IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO 47 OF 2006

SCANIA TANZANIA LIMITED.....PLAINTIFF

VERSUS

KAGERA TRANS COMPANY LIMITED.....1ST DEFENDANT

NICHOLAS KAMPA..... 2ND DEFENDANT

JUDGMENT

Mruma J.

This is an old case. It dates back from the year 2006. In its plaint presented for filing in this Court on the 11/8/2006, the plaintiff a limited liability company established under the Companies Act, Cap.212 R.E 2002, is claiming against the defendants severally and jointly for the Tshs. 45,000,000.00 being unpaid and or outstanding purchase price of five Scania trailers which the first defendant bought from the plaintiff on credit and another Tshs. 20,000,000.00 as punitive damages for the Defendants' wilful and intentional breach of the contract entered by the first defendant and the plaintiff.

The first defendant just like the plaintiff is limited liability Company incorporated under the Company laws of Tanzania. The

second defendant is a natural person managing the affairs of the first defendant.

Unfortunately the parties could not settle this matter amicably and the mediation was marked to have failed on the **11.12.2007**. Thereafter the legal battle was launched. Before I plunge into the pros and cons of each party's case, let me recapitulate the history leading to this matter.

The plaintiff deals in Scania vehicles, spare parts and related workshop services. She had entered into contract with the first defendant for the sale of the five ex-UK 3-Axle Trailers at a total price of 45,000,000.00 on a credit. It was a three months credit beginning and including March 2006. On 31.1.2006 a Promissory Note (**Exhibit P3**) in favour of the plaintiff for the sum of 31,350,000.00 as security for the said credit was executed. Subsequent thereto and immediately on the same day, the second defendant who is the Managing Director of the first defendant via his letter dated 30.1.2006 undertook to have the said amount discharged by May, 2006 by signing a Repayment Schedule (**Exhibit P1**).

It is alleged that on 30.3.2006, 28.4.2006 and 25.5.2006 the defendant issued three post-dated cheques (**Exhibit P4 collectively**) all bearing equal amount of money at the tune of shillings 10,450,000.00 each. However, on due dates the second defendant advised the plaintiff not to bank the relevant cheques

as the particular account had no funds. That up to the moment of instituting this suit, the plaintiff had never received any sums in respect of the said outstanding amount. That being the circumstances, the plaintiff knocked onto this Court's doors to seek redress.

Reliefs Sought

The plaintiff's claim is for the judgment and decree against the defendants jointly and severally for the following reliefs

1. Payment of Tshs. 65,000,000.00 being unpaid and/or outstanding purchase price of five trailers which the first defendant bought from the plaintiff on credit and punitive damages for defendant's wilful and intentional breach of the contract.
2. Interests on the principal sum from 31st January, 2006 when the relevant transaction was entered into, until the date of judgment at commercial rate of 24% per annum.
3. Interest on the decretal sum from the date of judgment until its satisfaction in full at court rate
4. Costs
5. Any other and or further relief as the Honourable court shall deem fit.

The defence

The defendants in their joint written statement of defence state that the facts in the plaints are mere distortions as they do not reveal the actual business transacted between the parties. The defendants state that the plaintiff invited the defendants to a customer business trip to London on terms and conditions that the customers were to deposit 3,000,000.00 to cover for their visa, air ticket, accommodation, meals, and travel costs, and that the said amount could be taken into account as deposit for the five trucks which could be purchased by the participating customers. The first defendant accepted the offer and paid the said amount and at the end of the trip (on which it was represented by the 2nd defendant) she purchased a total of 5 trucks and 6 trailers. The pleadings further states that since the 1st defendant was an TIC (Tanzania Investment Centre) incentive Certificate holder it was an implied contractual term that the purchase price of the trucks and trailers would be in accordance to the prices allowable to a TIC incentive certificate holder. To that end, it is stated in the pleading that the first defendant has paid to the plaintiff a total of Tshs. **197,907,615**, which an amount of Tshs.7, 766,389 is over and above the actual price of the vehicles purchased.

