

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

COMMERCIAL CASE NO. 153 OF 2013

**BETWEEN**

CHINA RAILWAY JIANG ENGINEERING  
CO (T) LIMITED -----PLAINTIFF

***VERSUS***

CONTINENTAL SERVICES LIMITED ----- DEFENDANT

**JUDGMENT**

**SONGORO, J**

China Railway Jiang Engineering Co (T) Limited, the plaintiff instituted a suit against Continental Services Limited, the defendant claiming that, they entered into Construction Contract of building "Leticia Tower" at the premise situated on Plot No 59, Ali Hassan Mwinyi Road, Kijitonyama, Dar es Salaam.

Further, plaintiff claim payments of the contractual sum were supposed to be made in accordance with certificates of payments issued by Architecture. But Defendant Company failed to pay part payment of the agreed contractual sum arising from certificates of payments No 17 to 21. Plaintiff also claim defendant even refused to refund to the plaintiff amount paid as Value Added Tax (VAT) incurred in purchasing building materials and other services. The plaintiff is therefore praying for judgment and decree against the defendant as follows;

- 1) This Honourable court be pleased to order the defendant to pay the plaintiff a sum of shs 1,016,275,313 arising out of the defendant`s failure to honour certificate of payment issued by the Architect.
- 2) That, the defendant pays the plaintiff interest of shs 205,901,001.16 accumulated on the principal amount failure to honour the certificates of payments on the principal sum claimed in item (a) above.
- 3) That, the defendant pay an Interests rate on the decretal sum from the date of judgment to the date of full payment
- 4) General damages to the tune of shs 100,000,000/=

- 5) costs of the suit
- 6) Any other reliefs as this honourable court may consider fit and proper to grant.

In response to the plaintiff claim, the Continental Services Limited, the defendant filed a written statement of defence, and opposed all plaintiff`s claim. Further, the defendant put the plaintiff on strict proof.

In light of the plaintiff claims and defendant defence, the court in consultation with the parties drew the followings as issue for determination;-

- 1) Whether or not the defendant has honoured certificates No 17, 18, 19 20 and 21 issued by the Architecture in favour of the plaintiff and what is values of certificate.
- 2) Whether or not the defendant is indebted to the plaintiff and to what amount
- 3) Whether or not the plaintiff wrongly charged the interests in the certificates which was issued.
- 4) If the answer in I and 2 is in affirmative has the plaintiff suffered any damages, and
- 5) What relief or reliefs are parties entitled.

So, the plaintiff suit was heard and decided on the basis of the above mentioned agreed issues. During the hearing the plaintiff was represented by Mr. David Ntonge, Learned Advocate; while the defendant was represented by Mr. Jerome Msemwa and Mr. Martine Rwehumbiza, Learned Advocate.

In pursuing his claims the plaintiff called only one Bakir Samardzic who testified as PW1 and tendered several exhibits. To start PW1 first explained that, he is employed by the plaintiff company as special advisor to the plaintiff chairman.

Then relying on his witness statement, PW1 told the court that, in March 2008 the plaintiff company entered into construction contract with the defendant to build the office block known as Leticia Tower on Plot No 59 along Ali Hassan Road, Kijitonyama, Dar es Salaam.

The witness then stated that, the total agreed construction costs was shs 4,284,879,151.00 (Four billion two hundred eighty four million and eight hundred seventy nine thousand one hundred fifty one) and Messrs.' MD Consultancy Architects was appointed as Architecture of the project.

On mode of payment, PW1 stated in paragraph 7 of his witness statement that, it was agreed that, defendant would be paying the plaintiff for works certified by the Architecture, within 28 days from the day a certificate of payment is served to the defendant by the architecture.

It was part PW1`s testimony in his witness statement that, certificates of payment No 1 to 16 were paid accordingly by the defendant

He the contested that, the Certificates No 17, 18, 19, 20 and 21 were not fully paid. Even he contested that, Value Added Taxes (VAT) which the plaintiff was charged in procurement of materials and services charged in respect of the above mentioned certificates was not paid. In further clarification PW1 explained that, the Architecture issued certificate No 17 of shs 190,733,248.00 and if VAT paid is added the amount due is shs 225,065,232.64.

