal to source the Chilli to the date of judgment. This money would be used for other business = Tshs. 138,891,095 x 30% = 41,667,329 x 14 months from the date 'of default =Tshs. 583,342,599/=; and fifth, Payment for specific damage suffered due loss of good will from Clients Euro. 2600 per month x 14 months = 33,800 which is now equivalent to Tshs. 94,640,000/=.

I have considered these specific damages claimed by the plaintiff and the evidence tendered in this court, there plaintiff did not specifically prove the said damages, therefore being guided by the law cited above, that special

damages must strictly be proved. I am of considered opinion the plaintiff has failed to substantiate it as prayed, and thus consequently is hereby rejected.

In conclusion thereof, I enter a judgment for the plaintiff and order as follows:-

i) The first defendant to pay the Plaintiff Euro 22,400/= as refund which was equivalent to Tshs. 60,719,904/= in the day it was paid to first defendant on 11.08.2021;

ii) The first defendant to pay to the Plaintiff Tshs. 40,000,000/= being general damage.

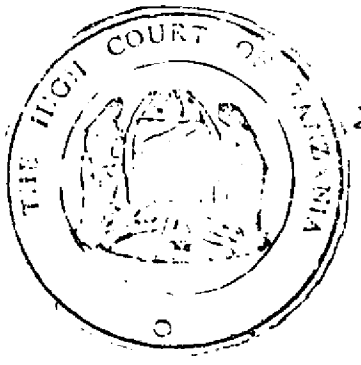
iii) The first defendant to pay interest on the sums prayed above at the commercial bank rate 23% per annum from the time of filling this case to the date of judgment;

iv) The first defendant to pay interest on the decretal amount at court rate of 7% from the day of judgment to the day of payment;

v) Costs of this suit be borne by the first defendants.

It is so ordered.

Dated at **MOSHI** this day of 31st July 2023.



A. P. KILIMI

JUDGE

31/7/2023