

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

**COMMERCIAL CASE NO. 31 OF 2020**

**SARRCHEM INTERNATIONAL TANZANIA LIMITED.....PLAINTIFF**  
**VERSUS**  
**WANDE PRINTING AND PACKAGING COMPANY LTD...DEFENDANT**

**JUDGMENT**

**B.K. PHILLIP, J**

In this case the plaintiff alleged as follows; that on 12<sup>th</sup> July 2018, he signed a Memorandum of Understanding (henceforth "the MoU") with the defendant in which the defendant agreed to pay him a sum of USD 118,425.93. It was agreed that, the defendant would be able to pay the aforesaid amount of money through making orders for buying new materials/goods from the plaintiff and pay the current invoice by 100%, and 15% of the outstanding amount in the previous invoice (debt). The plaintiff alleged further that on 7<sup>th</sup> February 2019, the defendant paid to the plaintiff USD 26,955.92 only. Thereafter he never made any payment despite being reminded and demanded to pay the unpaid amount. In this case the plaintiff prays for judgment and decree against the defendant as follows:

- i. For a declaration that the defendant is in breach of his duties and obligations in the Memorandum of Understanding to pay in full for the materials that were supplied by the plaintiff.
- ii. For payment of all outstanding amount to a tune of USD 91,470.01 being the principal amount that the defendant owes the plaintiff to date.
- iii. For payment of general damages in the extent to be assessed by this honourable court.
- iv. For payment of interests at the mercantile rate of 18% on item (ii) herein, counting from 7<sup>th</sup> February 2019 when the defendant made the last payment until the date of judgment.
- v. For payment of interest at the court's rate of 12% on item (ii), (iii) and (iv) above, counting from the date of delivery of judgment until date of full settlement.
- vi. For payment of the costs of this suit.
- vii. Any other reliefs the court shall deem just and fit to grant.

In his defence, the defendant denied to have entered into any contract with the plaintiff or signed the MoU.

At the 1<sup>st</sup> Pre-trial Conference, the following issues were framed for determination by the court;

- i. Whether there was any contract between the plaintiff and the defendant, if the 1<sup>st</sup> issue is answered in the affirmative, then
- ii. Whether there was a breach of the terms of the contract by either party.

iii. To what reliefs are the parties entitled to.

At the hearing of this case, the learned advocates Leila Hawkins and Makaki Masatu, appeared for the plaintiff and the defendant respectively. Each party had one witness. Mr. Eligius Michael Uisso testified for the plaintiff as PW1 whereas Mr. Joseph Wasonga testified for the defendant as DW1.

Starting with the 1<sup>st</sup> issue, that is, **whether there was a contract between the plaintiff and the defendant**, PW1 testified that on 12<sup>th</sup> July 2018, the plaintiff and the defendant signed the MoU which indicates that the defendant agreed to pay the plaintiff a sum of USD 118,425.93. PW1 tendered in court the MoU and the same was admitted as Exhibit P3. Furthermore, PW1 testified as follows; that the agreed mode of payment of the aforesaid sum of money was that the defendant would make orders for buying other materials/goods from the plaintiff and in the payment of those materials/goods he will also pay 15% of the unpaid amount in the previous debt. The defendant paid the plaintiff USD 26,995.92 only out of USD 118,425.93, leaving an outstanding amount to a tune of USD 91,470.01. The defendant has been demanded to pay the outstanding amount but has been adamant to clear it despite admitting that he is indebted to the plaintiff. To substantiate, his averment, PW1 tendered in court two letters sent to the plaintiff by the defendant dated 11<sup>th</sup> June 2018 and 15<sup>th</sup> February 2018 which were admitted in evidence as exhibit P2 and exhibit P1 respectively.

On the other hand, DW1's testimony is to the effect that the plaintiff sued a different legal entity from Wande Printing and Packaging Company

Limited, (the defendant ). He tendered in court the certificate of Incorporation of the defendant's company which was admitted as Exhibit D1.

Moreover, DW1 testified that the defendant never executed the MoU and that the same is not enforceable in law for want of consideration and being prohibited.

From the evidence adduced by the witnesses and the facts of this case, the contract that is referred to is the MoU -(Exhibit P3).As I have explained earlier in this judgment, the defendant in his defence made a general denial of all allegations leveled against him. Also, contended that the MoU was not signed by the defendant, but was between the plaintiff and a different company. I wish to state here outright that the above contention is unfounded and misconceived because the plaintiff's name in Certificate of Incorporation -(Exhibit D1) and the one that appears in this case are the same that is, "*Wande Printing and Packaging Company Ltd*".

