

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

COMMERCIAL CASE NO. 151 OF 2018

KAHAMA OILS MILLS LIMITED PLAINTIFF

VERSUS

SGS SOCIETE GENERALE DE SURVEILLANCE SA1ST DEFENDANT

SGS-CSTC STANDARDS TECHNICAL SERVICES

COMPANY LIMITED –TIANJIN, CHINA2ND DEFENDANT

SGS TANZANIA SUPERINTENDENCE CO. LIMITED.....3RD DEFENDANT

Date of Last Order:02/11/2020

Date of Judgement:11/12/2020

JUDGEMENT

MAGOIGA, J.

The plaintiff, KAHAMA OILS MILLS LIMITED by way of a plaint instituted the above named suit against the above named defendants jointly and severally praying for judgment and decree for the following reliefs, namely:

1. A declaratory order that the issuance by the defendants of the so called PVoC/CoC without at all conducting any inspection, verification and testing of the goods coupled with their failure to disclose the supplier's premises upon being so required by the plaintiff as averred above, was an act of gross negligence.



2. An order for payment of special damages of Tshs.417,557,349 and interest as 21% as follows:
- (a) Tshs.199,924,517.89 being compensation for the cost differential of purchasing locally PVC Resin 5000 bags required for the project averred under paragraph 6 above.
 - (b) Tshs.33,675,000.00 being costs of passage for the visit to China as averred in paragraph 12-17 above.
 - (c) Tshs.3,000,000.00 being administrative expenses.
 - (d) Tshs.1,149,440.00 being PVoC/CoC charge.
 - (e) Tshs.17,960,000.00 being laboratory Re test charges, and
 - (f) Tshs.162,250,000.00 being the disposal costs for the useless PVC Resin.
3. Payment of general damages taking into account the futile 'good chase' efforts by the plaintiff in search of mitigation of loss, due to the defendants' gross negligence.
4. Payment of the costs of this suit with interest thereon at Court rate of 12% from the date of judgement up to the date of satisfaction of the decree; and
5. Any other relief(s) that the Hon. Court may deem fit and just to grant.



Upon being served with the plaint, the defendants filed a joint written statement of defence strongly disputing the plaintiff's claims and prayed that this court be pleased to dismiss this suit with costs.

The facts of this suit as gathered from the pleadings are not complicated. They go that, on 22/02/2017 the plaintiff ordered PVC Resin SG5 packed in 40' *4 containers and PVC Resin SG8 packed in 40'*1 container: 5 container worth gross weight of 125,500 kilograms from China with which the plaintiff intended to execute the project for supply of High pressure Pipes and Fittings to Geita Urban Water Supply and Sanitation Authority won after successful tender.

The facts go that the plaintiff stipulated to the supplier the safeguards of being supplied the goods with Pre-Export Verification of Conformity (PVoC) to be done by the 2nd defendant as a condition precedent for the delivery of the goods. The 2nd defendant in that arrangement did as agreed and was certificate issued accordingly. The plaintiff believing the goods are to the standard required, paid all necessary taxes and transported the goods to his own factory in Kahama for production of High Pressure Pipes and Fittings. To the dismay of the plaintiff, when the production started the plaintiff discovered that the goods supplied with PVoC/COC certificate cover issued by

the defendants were utterly useless, resulting in the blocking and jamming of the plaintiff production machinery, thereby exposing the plaintiff to massive financial loss.

Further facts were that, all efforts by the plaintiff to have the matter solved in an amicable ways were in vain both from China to in Tanzania and it was in the course things come to light that the defendants acted negligently by relying on a documents without conducting any inspection, verification and testing of the goods prior to issuance of PVoC, hence, breach of duty of care leading and forcing the plaintiff to incur more money for the completion of the project, hence, this suit, praying for judgement and decree after hearing parties on merits.

At all material time, the plaintiff was enjoying the legal services of Mr. Roman Selasin Lamwai, learned advocate, while the defendants had the legal services of Messrs. William Mang'ena assisted by Baraka Msare and Timoth Vitalis.

Before hearing started, the following issues were agreed by parties and recorded for the determination of this suit, namely:

1. What were the specifications of the PVC Resin ordered by the plaintiff?



2. Whether the certificate issued by the defendant regarding the goods were in conformity with these specifications
3. Whether the 2nd defendant was involved in staffing the goods into the containers.
4. Whether the defendants were negligent in their inspection duties
5. What relief(s) parties are entitled to.