The defendants, actually concedes to issuance of post-dated cheques which were not banked, the demand notes issued to

them by the plaintiff and their refusal to pay the same but state that there is no justification of paying the said money claimed therein due to fraud. The particulars of fraud are given as follows:

a) That the trucks and trailers imported and sold by the plaintiffs to the 1st defendant were different from those the first defendant had chosen while in the United Kingdom.
b) That the plaintiff used the 1st defendant's Certificate of Incentives to clear the trucks and trailers at the lower price, but invoiced the 1st defendant with the higher price.
c) That the invoices issued by the plaintiff to claim money from the 1st defendant are incorrect, extortionate, arbitrary and unconscionable aimed at defrauding the defendants

The defendant put further that the claim was baseless and unjustifiable. The defendant filed a counter-claim, which unfortunately collapsed at early stages for being far too below the pecuniary threshold of this court.

The agreed issues.

Before the commencement of hearing of this case the following issues were agreed and recorded by this Court:

1) Whether or not the defendants owe the plaintiff any money, and if so, on what transaction is the claim based.

2) If the answers to the first issue are both in the affirmative, what are the terms and conditions of the said business transaction and if so whether the defendants are in breach of any of those conditions and terms.
3) Whether the plaintiff has committed any acts of fraud in the same transactions.
4) Whether the plaintiff is entitled to punitive damages in the circumstances
5) What reliefs are the parties entitled to.

For orderliness and precision purposes I chose to deal with these issues in *seriatim.* But first I will look into the evidence adduced.

The evidence:

The plaintiff called two witnesses. The first to testify is Mr. **Samweli Kilua Mhina (PW.1)** who introduced himself as a Key Accounting Manager in the Sales Department of the plaintiff Company. He told this court that he knew the second defendant after he had visited him several times for soliciting business and the matter at hand emanates from one of their meetings. He said that it related to the sale of five trailers for 45 million shillings to the first defendant. When asked as to what was the agreed payment mode **PW.1** stated that their client(defendants) suggested a repayment schedule (**Exhibit P1**) according to which they were supposed to start payment in **February,2006** but through **Exhibit P2** they requested for a one month grace period

and were therefore supposed to start payment in March, 2006. He stated that the 2nd defendant issued a Promissory Note indicating his undertaking to have the debt discharged by May (**Exhibit P3**). It was his further testimony that despite the initial deposit of 15 million, out of the said 45 million, the defendants did not make any further deposit to discharge the balance of the said 30 millions.

When examined on the existence of the transaction between the parties, PW1 stated that apart from the invoice which is procedurally issued upon any order by the client, he was not aware of any agreement between the parties because written agreement were being dealt by his superiors. He however went on to say that the trailers were delivered right after the signing of the promissory note and the repayment schedule. On further cross examination PW1 stated that though he knew Sengerema Motors Transport Company (1995) Ltd, but he is not aware that the trucks and trailers which were to be sold to the defendants were also sold to that company. He conceded that in the year 2004 there was a business trip to London in which the second defendant representing the first defendant participated but said that he was not sure of the contents of the invitation letter sent to the defendants. He said that there was no transaction between the parties as a result of that trip.

Regarding the payment schedule he said that he knew it was not being performed because he had been asked to contact the customer-defendant to notify it on the obligation. Re examined he said that the trip to London and whatever transpired thereat was not related to the case at hand in anyway.

PW.2 is Mr. **Sanjay Kantilal Oza**- an accountant by profession and working as Finance Manager in the Plaintiff Company. His testimony is to the effect that Scania Tanzania limited sold five trailers to the 1st defendant for shillings 45 million and the defendant requested to pay by instalments and consequently issued three cheques which upon presentation to the bank were returned with a mark that there was no money in the account. He tendered three cheques as **Exhibit P4** collectively. He said further that after the cheques had bounced they notified the defendant but there was no response and therefore they decide to send a demand notice requesting the settlement of the outstanding dues (**Exhibit P5).** According to PW2 up to the date when he gave evidence, the debt had not been paid.

