

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMM. CASE NO. 6 OF 2003

CHINA CIVIL ENGINEERING
CONSTRUCTION CORPORATION } PLAINTIFF

VERSUS

NATIONAL INSURANCE
CORPORATION LIMITED } 1ST DEFENDANT

PARASTATAL SECTOR
REFORM COMMISSION } 2ND DEFENDANT

JUDGMENT

KIMARO, J.

China Civil Engineering Construction Corporation (the plaintiff) is claiming from the National Insurance Corporation Limited (1st Defendant) and Parastatal Sector Reform Commission (2nd Defendant) jointly and severally an amount of T.shs 84,281,461.32 allegedly being unpaid balance of the agreed charges for services rendered. The 2nd Defendant is Receiver Manager of the 1st Defendant by virtue of the Public Corporation Act, 1992, Section 43 (a).

There is undisputed evidence that the plaintiff did enter into a contract with the National Insurance Corporation for the rehabilitation of its Investment House along Samora Avenue Dar-Es-Salaam. Jerry Massaga, the only witness who testified for the defendants confirmed

that the plaintiff performed the work satisfactorily and that the amount which the plaintiff is claiming is genuine and is still outstanding.

The explanation given by the witness for failure by the 1st Defendant to pay, is bad financial position of the 1st Defendant. The amount of T.shs 84,281,461.32 is composed of T.shs 76,901,217.77 being the principal amount and T.shs 15,380,243.59 as 20% VAT.

In his final submissions, the Learned Advocate appearing for the defendants (Mbamba & Co. Advocates) confirmed that what the plaintiff is claiming is acknowledged by the defendant. He went further and requested this court to allow the defendant pay the amount claimed by the plaintiff by instalments under Order XX Rule II (1) of the Civil Procedure Code 1966.

I consider the submission on how the debt should be liquidated, being a misplacement because it was not pleaded by the defendants and it deals with execution, a stage which has not been reached in these proceedings. Much as the Learned Advocates for the plaintiff (M/S M.A Ismail & Co. Advocates) responded, no time will be wasted to dwell on it for the reason given above.

The other request made by the Learned Advocate for the defendants is waiver of the interest of 29%. The argument given to support the waiver is that the rate of the interest has not firmly been established by evidence, nor source of the said rate disclosed by a provision of law or usage.

The Learned Advocates for the plaintiff said that the court should consider the long period which lapsed since the payment became due, and until now it has not even been paid. The case of **Said Kibwana and General Tyre E.A V Rose Jumbe (1993)** T.L.R 173 which speaks about divisions of interest was relied upon. The case says that there are two divisions of interest. One covers the period when the debt fell due to the time of the delivery of judgment. The other covers delivery of judgment till full satisfaction. As for the former, the interest rate falls within the discretion of the court while the latter the interest hinges between 7 and 12%.

In my considered view, considering the long period the claimed amount has been outstanding, it is in the interest of justice that it be paid interest. The payment was delayed unnecessary and reasons given that the 1st defendant was in financial difficulties is neither supported by the pleadings nor the conduct of the 1st Defendant in this case.

I thus enter judgement for the plaintiff against both defendants for T.shs 84,281,461.32 on admission, plus costs. Interest is granted to the plaintiff at the current commercial rate from the date the payment fell due till date of judgment. Thereafter, interest to be calculate at 7% till full payment.

N.P.KIMARO
JUDGE
20/04/2004

23.4.2004

Coram: Hon. N.P.Kimaro, Judge

For the Plaintiff – Mr. Mbamba/Kalolo.

For the 1st Defendant } Mr. Mbamba
For the 2nd Defendant }

CC: Ngonyani.

Court: Judgment delivered today.

Order: Judgment is entered for the plaintiff for T.shs 84,281,461.32 on admission. The plaintiff is granted interest at current commercial rate from the date when the debt full due to the time of judgment. Thereafter interest at the court rate (7%) till full satisfaction. It is also granted costs.

N.P.KIMARO
JUDGE
23/04/2004

I Certify that this is a true and correct
of the original/Order Judgement Rulling
Sign [Signature]
Registrar Commercial Court. Dsm.
Date 23/4/04