Regarding Certificate No 18 it was of shs 105, 677 927 and if the VAT paid is added the tax the amount due is shs 124,699,953.86. In respect of certificate No 19 the amount due is shs 58,091,445.1 and if the VAT paid is added the amount due is 68,547,905/=. Likewise in certificate No 20 the amount due is shs 91, 241,494.00 and if the VAT paid is

added the amount due is shs 107,664,967.64. Then on certificate No 21 the amount due was shs 298,819,514 and if the VAT paid the amount due is shs 352,603,486.52.

Next, PW1 explained in paragraph 12 of his witness statement that, currently the defendant is indebted to the plaintiff to the sum of shs 1,405,923.78 as construction costs an amount which attract interest. PW1 insisted in paragraph 14 of his witness statement that, the plaintiff is entitled to payments of sum of money arising from certificates No 17 to 21 issued by the Architecture. Interest on the decretal sum of shs 389,648,329.78 and general damage of shs 100,000,000/=.

In support of the plaintiff claims, PW1, tendered certificate of completion of works issued and signed by MD Consultancy and signed by Dudley Mawalla which was admitted as Exhibit P1, and stated that, the construction work was completed on 1<sup>st</sup> May, 2011. Further, he tendered an Interim Certificate No 17 Revision A of shs 190,733,248.00 exclusive 18 % of VAT dated 17/1/2011, which was admitted as Exhibit P2. Furthermore he tendered Leticia payment schedules of the plaintiff which was admitted as Exhibits P3, P3 (1) P4. The list shows and established a sum of shs 3,995,689,846.24 was paid to the plaintiff and a sum of shs 1,016,275,313.76 was still outstanding and UN paid.

Other exhibits which were tendered by PW1 are 27 receipts of the plaintiff acknowledging payments from the defendant`s company and were admitted as Exhibit P7.

Then, PW1 was cross examined by the defence counsel and explained that, the dispute between the plaintiff and defendant is on payment of outstanding sum arising from certificates of payments issued by the architecture as proof of completion of works. .

In further cross examination, the witness claim that, in the execution of the works and procurements of materials they paid Value Added Tax because there was no tax exemptions furnished to them from Tanzania Investment Centre (TIC) as per defendant`s promise. So the sum incurred in procurement by the Plaintiff had a Value Added Tax (VAT) component which is refundable sum. After PW1, testified, the plaintiff closed his case and the defence case was opened.

In support of their defence, the defendant called Paul Lyimo who testified as DW1. Then relying on his witness stated DW1 agreed that, the plaintiff's company on the 13<sup>th</sup> March, 2008 entered into construction contract with the plaintiff to construct a Leticia Tower at Plot No 59, Ali Hassan Mwinyi Road, Kijitonyama, Dar es Salaam.

The witness then stated that, the plaintiff claim is denied because the entire contractual sum was paid to the plaintiff. He further contested that, a contract entered between the plaintiff and defendant did not provide for a refund of Value Added Tax because the project was tax exempted under a certificate of incentive issued by Tanzania Investment centre.

To substantiate his point that, the project has tax exempted, DW1 referred the court to a copy of certificate of incentive annexed to the plaint which shows there was tax exemption. So DW1 contested that, all plaintiff tax refund claims have no basis. The witness further clarified that, from the agreed contractual amount, a sum of shs 164,263,570.78 was paid to DERM Electrical Contractors as directed by the plaintiff in certificate No 17 contrary to the plaintiff's claim.

The witness then explained that, certificates of architecture shows a total sum payable in certificates No 1 to 21 was shs 4,058,918, 520.00. Whereas Annexure MR2 shows amount paid by the defendant to the plaintiff is shs 4,159,953,417.00 which means defendant has overpaid by a sum of shs 101,034,897.00.