In cross examination PW2 said that they sold trailers to the defendants early in 2006, and that the invoices represented the agreement for the transaction. However it was not easy for him to remember the chassis numbers of the said trailers or the trucks. Upon being Referred to photocopies of registration cards for the trailers, it was his statements that the first one with

chassis number **A.135390** registered in the name of Charan Singh and Sons, second one was chassis number **A. 406255** registered in the name Sengerema Motors and Sengerema Vodacom, the third one chassis number A.135390 ,fourth with Chassis number 62256783 also registered in the name of Sengerema Motors Transport (1995) Limited, all were not the same as the trucks and trailers which the plaintiff had sold to the defendant. He denied also to have imported the said trailers using the defendant's incentive certificate and then to have sold the same to another person because the said trucks were for the plaintiff's own stock and not imported specifically for the defendant.

Concerning the business trip to London in the 2004 he conceded that the defendant participated but there was no any special agreement between the parties in connection with the trip and therefore nothing was outstanding in connection with the said trip. The witness further said that some other payments made to the plaintiff apart from the said 15 million were not related to the transaction at issue.

That was basically all for the plaintiff's case.

The defendants called one witness to testify- that is the second defendant himself (**DW.2**) who is the Managing Director of the 1st defendant. He said that he knew the plaintiff because he used to

purchase spare parts from it and the last time he had transacted was in the year 2004.

The witness told this court that on the 18.7.2004 he was invited to attend a business trip by Scania and among the conditions for the participation was to make a deposit of shillings 3 million which were to be regarded as a deposit for at least five trucks that were supposed to purchase at the end of the trip from Scania-UK.

He said that while in the United Kingdom, he selected five trucks and five trailers. Having arrived back he went to Scania to ask for the documents for the said trucks and trailers so that he could manage to request for exemption of some import taxes from the Tanzania Revenue Authority (TRA) by virtue of his Certificate of Incentive(**Exhibit D1)**. He said that using that certificate he applied and was granted exemption for importation of the tractors and trailers. It was his testimony also that after he had obtained exemption he waited until nine months before the said trucks and trailers could be delivered. He said that only five trucks were supplied to him while he paid shillings **173,400,000**/= He tendered a receipt number **12366** dated **30.11.2005** (**Exhibit D3)** in respect of this sum. As for trailers, he said that the plaintiff said that it could release them after he had made full payments. It is his further averments that he made payments to the plaintiff for the trailers and to substantiate the payments he

tendered four receipts (collectively **Exhibit D4**), the first being receipt **no. 60010** dated **16.1.2006** for the sum of 2 million, receipt **no.60026** dated **27.1.2006** for the sum of **9,507.615/=**, receipt number **60032** dated **30.1.2006** for the sum of **15,000.000**/= and finally receipt number 12060 dated **10.6.2005** for the sum of 10,000,000/=.

The witness went on to say that after the said payments he was given the trailers. Explaining further, he said that the trailers were given to him when he was continuing to pay because he had written a letter to guarantee the plaintiff for the loan he had taken.

The witness also said that the total amount he had paid through those receipts was shillings 38 million. He admitted to be aware of the shillings 30 million repayment schedule he signed in favour of the plaintiff. When asked as to why he wrote a committal letter and signed a repayment schedule if indeed he had paid all the outstanding dues, PW2 said that it was due to continued harassment from the plaintiff on when and how much he could pay, and because he was in hurry and he wanted to do business. He said he had to write the letter so that he could take the trailers.

Regarding the cheques, PW2 said that they were not honoured because he had to stop the same after discovering that he had overpaid the plaintiffs and also that the trailers which he had

chosen were not the ones that were supplied to him, instead, his Certificate of Incentives was used to import some trailers which were given to another person in the name of Serengeti Motors. Explaining how he became aware of the differences he said that he discovered the same when he was loading the trailers on the chassis and went to TRA to investigate where it was confirmed that somebody else registered in connection with those trailers. He said further that the said trailers and trucks were given to Chaghan Singh and Serengeti Motors.