In proof of her case the plaintiff called a total of 4 witnesses. The first witness for the plaintiff was Mr. MHOJA NKWABI KABALO- to be referred in these proceedings as PW1. PW1 through his witness statement which was adopted as his testimony in chief told the court that, he is the Chairman and Chief Executive Officer of the plaintiff and that by virtue of his position is aware of all daily operations of the company. PW1 told the court that, among others, his company deals with manufacturing of water pipes of various descriptions and it imports raw materials from abroad. PW1 tendered in evidence letter of acceptance for Tender reference No.GEUWASA/Ge/00/08/01 dated 17/03/2017 which was admitted in evidence as **exhibit P1**. Equally PW1 tendered in evidence letter of acceptance and call for contract signing dated 17/03/2017 which was admitted and marked as **exhibit P2**.



Further testimony of PW1 was that, in March 2017, the plaintiff won a tender for the supply of pipes and fittings, Tender No. GEUWASA/02/2016-17/HQ/G/02 issued by Geita Water Supply and Sanitation Authority worth of Tshs.855,714,111.00. PW1 went on to tell the court that, upon getting the tender, he instructed his subordinates, in particular, Zainul Pathan to make all arrangements with particular specifications to meet the tender by importing the raw materials from China. Through email communications with Mr. Jack Lee from China, at last, it was agreed that the specification for the needed raw material were PVC Resin SG5 packed in 40*4 containers and PVC Resin SG8 packed in 40*1 container with a gross weight of 125,500 kilogrammes. The emails communication between Zainul Pathan and Mr. Jack Lee, it was, among others, agreed that before shipment of the goods a certificate as to Conformity has to be issued. As usual a commercial invoice No.16AC308 and pack list both of which were back dated to 25th February, 2017 were issued and payments were affected. PW1 told the court that, later he got a bill of lading No.CNS17 0224195 issued by COSCO shipping line Limited dated 19th March 2017. PW1 tendered in evidence commercial invoice dated 25/02/2012 and packing list dated 25/02/2017 which were collectively admitted in evidence and marked as **exhibit P3a-b**. Equally PW1 tendered in evidence

bill of lading and SGS report which were collectively admitted and marked as **exhibit P4a-b.**

PW1 went to tell the court that, upon receiving all the necessary documents, the plaintiff paid all taxes and charges which enabled the consignment to be cleared and transported to Kahama ready for production. PW1 tendered in evidence release order which was admitted in evidence and marked as **exhibit P5.**

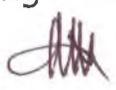
But to the dismay of PW1, when production started it came to light that raw materials supplied were unfit for the task intended by causing serious destruction to the machines in the factory. PW1 went on to tell the court that, their efforts to communicate with the supplier, which included going to China was all in vain. According to PW1, the second defendant was the one who issued pre-export verification conformity certificate but without a report. Further, it was revealed that both 2nd and 3rd defendants were negligence and as such breached duty of care and as such the plaintiff suffered both financially and psychologically, hence, claims of the reliefs as stated in the plaint.

Under cross examination by Mr. Mang'ena, PW1 told the court that, being the chairman and Chief Executive Officer, he has employees who are casted with

some duties which are done at his sanctions. PW1 told the court that, Zainul Pathan was his employer who was working in procurement department, foreigner from India, however, he went back to India and because of Covid-19 has not been able to come back. As to the standards which were ordered PW1 told the court that, are as in exhibit P3 tendered in court. PW1 went on to tell the court that Pathan was telling and briefing him everything on this transaction, including interpretation of all the documents communicated in English.

PW1 pressed with questions told the court that they were obliged to go China to meet the supplier with the aim of sort out the problem. After arrival in China they met Mr. Jack Lee from ACETO who had little help but directed them to SGS because he exported what SGS has verified. Upon getting documents, PW1 told the court that, he realized no seals were put on the container.

Under re-examination by Mr. Lamwai, PW1 told the court that SGS were responsible for putting seals to make sure that the imported cargo is secured after inspection. They did not put seals, pointed out PW1. SGS were to test the cargo and PW1 told the court he paid for testing as agreed but no testing was ever done.