DW1 claimed that, the defendant is entitled to refund of overpaid sum and interest rate of 30% per annum. Next, DW1 explained that, the plaintiff was aware that, the project has tax exemption and it was wrong to include the component of the Value Added Tax and interest as costs of the project. To substantiate the defendant defence, DWI tendered an Agreement and schedule of conditions of building contract between Continental Services and Limited and China Railway Jianchanga Engineering Co Limited which was admitted as Exhibit D 1,

Further DW1 explained that, a letter from Tanzania Revenue Authority dated 12th August, 2008 addressed to the Managing Director of M/s Continental Services Ltd with a

title Duty Exemption on Capital /Deemed Capital Goods shows a Certificate of Incentives No 060576 was effective from 22/7/2008. It also lists of goods as capital /deemed capital goods for construction of commercial building with import duty and VAT Relief is stated as 0% taxes rates. The witness tendered Certificate of incentives No 00214810 dated 22/7/2008 which were admitted as exhibits D2 and D3 respectively.

DW1 further explained that, they were issued with a letter from Tanzania Revenue Authority directed the defendant`s company to take full responsibilities of accounting any VAT payments the project and not the plaintiff. DW1 also tendered TRA letter which was admitted as Exhibit D6, and several correspondences, showing execution of contracts and mode of payments. So the witness maintain a VAT claim of refund is not legally maintainable because the project was tax exempted.

Finally, DW1 prayed that, the plaintiff suit be dismissed on the ground that, all certificates of payment were honoured, and there is no tax liability which is due because the project was under tax exemption.

After both the plaintiff and defendant witness gave their testimonies both counsels with the leave of the court filed closing submissions.

On his part, Mr. David Ntonge, Learned Advocate of the plaintiff stated that, out three witness only Mr. Bakir Samardzic PW1 appeared in court for cross examination and re-examination respectively. He then submitted that, the agreed construction price of Leticia House was shs 4.284.879, 151 but the amount excluded the Value Added Tax which was incurred by the plaintiff in purchasing building materials and services...

The counsel then explained that, certificates of payments No 1 to 16 issued by Architecture for payment were honoured as per the agreement. But certificates of payments No 17,18,19,20 and 21 which attracted sum of 744,560,632 .00 plus 18% of VAT Taxes were not full honoured.

The plaintiff counsel then admitted according to exhibits P4 and 5 the plaintiff accepted that, a sum of shs 3,995,689,846.24 was paid according to the terms of the

agreements but the actual which was supposed be paid is shs 5,011,695,160.00. It was the submission of the plaintiff counsel that, payment made were less by shs 1,016,275,313.76.

Regarding the defendant explanation that, a sum of shs 164,263,570. 78 cents was paid to Derms Electrical Contractor, the plaintiff counsel contested that, no one was called before the court to testify from the said company to confirm if the alleged amount was paid to Electrical Contractors.

The plaintiff counsel submitted that, in such circumstances the court is entitled to make an inference that, since none was called to testify and confirmed payments certainly defendant claim on payment of electrical sub-contractor has not been substantiated. So the plaintiff counsel submitted that, therefore the plaintiff is entitled to payment of shs 1,016,275,313.00. arising from the defendant's failure to honour aforementioned certificates of payments issued by the architect, interest of Tshs 389,648,329.78. Also is entitled to general damage to the sum of shs 100,000,000/= . On the defendant assertion that, the project was tax exempted the plaintiff counsel submitted a certificate of incentive was not furnished to the plaintiff before or at the commencement of the project. So that, procurement of goods was done on tax exemption basis. So the plaintiff claim for refund of tax is justifiable. Finally the plaintiff counsel prayed to the court the judgment entered against the defendant as prayed.

On his part, the defendant through Mr Jerome Msemwa and Martin Rwehumbiza Advocates submitted that, the dispute between the party's centers on payments of Certificates No 17 to 21, and plaintiff is claiming a sum of shs 1,016,275,313 as amount due from the said certificates plus interest of shs 205,901,001, and shs 100,000,000 as general damages. The defence counsel maintained in his submission that, entire contractual sum was paid.