He continued to tell this court that having discovered that even the three million he had paid as per invitation letter was not considered in offsetting his liability he decided to take the matter to Court, and instituted civil suit number 47 of 2007 at Kisutu Rm's Court which was later on transferred to Samora Rm's court. He said that the plaintiff was supposed to refund to him even more than shillings 30 million. It was also his contention that upon crosschecking the invoices issued for the balance status he discovered that there were differences on the two invoices in that though they had same numbers they indicated different amount of Britain Sterling pounds 111 and 104.

When asked about the transaction with Scania which led to the shillings 45 million debts, he said that he did not know that transaction and that he did not owe anything to Scania.

On further cross examination he stated that the said trailers were delivered to him but he never made any reconciliation of his accounts. This marks the end of the defence case.

Analysis of issues:

Now I revert to the issues framed by this court for determination. The first issue is:-

1) **Whether or not the defendants owe the plaintiff any money, and if so, on what transaction is the claim based.**

To answer the first part of this issue it is imperative that the second sub issue be tackled for it is this part which lays the basis of the major issue. It appears from the testimonies of the witnesses of both the plaintiff and the defendant and the various documents tendered in this case that parties are not disputing the fact that there were transactions between them that involved a substantial amount of money. They are only opposed as to which transaction among several others was the basis of the debt now under consideration.

Whereas the plaintiff claims that the debt in question is related the transaction in which she sold five trailers for the shillings 45 million to the defendant, the defendants claims that the debt under consideration is related to a transaction in which he dealt with the plaintiff in respect of five trucks and 6 trailers for which

he paid more than shillings 197 million. This takes me to the provisions of section 112 of the Evidence Act [Cap 6 R.E. 2002]

The said law puts a burden of proof on he who alleges. The law provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person.

In the instance case the plaintiff stated that early in January in 2006 they sold five trailers to the defendant on credit for shillings 45 millions. **PW1** conceded that they received a total of shillings 15 million deposit (refer page 49 and 50 of the transcribed testimony dated 30.6.2008) as part payment of the said amount. This was proved by **Exhibit D3** which was tendered by the defendant through **DW.1**. It is the testimony of both **PW1** and **PW2** that thereafter the defendant had vide a letter (**exhibit P2**) requested a grace period to be allowed to start paying the loan by March instead of February 2006. This letter (Exhibit P2) is very clear and for avoidance of doubt I reproduce hereunder the relevant part of the said letter

"…… *Date: 30th January, 2006*

The Managing Director,

Scania Co. Ltd

DAR ES SALAAM.

Dear Sir,

RE: LOAN REPAYMENT SCHEDULE FOR T.SHS 30.0 MILLION

As previously agreed, we hereby present our Loan repayment schedule for the loan of Tshs. 30.0 million being costs of trailers you sold to us on loan.

Please note that we had to make heavy services on the trailers we bought from you and hence we will not be able to pay any instalment for February, 2006.

We therefore request you to allow us a grace period of the first month of February 2006 and let us start paying the monthly instalments and interest thereof from March 2006. Interest for February will also be paid accordingly.

We attach the loan repayment schedule for your approval.

Yours faithfully

[Signed]

NICOLAS KAMPA

MANAGING DIRECTOR*....."*

The said repayment schedule indicates repayment of a total amount due and payable including interest of 18% per annum to

be shillings 31,350,000.00 The proposal was accepted by the plaintiff without any alteration and this is confirmed by testimonies and evidence of both parties.

The contents of the above quoted letter tallies with the plaintiff's story that they sold to the defendant trailers in early January, 2006. The first two paragraphs and paragraph two of the said letter in particular suggest that previously parties had agreed that payments should start in February, 2006. This impresses that the soonest the sale took place was early January as further corroborated by receipt number **60032** dated 30.1.2006 for the sum of **15,000.000**/= which is said to have been deposited with the plaintiff as part payment of shillings 45 million.