The second witness for plaintiff was Mr. WILLIAM MAKOYE MATONANGE- to be referred herein after as PW2 for the purposes of these proceedings. PW2 through his witness statement adopted in these proceedings as his testimony in chief, told the court that, he is the General Manager of the plaintiff's company, hence, superintended over all administration matters, including negotiations for sales and purchases by the plaintiff and overlook all the imports and supervise procurements. The testimony of PW2 in paragraphs 3-14 are same as that of PW1 and for avoidance of long and boring judgment, I will not repeat them here. PW2 went on to tell the court that through his lawyers he wrote letters to Tanzania Bureau Standards seeking an intervention in respect of the pre-export verification of conformity certificate which was issued by the second defendant after all efforts to resolve the matter were in vain. PW2 told the court that, because SGS are agents of TBS in verifications of goods imported to Tanzania for purposes of certifying that the intended exports conformed to the standards applicable in Tanzania for such goods. PW2 went on to tell the court TBS replied to their letter conforming that the SGS inspected non-regulated goods. PW2 pointed out that in their follow up of the matter they learned that the defendants did not inspect nor conducted any verification of the goods but rather acted on faked



documents that have been supplied by the exporter Zhengzhou Aceto Chemicals. PW2 pointed further that the defendant purported to undertake the task of issuing a pre-export certificate when knowing very well that the goods were non-regulated and in any case they did not have the ability to test them. PW2 tendered in court demand notices to sue SGS dated 31/07/2017 and 16/12/2017 respectively which were admitted in evidence and marked as **exhibit P6 and exhibit P7**. Equally PW2 tendered in evidence Pre-Export Verification of Conformity (PVoC) with reference T2/2017/04164 dated 20/12/2017 as **exhibit P8**.

Further testimony of PW2 was that, they tested the goods in South Africa and after getting the test report, they realize that the specifications given in the order and what was supplied were materially different. Not only that but PW2 went on to point out that even the certificate issued by the 2nd defendant had no seals after purported inspection. This failure to seal the containers, according to PW2, was a deliberate or is that no inspection and verification was ever done as expected, hence, an exhibition of gross negligence and by issuing the certificate, the plaintiff was re-assured that he was importing quality goods while it was not so. PW2 told the court that, forced in the circumstances , had to buy the same materials from other suppliers and in so



doing incurred loss to the tune of Tshs.417,557,349.00. Eventually, PW2 prayed that this suit be granted as prayed in the plaint. PW2 tendered in evidence certificate of analysis from Chemiscience Laboratories which was admitted in evidence and marked as **exhibit P9**. Also, PW2 tendered in evidence 4 proforma invoices and 2 bank statement from TATA AFRICA HOLDINGS (T) limited in evidence as **exhibit P10a-f**. Another exhibit PW2 tendered is Tax invoice dated 15/05/2017 which was admitted in evidence as **exhibit P11**. And lastly, PW2 tendered in evidence Proforma invoice dated 1st June,2017, 2 tax receipts and storage charges which were collectively admitted in evidence as **exhibit P12a-g**.

Under cross examination by Mr. Mang'ena, PW2 told the court that as General Manager he is responsible for all management of the plaintiff's factory. PW2 told the court further that they have licence to import chemicals. As to Zainul Pathan it was the testimony of PW2 that he was working under his supervision and anything was to be approved by the Chairman-PW1. PW2 pressed with questions told the court that, their order was pressed through email and the communication was between Jack Lee and Zainul Pathan. Certificate of conformity to any imported material was requirement of Tanzania Bureau Standards.



PW1 went on to tell the court that, when the problem occurred, PW1 and Zainul Pathan went to China to find out a solution but in vain. PW2 told the court at last they resorted to test the material to find out what is the problem and did that in South Africa and the results were that the goods were of bad quality. To prove that no pre-export inspection, PW2 pointed out that, no seals were put and the documents given were all fake.

Under re-examination by Mr. Lamwai, PW2 told the court that putting seals was a legal requirement for it signifies that the goods were checked and inspected for export. PW2 insisted that, what the defendants did was the highest degree of negligence in the circumstances.