Not only that , the contents of Exhibit P1, P2 and P3 bring a strong message that there was a contract between the plaintiff and the defendant that is ,the MoU-(Exhibit P3) in respect of the payment of the outstanding amount arising from previous business transactions between the plaintiff and the defendant. By reading the preamble to the MoU, there is no any scintilla of doubts that the plaintiff and the defendant had a business relationship, that is, engaged in business transactions whereby the defendant bought materials/goods from the plaintiff.

From the foregoing this issue is answered in the affirmative. For avoidance of doubts, I wish to point out that I have taken into consideration the lengthy submission made by Mr. Makaki showing that the MoU is not enforceable and that the plaintiff has failed to establish, and prove the existence of a contract for sale or supply of goods by the plaintiff and receipt of goods/materials by the defendant. First of all, it has to be noted that in this case the plaintiff's claim is hinged on the MoU which in its preamble sets up some facts, showing that there had been previous business transactions between the plaintiff and the defendant, and that the defendant owes the plaintiff a sum of USD 118,425.93. The presence of the aforesaid facts in the MoU, removes the need for the plaintiff to bring any evidence to prove the existence of the previous debts which accumulated to a tune of USD 118,425.93, which has been admitted in the MoU. In addition, in his testimony DW1 did not state that there has been no previous business transactions between the plaintiff and the defendant. I am of a settled opinion that the cases referred to this Court by Mr. Makaki in his closing submission to wit; **Engen Petroleum (T) Limited Vs Tanganyika Investment Oil and Transport Limited, Civil Appeal No. 103 of 2003** (unreported) and **Elias B. Ramin & Company Limited Vs. D.B. Shapriya & Co. Ltd, Commercial Appeal No. 55 of 2017**, (unreported), just to mention a few, are distinguishable from the facts of the case in hand.

Thus, the contention that the plaintiff was required to prove his claim by tendering documentary evidence for delivery of the goods/materials is misconceived.

As regards Mr. Makaki's contention that the MoU is enforceable for lacking consideration, in my opinion the same is also misconceived as the preamble to the MoU states clearly that the defendant owes the plaintiff a sum of USD 118.425.93 in respect of previous business transaction between them. Since the defendant has not adduced any evidence to show that the contents the MoU are not correct, I do not see any plausible reasons not to accept its contents.

In addition, I have noted that the arguments aforesaid raised by DW 1 and Mr. Makaki are just afterthoughts as they were never pleaded. The position of the law is very clear that parties are bound by their pleadings. In the case of **Yara Tanzania Limited Vs Charles Aloyce Msemwa t/a Msemwa Junior Agrovet and another** (unreported), Hon Mwambegele, J as he then was said the following;

*"It is a cardinal Principle of the Law of Civil Procedure founded upon prudence that parties are bound by their pleadings"*

Other cases with similar holdings are **Exim Bank ( Tanzania ) Ltd Vs Dascar Limited and another, Civil Appeal No.92 of 2009 (CA)** (unreported) and **Mbowe Vs Eliufoo ( 1967) E.A 240.**

As regards the 2<sup>nd</sup> issue, that is whether there was a breach of the terms of the contract, the answer to this issue is straight forward in the affirmative as the defendant has not adduced any evidence to prove that he complied with the terms of the MoU, that is payment of the amount he owes the plaintiff as agreed in the MoU.

Coming to the last issue on the reliefs the parties are entitled to, I am satisfied that the plaintiff has proved his claims to the standard required by the law. As I have already intimated earlier in this judgment the defendant has come up with arguments which are purely "afterthoughts" and some excuses to avoid his obligations under the MoU. In the upshot I hereby enter judgment for the plaintiff as follows;

- i. That the defendant is in breach his duties and obligations in the Memorandum of Understanding.
- ii. The defendant shall pay the plaintiff a sum of USD 91,470.01, being the principal amount that the defendant owes the plaintiff.
- iii. Defendant shall pay the plaintiff interests on the decretal sum in item (ii) herein above at the mercantile rate of 18% from 7<sup>th</sup> February 2019 to the date of judgment.
- iv. The defendant shall pay the plaintiff interests on the decretal sum in item (ii) above at the court's rate of 7% from the date of judgment to the date of full payment.
- v. The defendant shall pay the plaintiff the costs of this suit.

Dated at Dar es Salaam this 14<sup>th</sup> day of July, 2021.



  
**B.K PHILLIP**  
**JUDGE**