Apart from that, there is Exhibit **P3** titled "**PROMISSORY NOTE**" executed on the **31.1.2006** by the said Nicolas Kampa **DW.1**, who is the Managing Director of the 1st defendant's company promising to pay on demand or order a sum of Tshs. **31,350,000.00** to Scania Tanzania Ltd with interest at 30% per annum until the date of repayment.

The defendant admitted in his pleadings to have owned the documents and **DW.1** admitted execution of these documents during examination in chief and added that he did the that so as to be able to take the trucks and do business and also because he was being harassed to pay by the plaintiff (**refer page 49 of the transcribed testimony of DW.1 dated 7.9.2009**).

From the above circumstances, and the first paragraph of **Exhibit P2** in particular, it need no magic to conclude that indeed the claim is based on the transaction which involved selling of five trailers to the defendants on a loan arrangement repayable by instalment.

Now, do the defendants owe the plaintiff? I certainly say YES! The plaintiff stated in its claim that the defendant owed it a sum of 45 million being unpaid sums of money for the trailers sold to it on a loan basis. However, as gathered from the evidence analysed hereinbefore indeed, it is only shillings 30 million plus interest of 18% per annum (which was 1,350,000.00 at the time of instituting this suit) totalling to shillings 31,350,000.00 which until that time had not been paid.

In explaining his failure to pay, **DW.1** stated that apart from issuing the three consecutive cheques with an amount of 10,450,000 each purporting to discharge the amount; he discovered that he had actually paid more to the plaintiffs (page 50 of the transcribed testimony of DDW.1). He denied the liability arising out of the transaction stating that there was no such transaction in which the plaintiff sold to him five trailers for shillings 45 million but rather what he could remember is a transaction in which the plaintiff sold to him 5 trucks and 6 trailers for which the defendants had paid about **197,907,615**, out of which Tshs.**7, 766,389 197**, is over and above the sum

which was due. He tendered some documents (**Exhibit D3** which was a Receipt for the sum of shillings **173,400,000**/= for the trucks and exhibit **D4** which included a total of 4 receipts worth shillings 38 millions).

On the other hand the plaintiff through **PW.1** in principal did not dispute receipt of the said sums of monies but its contention is that those payments were received in connection with different transactions between the parties. These transactions were carried out before January 2006 transaction.

I do agree with the plaintiff. I am of the firm view that the plaintiff's story in this regard is correct. The defendant has failed to prove that actually he did not have a transaction with the plaintiff in respect of the trailers the payments for which are in dispute. DW1 did not at all controvert his letter (**Exhibit P.2**-loan repayment schedule) and the said schedule itself (**Exhibit P.1**), neither could he deny authorship of the promissory note, all pointing to his acknowledgement of the transaction and indebtedness in that respect.

That apart, there is yet another circumstance which depicts ill-motive on the part of defendant in the whole transaction. He is denying knowledge of or its existence of this particular transaction, but is stated undisputedly that the plaintiff used to conduct a business trip to UK annually whereby its customers were given chance to visit the headquarters of Scania in the UK

thereafter increasing their chances of buying trucks at a discount price. The defendant concedes that the defendant was one of the Customers which were invited and in 2004 trip it was represented by the second defendant **DW.2.**

It does not sit right with me that indeed the defendant had no previous dealings with the plaintiff for if that was true it could not have had the chance of being considered for the trip as one of the plaintiff's customers. DW1 was included in that trip because the 1st defendant was among the customers of the plaintiff.

In fine therefore I find the defendant to owe the plaintiff a total of 31,350,000 which accrued from the sale of five trailers to the defendant on loan basis and which to date have not been paid.

Confidently now, I will not labour much on the second issue. The first issues have been affirmatively answered. And as for the terms and conditions, there is no a needle-in the-haystack search, for they are readily discernible; that the trailers were to be delivered upon discharge of part payment, that the balance of the purchase price was converted into a term loan payable in three months instalments with an interest of 18% per annum, and a grace period of One month of February, 2006.