Next and third witness for the plaintiff was Mr. HUSSEIN SHILALA-to be referred herein as PW3. PW3 through his witness statement that was adopted as his testimony in chief told the court that, he is the overall mechanical engineer of the plaintiff factory. According to PW3, the plaintiff's factory does various manufacturing of water pipes of various descriptions and it imports raw material from abroad. PW3 told the court that when the disputed materials were put on production it became apparent that the materials were unfit for manufacturing of water pipes and that they even caused serious destruction of the machines in the factory by causing

blockage and breakdown of the machines. PW3 told the court that, he went to Mwanza to repair them as at the factory level maintenance was not possible.

Under cross examination by Mr. Mang'ena, PW3 told the court that he is standard VII leaver but has been working with the plaintiff's industry as mechanical engineer since 2005. PW3 when pressed with more questions told the court that, he is responsible for operating and servicing all machines and supervise a team of 10 people working under him. PW3 admitted that he is not a registered engineer because in Mechanical engineer no registration is required. PW3 told the court through his experience, he is the one who gave the specifications and other process was done by others. PW3 insisted that, the materials were unfit because they caused blockage in the machines.

Under re-examination by Mr. Lamwai, PW3 told the court that, his education do not qualify him to be registered and on top of that, no board for registering mechanical engineers.

The last witness for the plaintiff was Mr.HUSSEIN ABDI HAJI- to be referred hereinafter as PW4. PW4 through his witness statement adopted in these proceedings as his testimony in chief told the court that, he is the agent of the plaintiff on matter relating to purchase of resin subject of this dispute.

PW4 went on to tell the court that, he does represent the plaintiff on all matters concerning its business. PW4 remembers that on 20th May, 2017 he received a sample of PVC resin tested by SGS in China from Kahama to SGS Dar es Salaam for verification on whether the certificate of conformity issued in China conforms to the products imported after the blockages in the machines. According to PW4, he took the sample to SGS Dar es Salaam and Tanzania Bureau of Standards but all failed to test the sample. PW4 tendered in evidence form of SGS for receiving samples in their office in Dar es Salaam on 22/05/2017 which was admitted in evidence and marked as **exhibit P13**.

In response, Tanzania Bureau of Standards wrote a letter dated 20th December, 2017, among others, conforming that their authority to inspect goods given by TBS to SGS was limited to regulated goods and not otherwise. Further, TBS advise them to settle the dispute with the plaintiff. PW4 testified that the 2nd defendant who is the subsidiary of the 1st defendant and as such acts for 3rd defendant in respect of exports to Tanzania had a duty of care to any imported goods in respect of which it issued its certificate and it breached its duty of care to the plaintiff and has caused the plaintiff to suffer gross injury. PW4 concluded his testimony by testifying that both the defendants are vicariously liable to the plaintiff.



Under cross examination by Mr. Mang'ena, PW4 told the court that, he has been agent of the plaintiff and this saga inclusive and that he received the sample from Kahama and took them to SGS Dar es Salaam, which was PVC resin. PW4 told the court further that, in the course of following the problem at SGS Dar es Salaam, they told him that they have no laboratory for testing the sample. PW4 told the court that, from SGS Dar es Salaam he went to TBS who admitted to have no laboratory for testing resin and they advised PW4 to try outside the country. PW4 was shown exhibit P8 and says it speak voluminous on what happened.

This marked the end of the plaintiff's case and same was marked closed.

The defendants in their defence called one witness, Mr. NICHOLAS GREGOIRE- to be referred in these proceedings as DW1. DW1 through his witness statement adopted in these proceedings as his testimony in chief told the court that he is senior legal counsel for the defendants since 2005 stationee in Geveva, Switzerland. DW1 told the court that, the defendants are pre-shipments inspection companies for Tanzania obliged to inspect and verify goods for shipment to Tanzania in view of satisfying themselves whether the goods confirms with the standards applicable in Tanzania as per Tanzania Bureau of Standards (TBS) Regulations. According to DW1, out of



the three defendants, it was only the 3rd defendant who is incorporated in Tanzania. In this dispute, the defendants were employed by ZHENGZOHOU ACETO CHEMICAL LIMITED (the supplier), not a party to this dispute to conduct the pre-shipment inspection and verify PVC Resin SG5 (the goods) which the latter was contracted by the plaintiff to supply.

DW1 told the court that it is not in dispute that the defendants conducted a pre-shipment inspection and positively verified the goods in dispute as to fitness for Tanzanian standards. According to DW1, the problem arose only when the plaintiff alleges that the goods were not fit for purpose of which they were purchased. DW1 indentify the certificate issued by the defendants.