In addressing the 1<sup>st</sup> and 2<sup>nd</sup> agreed issues of whether the defendant has honoured certificates No 17, 18, 19 20 and 21 by paying the stated sum and whether the defendant is indebted to the plaintiff, the defence counsel submitted the amount stated in all 21

certificates was paid and confirmed in Exhibit D7 the project manager Mr. Wei Wei stated also stated sum of Shs 4,159,953,417 .02 was paid to the plaintiff by 22<sup>nd</sup> April 2012. So the amount was paid.

Turning to the 3<sup>rd</sup> agreed issue whether the plaintiff wrongly charged interest on amount stated in certificates No 17-21 , the counsel submitted that, as per Exhibit D6 which is a TRA Letter dated 11<sup>th</sup> November, 2009 the project was under tax exemption of Tanzania Investment Centre. So the plaintiff claim for refund of tax to the defendant is not proper and unfounded.

Responding to the plaintiff claim of damages the defendant counsel submitted that, the plaintiff did not suffer any loss or damages since defendant timely paid to the plaintiff all payments.

To conclude his submission the defendant counsel submitted that, the plaintiff did not prove his claim on the balance of probability. So they prayed for the dismissal of the suit for lack of merit.

The court considered plaintiff`s claims of a sum 1,016,275,313 arising out of construction contract, and defendant`s denial and find that, it is trite law that, under Section 110 (1) and (2) of the Evidence Act, 1967, Cap 6 R.E. 2002 whoever request a court to give judgment in his favour as to any legal right on the existence of any fact which he asserts, must prove that, the fact exist.

The same legal position was stated by the Court of Appeal of Tanzania in a decision in the case of Wolfango Dourado V. Tito Da Costa, ZNZ Civil Appeal No. 102 (CA) (unreported) where the court insisted that;

*"Whoever alleges a fact, unless it is unequivocally admitted by the adversary has to prove it, albeit on the balance of probability".*



Guided by the above cited legal principle, the court find and decide that, a burden of proof on claims raised in the plaint, lies on the plaintiff.

With that, clarification I revisited the plaintiff claims and defendant defence and find it may be conveniently be divided into three clusters.

The first cluster is claim based on whether there is still outstanding sum contractual from certificate of payments No 17 to 21. The controversy here is in respect of Certificates No 17 to 21 which are subject plaintiff`s claims.

The second cluster is claim is based on refund Value Added Tax (VAT). The controversy is that, the plaintiff claim to have procured building materials and service and paid Value Added Tax while the defendant maintain that, the project was tax exempted by Tanzania Investment Centre (TIC). So no taxes were supposed to be paid and a claim for VAT refund has no basis.

The third claim is based damages and interests arising from breach of the terms of payments of construction agreement.

Before moving into the merit of the argument presented by both parties, on whether contractual sum stated in certificates No 17 to 21 has been fully paid and if there has been a breach of payment clause, I find it is important at this early stage to address plaintiff claim of Value Added Tax refund.

In my perusal, of the plaintiff claim of value added tax refund, I easily noted that, the plaintiff is claim of refund is of shs 495,004,847 alleged to have been paid as Value Added Tax. The claim of refund is interwoven in the plaintiff main claim of shs 1,016,275,313. I have examining the plaintiff`s claim of Value Added Tax refund and find there are two opposing arguments. PW1 and the plaintiff jointly argues that, in the cause procuring construction materials "purchase price paid included payment of 18% percent as Value Added Tax. On the other hand DW1 and the defendant opposed the claim on the basis that, the project was under tax exemption therefore a claim of VAT refund is not legally maintainable.