Did the defendant breach any of those conditions? That too need not magnifying lenses nor does it require a microscope. The defendant paid only 15 million, and to-date they have not paid

the balance plus interest. They are in breach of the payment terms and conditions to that extent.

3. Whether the plaintiff has committed any acts of fraud in the same transactions?

Fraud allegations were put up by the defendant in its defence the particulars thereof being that the trucks and trailers imported and sold by the plaintiffs to the 1st defendant were different from those the first defendant had chosen while in the United Kingdom, the plaintiff used the 1st defendant's Certificate of Incentives to clear the trucks and trailers at the lower price, but invoiced the 1st defendant with the higher price and that the invoices issued by the plaintiff to claim money from the 1st defendant are incorrect, extortionate, arbitrary and unconscionable aimed at defrauding the defendants.

Apparently and without much ado, I find the answer to this issue to be in the negative and this is simply because, the particulars of fraud allegations above stated does not in any way correlate to the transaction at hand which I have found to have been that of a sale of five trailers on a loan basis.

My view is firmly rooted in the definition of the term fraud under Section **17(1) (a) - (e) of the Law of contract Act, Cap.345 R.E 2002**. The law is couched in the following language

17. "Fraud" defined

(1) "Fraud" means any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract–

(a) The suggestion, as to a fact, of that which is not true by one who does not believe it to be true;

(b) The active concealment of a fact by one having Knowledge or belief of the fact;

(c) A promise made without any intention of Performing it;

(d) Any other act fitted to deceive; or

(e) Any such act or omission as the law specially declares to be fraudulent.

Since I have found as a matter of fact that the dispute in this matter arises from a transaction which took place between January and March, 2006 transaction the terms and conditions of which were clearly spelt out, I find that the question of fraud has been misplaced in this matter. The reason that the defendant has failed to link up the two transactions; that in relation to the sale of the five trailers alleged and proved on preponderance of probability by the plaintiff and those in connection with the sale of

5 trucks and 6 trailers which the defendant has failed to substantiate its existence. Consequently it will be futile exercise to test his allegations against the legal scales provided under section 17(1) of the said law of Contract Act.

For the reason I have given above. The third issue is answered in the negative.

4. **Whether the plaintiff is entitled to punitive damages in the circumstances.**

Punitive damages which are also termed exemplary damages are not awarded to compensate the plaintiff, but in order to reform or deter the defendant and similar persons from pursuing a course that which damaged the plaintiff. They are damages that are intended to punish the wrongdoer in a breach of contract. As such, they are not based on actual economic loss like compensatory damages. They're designed to make an example out of the guilty party by punishing him for his wrongful conduct.

Punitive damages are awarded only in special cases where conduct was egregiously invidious and are over and above the amount of compensatory damages. In the case of **Balbir Singh Saini Vs Savings and Finance Commercial Bank Limited and BECCO Civil Appeal No 32 of 2009**, the Court of Appeal declined to approval an award of punitive damages on the ground that there was no evidence of malice and deceit on the part of the defendant.

I have canvassed the evidence and testimonies of the witnesses in this case I find this to be a fit case which calls for deterrence measures by this court to protect honest businessmen and women from the evils of unscrupulous dealers. The defendants had indeed transacted with the plaintiff. They exchanged various documents as analyzed and admitted in this case. They clearly admitted to be indebted to the tune of Tshs. 31,350,000.00 as at 31st January, 2006 and proposed a repayment schedule (Exhibit P1) which was readily accepted by the plaintiff. The loan repayment schedule submitted to the plaintiff was accompanied by an admission letter (Exhibit P2). On the following day i.e. 31st January, 2006 DW1 executed a Promissory Note (Exhibit P3), in favour of the plaintiff for the amount plus interest. On 28th April, 2006 the defendant issued three cheques (Exhibit P4) in favour of the plaintiff but were all dishonoured when presented for encashment. All these evidence indicates that the defendant was invidious and not honest in dealing with the plaintiff.

Finally, there were chances to settle this dispute through mediation but when it was called on for that purpose on 8th November, 2008 before Mjasiri J (as she then was) his counsel simply reported to the court that his client was absent.