However, DW1 pointed out that the defendants are not parties to the alleged contract to supply PVC Resin SG5 (the goods) between plaintiff and supplier. According to DW1, the defendants came in only for verification and inspection of the goods to see to it that they met the standards in Tanzania. DW1 went on to tell the court that, the defendants are not concern with the purpose for which the plaintiff was importing the goods.

DW1 testified that, the defendants were not parties in contract for buying/importing the goods in issue and as such refuted any sort of alleged negligence against the defendants because what they verified were in



conformity with the standards under Tanzania laws pertaining to safety, quality and health.

DW1 further testimony was that defendants being not parties to the contract to supply the goods between the plaintiff and the supplier were not aware of the terms and conditions, price and whatever relating to the whole contract, save for pre-shipment verification of goods, which role the defendant did excellently.

DW1 went on to tell the court that, the unfitness of the goods do not render the PVoC fictitious nor does it by itself impute negligence to the defendants. DW1 pointed out that, the defendants role in this issue was only to test the compliance of the goods to the Tanzania Bureau of Standards, which is the custodian and overseer of observance of standards in the country. DW1 threw all blames to the supplier and pointed out that, the goods in dispute had nothing to do with the Geita Project because the project was for supply of **'water metres'** and not **'high pressure pipes and fittings'**.

DW1 threw all blames of the misfortune to the plaintiff for not exercising due diligence and loss, if any, according to DW1, was caused by the plaintiff and no prove that, they travelled to China as alleged for want of boarding pass and hotel receipts. Basically, DW1 disputes all claims by the plaintiff and

invited this court to dismiss this suit with costs. DW1 tendered no documentary exhibit in this suit.

Under cross examination by Mr. Lamwai, DW1 told the court that, the defendants are agents of TBS for Tanzania for pre-shipment inspection and verification that the goods conforms to Tanzania standards by using both international and regional standards. Pressed with questions, DW1 told the court that, there are situations where other standards can be used. Further, DW1 told the court that, the exporter is the one who employ them for the job and after inspection and verification they issue certificate. DW1 when shown exhibit P4 dated 1.4.2017 and asked why it was not sealed he replied that it was not require by TBS. As to sealing, DW1 told the court that, it was not their obligation. However, when DW1 was quizzed admitted that sometimes is necessary and at times is not. DW1 admitted that, the performed inspection which was dated 17.03.2017 and it was accompanied by pro- forma invoice, packing list. DW1 told the court that sealing is to reduce risks and admitted that they have no evidence that it was not required.

DW1 was not re-examined and this marked the end of hearing of defence case. The case for defence was equally closed.



The learned advocates for parties' prayed to file final written submissions. I granted the prayer and ordered them to file within 7 days as per rule 66 of this court's Rules. I have had an opportunity to go through them and I hereby commend them for their very insightful input and in the course of analyzing the evidence will tandemly consider them.

Now the noble task of this court is to determine the merits and demerits of this suit. From the facts and evidence tendered, it should be noted that from the parties' pleadings, evidence tendered and parties' learned trained minds' final written submissions, the following are not in dispute; namely: **One**, there is no dispute that the plaintiff imported chemicals for the manufacturing of PVC from ZHENGZHOOU ACETO CHEMICALS LIMITED. **Two**, there is no dispute as well that, the defendant conducted pre-shipment and verification of the alleged goods as agents of TBS in Tanzania and subsequently issue certificate of conformity.

However, what is in serious dispute is whether the defendants can be held liable without the supplier for what they did after the plaintiff suffered damages.

In answering the above basic question this court is enjoined now to answer the issues framed before hearing started.



Nevertheless, during hearing, an objection was taken against the witness statement of DW1 and several arguments put forth for and against the adoption of the impugned witness statement. I overruled the objection and promised to give reasons for my decision. The objection was overruled because by the moment DW1 took an oath in court before the witness statement was sought to be tendered, in my opinion, it cured any defect in the witness statement in respect of problem with the jurat. Also, it should be noted that no matter that witness statement may be a hundred per cent with the rules, but so long as the intended maker of the witness statement does not come to court to adopt its contents as testimony in chief and be cross examined then, its evidential value is as good as nothing. Further, no prejudice was cried by the plaintiff's side as such guided by the principle of overriding objective, I find the same not fatal to the case. Therefore, so long as DW1 was in court via video conference from Geneva and he was sworn in and plaintiff was availed with opportunity to cross examine DW1, then, any objection after swearing in, becomes inoperative. It is for the above reasons, I overruled the objection.