The court has carefully considered the plaintiff claim of VAT refund AND easily find issues whether the plaintiff was under legal obligation to pay VAT or paid VAT and is now entitled to refund certainly involves and entails interpretation of Sections 4,5 and 11 of Value Added Tax Law Act No 24 of 1997 and tax relief clauses which deals with imposition of Value Added Tax and granting of VAT Reliefs. Next the court finds the Value Added Tax Act is one of the revenue laws administered by Tanzania Revenue Authority (TRA)

Taking into account that, the plaintiff claim a refund of Value Added Tax requires interpretation of revenue laws administered by TRA, the court finds pursuant to Section 7 of the Tax Revenue Appeal Act Cap 408, the jurisdiction for determining all proceedings of civil nature in respect of disputes arising from revenue laws administered by Tanzania Revenue Authority is on the Tax Appeal Board. Thus from the above cited section only Tax Appeal Board have the sole original jurisdiction to determine any application or prayer for the refund of VAT and not this court. The same legal position was stated and emphasized in a decision of Civil Appeal No 93 of 2009 between Tanzania Revenue Authority Versus New Musoma Textiles Limited that;-

*"The Board shall have the sole original jurisdiction in all proceedings of civil nature in respect of dispute arising from revenue laws administered by the Tanzania Revenue Authority"*

Therefore guided by Section 7 of the Tax Revenue Appeal Act Cap 408 and decision in the case of Tanzania Revenue Authority Versus New Musoma Textiles Limited it is the finding and decision of the court that, the Tax Appeal Board is sole the forum established to hear and determine tax disputes administered by the Tanzania Revenue Authority which includes VAT Refund. It follows therefore this court has no jurisdiction to hear and determined the VAT Refund claim.

For reasons explained above I hereby struck out the plaintiff claim of VAT refund on the ground that, the court has no jurisdiction to hear and determine VAT claim of refund. The

original jurisdiction tax matters lies with the Tax Appeal Board. That, is all the court may say on refund of VAT.

Moving on the plaintiff claim non- payment of certificates No 17,18,19,20 and 21 and I find the key issue for determination is whether amount stated in the said certificates were fully paid and within the agreed contractual period. The court find in the actual sense parties are at a logger head on the issue of payments.

To start with I would state that, as a matter of principle derived from the Construction Contract the "*owner*" of the works and premises under construction is under contractual obligation to honour and pay amount of money stated in the certificates of works issued by the architecture who certified works to have been completed. In other words the defendant was under contractual obligation to pay amount stated in issued certificates and which in total makes construction costs of shs 4,284,879,151.00 (Four billion two hundred eighty four million and eight hundred seventy nine thousand one hundred fifty one ).

It seem to me that, according to the usage and practice of payments in construction contract and industry amount monies stated in the certificate of works issued by architecture or contractual sum in the contract on completion of works is not negotiable in the sense the amount must be paid in full. So, it is a rule of practice in the industry that, once a certificate for payment is issued the defendant was bound to pay the stipulated amount as per certificate.

Also, I will add that, since the plaintiff executed his entire construction works and the works has been approved by the architecture, and the defendant who is the client, and owner of the premises was under contractual obligation to pay the plaintiff with the entire agreed construction costs was shs 4,284,879,151.00

Now reverting to the plaintiff claims that, certificates of works No 17, 18, 19, 20 and 21 were not honoured, the court assessed and evaluated evidence from both sides and find the agreed contract sum was shs 4,284,879,151.

Further, the court assessed the testimony of PW1 on the amount paid, and find he stated that, the plaintiff was paid a total sum of 3,995,689,846.24 out of the contractual sum of shs 4,284,879,151. So the amount paid was less than the agreed contractual sum by shs 289,189,305.

Likewise, the court find if DW1 and the defendant maintains that, the total contractual sum was shs 4,284,879,151/= and paid sum was shs 4,159,953, 417/= plus a fact that, a sum of shs 164, 263 570. 78, was paid to Derms Electrical Contractors that, established from the mathematic point of view that, out of agreed contractual sum of shs 4,284, 879,151 a sum of shs 124,925,734 is still due and un paid to the plaintiff

Next on DW1 testimony that, a sum shs 164, 263 570. 78, was paid to Derms Electrical Contractors honestly the court finds there is no evidence on payments made to electrical contractors, and there was no evidence if the paid sum shs 124,925,734 will be deducted from the agreed contractual sum. In the absence contractual term or agreement that, the sum be paid to Derms Electrical Contractor will be deducted from the agreed contractual sum I find what was paid to the electrical contractor was not paid not in accordance with terms of construction contract... So failure on the part of the defendant to pay the plaintiff the entire agreed contract sum of shs 4,284,879,151.00 within specified time of completion of the constructions that, implies that, payment of Certificates of works No 17 to 21 were paid in accordance with the agreed schedule.

