

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB- REGISTRY

CIVIL CASE NO. 63 OF 2023

KIJANI CROPS EXPORTATIONS TANZANIA LIMITED PLAINTIFF

VRS

AMS AFRICA ENTERPRISESDEFENDANT

SUMMARY JUDGMENT

Date of last Order: 5-12-2023

Date of Judgment: 5-2-2024

B.K. PHILLIP, J

The plaintiff herein instituted a summary suit against the defendant under Order XXXV Rule 2(1) of the Civil Procedure Code, praying for summary judgment and a decree against the defendant as follows:

- i) A declaratory order that the defendant has breached the contract entered with the plaintiff.
- ii) An order for payment of USD 524,300/=.
- iii) Interests at the court rate of 12% on the amount (ii) from the date of filing the suit to the date of Judgment.
- iv) Interests at the court rate of 12% on the amount (ii) and (iii) from the date of Judgment until the satisfaction of the decree.
- v) Commercial Interests of 21% on amounts (ii) from the date of judgment until the satisfaction of the decree.
- vi) Costs of this suit.

- vii) Any other remedy that the honorable court deems fit and just to grant.

It is the plaintiff's case that on 4th July 2021, it entered into a contract with the defendant for the supply of Soya beans (henceforth "the goods") from Zambia worthy of USD 428,000/= which was agreed to be delivered to the plaintiff on or before 4th August 2021. The plaintiff fulfilled its obligation by paying the defendant the aforesaid agreed consideration. However, the defendant did not deliver the goods as agreed. Consequently, the plaintiff and the defendant had a meeting in which they resolved to settle the matter amicably by signing a deed of settlement. The defendant agreed to pay back to the plaintiff the sum of USD 428 plus interest before 31st March 2022 and issued three cheques worth USD 524,300/= in favor of the plaintiff, to wit; cheque Nos.000033,000028 and 000030. Upon being presented at the Bank for encashment the aforesaid cheques were not honored due to insufficient funds in the defendant's bank account. The plaintiff notified the defendant that the cheques were not honoured but nothing was done to resolve the matter. Ultimately the plaintiff passed a board resolution to institute the case at hand against the defendant.

Upon notice of the summary suit being issued and served unto the defendant, no leave to defend the suit was sought by the defendant as per the requirement of Order XXXV Rule 2(2) of the Civil Procedure Code ("CPC"). Consequently, when the case was called for necessary orders, the learned Advocate Gilbert Masaga who appeared for the plaintiff, moved this court to enter a summary judgment against the defendant, under Order XXXV Rule 2(2)(a) of the CPC.

The position of the law is that when a summary suit is instituted in court, the defendant can neither enter appearance in court nor defend the suit unless he/she seeks and obtains leave to defend the suit. Failure to do so is tantamount to an admission of the claims and entitles the plaintiff to a decree, as per Order XXXV Rule 2(2)(a) of the CPC.

Having perused the pleadings, I am satisfied that this is a fit case to enter a summary judgment against the defendant, as prayed by the learned Advocate Gilbert Masaga. Thus, I hereby enter a summary judgment against the defendant and order as follows:

- i) The defendant breached the contract entered with the plaintiff.
- ii) The defendant shall pay the plaintiff a sum of USD 524,300/=.
- iii) The defendant shall pay interests on the decretal sum in item (ii) at the commercial rate of 21% from the date of filing the suit to the date of Judgment.
- iv) The defendant shall pay interests on the deretal sum in item (ii) at the court rate of 7% from the date of judgment until the satisfaction of the decree.
- v) Costs of this suit shall be borne by the defendant.



Dated this 5th day of February 2024


B.K. PHILLIP

JUDGE