Now that I have assigned the reasons, the next duty of this court now to determine the suit on merits based on evidence on record and the issues



framed. The first issue was couched that, *'what were the specifications of the PVC Resin ordered by the plaintiff?'* According to Mr. Mang'ena, learned advocate for the defendant, argued seriously that, this issue was not proved for two reasons: **one**, the specifications were not pleaded and proved; **second**, the defendants were not privy to the contract between the plaintiff and the defendants for the supply of PVC resin. In support of his stance, the learned advocate cited the cases of YARA TANZANIA LIMITED v. CHARLES ALOYCE MSEMWA t/a MSEMWA JUNIOR AGROVET AND TWO OTHERS, COMMERCIAL CASE NO. 5 OF 2013, MOHAMED R. SHOMARI v. PRINCIPAL SECRETARY, MINISTRY OF DEFENCE AND NATIONAL SERVICES AND 2 OTHERS, CIVIL CASE NO. 37 OF 2009 (UNREPORTED), PETER KARANTI & 48 OTHERS v. ATTORNEY GENERAL AND 3 OTHERS, CIVIL APPEAL NO 3 OF 1988 (UNREPORTED) AND JAMES FUNKE NGWAGILO v. ATTORNEY GENERAL [2004] TLR 161 all of which held and insisted that parties are bound by their pleadings and once the evidence varies with pleadings should be disregarded. Therefore, Mr. Man'gena invited this court to find this issue in the negative.



On the other hand, Mr. Lamwai, learned advocate for the plaintiff argued that the goods ordered were PVC resin as indicated in exhibits, P4b, P3, and P4a as correctly identified in those exhibits.

I have carefully considered the rival arguments for parties on this point, and I am of the considered opinion that with due respect to Mr. Mang'ena it is not true that the PVC in dispute were without specifications and not pleaded as argued. The contents of paragraph 6 of the plaint are loud and clear that same had specifications as **PVC resin SG5 and SG8**. So the argument that specifications were not pleaded is misconceived on the part of the defendant's counsel. Further, the defendant in reply to paragraph 6 of the plaint categorically stated that **"the defendant plead nothing about the contents of paragraph 6 of the plaint."** This is an admission of the contents of paragraph 6 which categorically stated the specifications very clearly. On the contrary, therefore, the authorities cited by the defendant counsel on this point work against him that parties are bound by their pleadings and the defendant cannot deny a fact which he admitted at this stage. And once a fact is admitted it needs no proof. Another reason I find this point proved is that PW2 in paragraphs 6,7,21 and PW3 in paragraph 3 repeatedly stated the specifications clearly but no question was put on them



during cross examination to contradict them on this point, hence, continue to remain proved by the plaintiff through her witnesses. Based on the above reasons, I find issue number one in the positive and concluded that the PVC resin ordered were with specific specifications.

The second issue was *'whether the certificate issued by the defendant regarding the goods was in conformity with these specifications'*. This issue will not detain this court much. As correctly argued by Mr. Mang'ena and rightly so in the opinion of this court that issue number two depended on the findings in issue number one and much as issue number one has been answered in the positive, the contents of exhibit P4b clearly proves that the goods that were verified were not the ones ordered and paid for. Looking closely the remarks of SGS on the certificate (exhibit P4b) which is basically according to the nature of the goods being chemicals is a certificate of analysis shows the goods inspected, if any, were PVC resin and not PVC resin SG5 or SG8 hence proving that the goods that were inspected were not the ones specified in the order. That said and done, issue number two is answered in the negative that the goods were not in conformity with the specifications ordered.



The third issue is *'whether the 2nd defendant was involved in staffing the goods into the containers'*. It should be noted that the kind of goods in dispute reasonably require sealing at any rate to avoid a lot of tampering of the chemicals because were specified and dangerous. Exhibit P4b which was a certificate issued after inspection and verification is without seals. The defendant throw blames to both supplier and plaintiff that he was not a privy to their contract, and as such argues that sealing was not necessary.