So to conclude on the agreed issue No 1st and 2<sup>nd</sup> agreed I find and decide that, due the amount paid by the defendant to the plaintiff was less to the agreed contractual sum of shs 4,284,879,151.00. I find and decide that, defendant failure to honour contractual payment of certificates No 17, 18, 18, 19, 20 and 21 to the sum of shs 289,189,305. The amount due is basically the difference between agreed the total contractual sum of shs

4,284,879,151.00 and the amount paid sum of shs 3,995,689,846.24. The difference is 289,189,305.

So it my decision on agreed issue No 1 and 2, that, the contractual outstanding sum is shs 289,189 305, and defendant is indebted and liable pay the plaintiff to the sum of shs 289,189,305.

On DW1 testimony and defendant defence that, they paid sum of 164, 263 570. 78 to Derms Electrical Contractor as part of the contractual sum, I finds there is no tangible evidence which supports the said assertion. Further there is no tangible evidence if Derma Electrical Contractor was party to the contract between the plaintiff and defendant. Next the court find defendant defence that, he paid part of the contractual sum to electrical company is not a defence or waiver of not paying the full contractual sum to the plaintiff.

While still on that, point on agreed issues No 1 and 2, I find the plaintiff claim of outstanding sum shs 1,016,275,313 appearing in paragraph 15 (a) on the plaint was exaggerated because it wrongly included a claim of tax refund which has also an interest supposed to be determined by Tax Appeal Board. That, is all what the court may say on the 1<sup>st</sup> and 2<sup>nd</sup> agreed issues.

Moving to the 3<sup>rd</sup> agreed issue of Whether or not the plaintiff wrongly charged the interests on the amount due from certificates of payments No 17 to 21, the court finds plaintiff claim on interests may be conveniently divided into limbs

The first limb is the plaintiff`s claim of interest based on refund of Value Added Tax (VAT). Now in respect of the claim of interest based on refund of VAT I have already decided that, pursuant to Section 7 of the Tax Revenue Appeal Act Cap 408 it is Tax Appeal Board which has the sole original jurisdiction to hear and determine matters involves interpretation of law administered by the Tanzania Revenue Authority which

includes VAT Refund and interest accrued. For that, reasons, I hereby discard and dismiss the plaintiff claim on interests arising from VAT refund for lack of jurisdiction.

On second limb of claim interests based on un-paid certificates works No 17 to 21 which has its basis on construction contract. The court find it was not furnished with the evidence from the architecture or plaintiff on when Certificates of the Works were served to the defendants for payments. .

The court was expecting that, the for the purposes of calculation interest arising from Certificates of works No 17 to 21 the plaintiff would have been furnished the court on the exacts dates when certificates were served to the defendant. The dates of services are key for determination the interest due. So date or dates which certificates were issued would have enable the court to calculate the interest due on the amount claim for certificates No 17,18,19,20 and 21.

Admittedly the court noted from clause 34.1 of construction contract Exhibit D1 that, all monies payable by the employer after expiry of 30 days shall earn interest at the rate to be specified in the Appendix. But a proof of dates which certificates for payment were served to the defendant is missing. In the absence of evidence from the architecture himself or plaintiff on the exact dates which certificates were served to the Defendant the court find itself it has no reliable dates on when interests started to accrue which may be the basis of calculating on interest which was due from certificates No 17 to 21. So a claim on interest due from certificate of payments also fails because a claim has remained un substantiated

Reverting to the 4<sup>th</sup> issue of whether the plaintiff suffered any damages, the court find that, the defendant retained a sum of shs 289,189,305, which is UN outstanding from the contractual sum. The amount has been retained for quite some time, and the plaintiff would have used the retained for his business investment and make profits.