Despite of that glaring evidence in favour of the plaintiff the defendant through its witness **DW.1** denied any liability. I find this conduct of the defendant to be outrageous and calculated to

unjustly benefit the defendant. In the case of **Rookes Vs Barmad [1964] UKHL 1**, the UK House of Lords, and specifically Lord Patrick Devlin stated that one of the few circumstances under which exemplary damages could be awarded is where it is established that the defendant's conducts were calculated to make a profit for himself. To me the conduct of the defendant in this matter appears to defeat business ethics at the highest possible sense and terms and was geared towards getting unjust profit.

That notwithstanding, it is my considered view that the amount of Tshs. 20,000,000.00 prayed for in this regard is a bit on the higher side of the scale considering the magnitude of the transaction and the total amount of the claim. In my view an award of Tshs. 10,000,000.00 (Say Ten million Tanzania shillings) will grace the occasion. This brings me finally to the last though not the least in the list of issues.

5. The reliefs

The first relief prayed for is payment of 65,000,000.00 comprised of 45,000,000/= as an outstanding amount of the loan and 20,000,000 as punitive damages. I have earlier on showed that the evidence tendered has established the payment of Tshs.15 million out of the outstanding sum of Tshs. 45,000,000.00. It does not ring the bell to me as to why at all did the plaintiff

revert to original claim and disregarded the already discharged amount.

This court cannot close its eye to that fact and therefore I confine the prayer to the amount due and payable as evidenced by exhibits **P1**, **P2** and **P3**.that is to say shillings 31,350,000.00.

As to punitive damages, it stands adjudged at Tshs. 10 million as indicated and hence making a total of 46,350,000.00 awardable for prayer one.

Prayer number two is for interest on the principal sum as from 31st January, 2006 until date of judgment at commercial rate of 24% per annum. By this, the plaintiff here is asking the Court to do what Asquith, CJ. in **Victoria Laundry v Newman**[1949] 2 K.B. 528 at p. 539 (which was quoted with approval by the Tanzania Court of appeal in **Stanbic Bank Tanzania Limited v Abercrombie & Kent (T) Limited (Civil Appeal No. 21 of 2001) [2006] unreported**), that is, to put the plaintiff "... in the same position, as far as money can do so, as if his rights had been observed." He has fixed it at the rate of 24% per annum as commercial rate but did not substantiate as to whether that was the commercial rate then operating or the current one, and or on what basis did he infer to fix the same. In this accord, I fix it at the rate of 21% per annum for the Tshs 31,350,000.00 awarded in prayer one above from the date of filing this suit to the date of judgment. The punitive damages of Tshs 10 million awarded shall carry no interest.

Further interest at the rate of 7% per annum shall be chargeable on the principal sum of Tshs. 31,350,000.00 from the date of this judgment to the date the amount is paid in full. The plaintiff will have its costs of the suit.

In summary therefore Judgment is hereby entered for the plaintiff against the defendants jointly and severally as follows:-

1. Payment of Tshs.46, 350,000.00 as explained above.
2. Payment of commercial interest at the rate of 21% per annum from the date of filling the suit to the date of judgment.
3. Payment of further interest at the rate of 7% per annum on the principal sum of Tshs 31,350,000.00 from the date of judgment till full satisfaction.
4. Costs for this suit.

It so ordered.

A.R. MRUMA.

JUDGE

Date: 23drd June, 2011.

23/6/2011

Coram: Hon. A.R.Mruma, Judge.

For the Plaintiff: Mr. Ishengoma for Mwakipesile for Plaintiff.

For the 1st Defendant
For the 2nd Defendant } Mr. Ishengoma for Defendant.

CC: J. Grison.

COURT: Judgment delivered in presence of Mr. Ishengoma for the Defendant and Mr. Ishengoma holding brief of Mr. Mwakipesile advocate for the Plaintiff this 23rd day of June 2011.

A.R. MRUMA.

JUDGE

Date: 23drd June, 2011.

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