After listening to the arguments of both parties' learned advocates, it is the firm considered opinion of this court that, if sealing is not necessary in chemicals of this nature, then, the whole purpose of inspection and issuance of Certificate of Conformity dies a natural death. Two, this document was issued as requirement of law and procedure at the instance of Tanzania Bureau Standards. According to exhibit P8, TBS disowns the inspection, examination and verification done by the defendants for one reason that, the goods in dispute were non-regulated goods and as agents were required to seek the consent of TBS before taking any steps.

I have followed the arguments by parties learned advocates, and in particular that of defendant's learned advocate conclusion that, the 2nd defendant was not involved nor contracted in staffing the goods into the counters. Then the



next and immediate question is, why then inspect and paid for goods you cannot make sure the goods are staffed in the container? This goes to negligence and lack of seriousness on the part of the defendants.

The forth issue is *'whether the defendants were negligent in their inspection duties.'* This issue will not detain me much. Much as issues number one, two and three are answered as shown above, there is no way the conduct of the defendants in this suit be other than highest conduct of negligence. Exhibit P8 speaks voluminous on the negligence of the defendants.

The last but least issue is, what reliefs parties are entitled to? The defendant prays that the instant suit be dismissed with costs but given what I have answered in the above issues this suit is not one to dismiss as prayed by the defendants. On the part of the plaintiff, prays for several reliefs which I am now inclined to consider one after the other. The prayer was for declaration order that the issuance by the defendant of the so called PVoC/CoC without at all conducting any inspection, verification and testing of the goods coupled with their failure to disclose the supplier's office premises upon being required by the plaintiff as averred above, was an act of gross negligence. Having considered evidence on record and what transpired and the whole conduct of the defendants in the way they handled the disputed PVC resin, it

cannot be other than exhibition of negligence on their part. Had the defendants been careful enough they could have seek and sought the directions of TBS before handling the goods and also failure to put seals, after inspection was done, is no other than exposing the plaintiff at risk at their expense. The kind of goods in question needed special testing and handling to avoid risk of staffing wrong package. Therefore, all considered and taken on board, it is the humble opinion of this court that the defendants exhibited a high degree of negligence and their defence that the goods had no specification is denied and I hold them negligent in the manner they conducted themselves at the detriment of the plaintiff.

The second prayer was for payment of special damages of Tshs.417,557,349.00. In proof of this claim the plaintiff tendered in evidence exhibits P1 and P10 which all proves these special damages. The defendant's arguments that this limb of claimed was not proved is not true. The plaintiff specifically pleaded this claim and strictly tendered exhibits in proof of the same. On that note, therefore, the prayer of Tshs.417,557,349.00 must be and is hereby granted as prayed.

Another claim is for payment of general damages for breach of duty by acts of negligence exhibited by the defendants. I have taken into account the



evidence on record and the conduct of the defendant in this suit very seriously and I am inclined to grant general damages to the plaintiff based on reasons when determining the first prayer. Considering the plaintiff was greatly inconvenienced in the circumstances and taking into account the whole consignment was for business and guided by the provisions of section 73 of the Law of Contract which is very elaborate on the point. The said section provides.

Section 73 (1) Where a contract has been breached, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of the thing from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

(2) The compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

(3) where an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.



(4) in estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performing of the contract must be taken into account

On the totality of the above and guided by the above provisions of the law, I hereby grant Tshs.50,000,000/= being general damages for breach of duty of care and causing a lot of anxiety and disturbance to the plaintiff in taking up the matter.

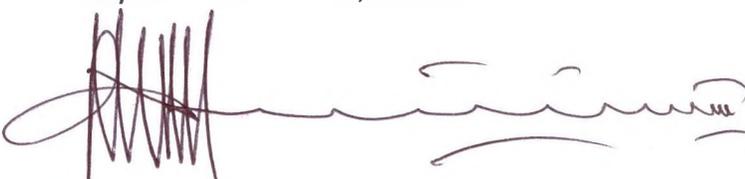
The plaintiff as well will be entitled to 12% court's interest on all amount granted from the date of this judgment till payment in full.

In the final analysis this suit is hereby allowed to the extent explained above with costs.

It is so ordered.

Dated at Dar es Salaam this 11th day of December, 2020




S. M. MAGOIGA
JUDGE
11/12/2020