Son on claim of general damages Courts in several decisions including a decision in the case of Stanbic Tanzania Limited Versus Abercrombie & Kent (T) Limited Civil Appeal No 21 of 2001 unreported the Court of Appeal quoting Lord Macnaghten in Bolag v Hutchison [1950] A.C. 515 have insisted and emphasized that, general damages are the ones which the law will presume to be the direct, natural or probable consequence of the action complained off; which in my view includes non-payment of contractual sum which is due from the defendant.

Also, in the case of Victoria Laundry v Newman [1949] 2 K.B. 528 at p. 539 Asquith, C.J said "damages" are intended to put a party in the same position, as far as money can do so, as if his rights had been observed.

Taking into account I have said the plaintiff was denied to use the amount due because was withheld by the defendant, certainly the plaintiff suffered damages because he was denied to use the sum which was due to him.

Since, I find the plaintiff wrongly included tax claims and interests in his claim, which I have said earlier that, their determination and jurisdiction lies with the Tax Appeals Board. So the claim of interest of shs 205,901,001, which had VAT component appears to be huge to the sum. *So I hereby assess and grant the damages to the tune shs 35,000,000/=* which obvious exclude interest on claimed VAT refund.

Reverting back to agreed issue No 5 on what reliefs are parties entitled too, the court find from contract between Continental Services and Limited and China Railway Jianchanga Engineering Co Limited Exhibit D 1, that, the defendant agreed and promised to pay a sum of shs 4,284,879,151/= as contractual sum to the plaintiff not more and not less. That's , Courts in several decisions including a decision of EDWIN SIMON MAMUYA VERSUS ADAM JONA MBALA [1983] T.LR 410 at 414 where Lugakingira J (as then was) quoting Lord Denning J (as then was) in the case of Robertson & Minister of Pension (1949) 1 KB 227 emphasized that;-

*.....if a man gives a promise or assurance which he intends to be binding on him and to be acted on by the persons to who it was given then, once it is acted on he is bound by it.*

Also in the same case of Edwin Simon Mamuya versus Jona Mbala, Lugakingira J further stated that;-

*Once the parties bind themselves in contract for a lawful consideration they are obliged to perform their respective promise,*

So going by cited decision which decided that, parties to contract including defendant is under obligation to full fill their contractual promises including that, of repaying the entire contract sum, I find the defendant has obligation to fulfill his promise of paying shs 4,284,879,151/= to the plaintiff as per his promised, not less and not more.

Since, I have found and decided that, all defendant`s payments were less than the agreed contractual sum of shs 4,284,879.151 as per his promised, by shs 289,189,305/= So I hereby rule that, the defendant is under contractual obligation to pay the plaintiff as per their promises on the actual contract sum. . I therefore enter Judgment and decree against the defendant as follows;-

1. Defendant to pay the plaintiff a sum of shs 289,189,305/= as part of the agreed outstanding contractual sum.
2. Defendant pays the plaintiff damages to the sum of shs 35,000,000/=
3. Defendant pays the plaintiff interest of 8% per annum of the principal debt granted in item 1 above from the date of filing a suit to the date of Judgment.
4. Further, the defendant to pay the plaintiff interest of 12 % per annum on the decretal sum from the date of Judgment to the date the decretal sum is paid in full.
5. The defendant is to pay plaintiff costs of pursuing the suit



Finally, I find plaintiff suit succeeds as explained above. The right of appeal is fully explained to the parties.

Dated and Delivered at Dar es Salaam on this 16 day of April 2018



H.T. SONGORO  
(JUDGE)

The Judgment has been delivered in the presence of Bakir Samardzic principal of the plaintiff company and Mr. Jerome Msemwa Learned Advocate of the defendant and Mr. Paul Lyimo Principal officer of the defendant