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

COMMERCIAL CASE NO.39 OF 2020

GLOBAL HARDWARE LIMITED .....PLAINTIFF

VERSUS

TANZALAND TEXTILES LIMITED .....DEFENDANT

Last Order: 06th September 2021
Judgement: 30th November 2021

JUDGEMENT

NANGELA, J.:

The Plaintiff herein has sued the Defendant and prays for judgement and decree against the latter as follows:

1. This Honourable Court be pleased to make an order that the Defendant is liable to pay the Plaintiff the sum of **TZS 747,002, 000** (Tanzania Shillings Seven Hundred and Forty Seven Millions and Two Thousand only) as outstanding amount owed to her, being an amount resulting from the supply of hardware and building materials.

2. Interest be paid at bank rate on the dectretal amount calculated from the date of filing the suit to the date of final judgment.
3. Payment of General damages as may be assessed by the Court.
4. Costs of this Suit.
5. Any other relief as this Honourable Court deems just and proper to grant.

I will briefly set out the facts of this case. It is averred that, on divers' dates, in 2019, the Plaintiff and Defendant entered into business transaction through which the Plaintiff's company supplied to the Defendant a number of hardware and building materials on credit. It is alleged that, the materials supplied to and received by the Defendant had a total value of **TZS 1,136,000,002**, and that, the Defendant promised to make good the debt after a short while. It is the Plaintiff's averment that, the Defendant only made a part payment of **TZS 389,000,000**/-.

On 22nd and 23rd January 2020, the parties met and discussed the matter and on 24th January 2020 the parties entered into a memorandum of understanding wherein the Defendant made an undertaking to make available payment of the remaining balance amounting to **TZS 747,002, 000**. However, despite of the

commitment to pay, the Defendant failed to honour it, hence, this suit.

In his Amended Written Statement of Defence filed in this Court, the Defendant disputed the claims. However, the Defendant stated that, much as there was a Memorandum of Understanding (MoU) entered between the two parties, after the Defendant made deposits into the Plaintiff's account, including deposit of **TZS 35, 000,000/=,** he was hampered by the outbreak of Corona Virus pandemic, which affected his business.

When the parties appeared for final pre-trial conference on the 29th August 2021, the Plaintiff enjoyed the legal services of Mr Bakari Juma and Ms Hakme Pemba, learned advocates, while the learned advocate Mr George Sang'udi appeared for the Defendant.

On the material day the following issues were drawn and agreed by the parties and the Court:

1. Whether there was any agreement to supply hardware and building materials between the Plaintiff and the Defendant.
2. If the 1st issue is in the affirmative, whether he supplied the Defendant with hardware and building materials worth **TZS 747,002,000/-.**

3. If the 2nd issue is in the affirmative, whether the Plaintiff is entitled to payment.
4. To what reliefs are the parties entitled.

At the commencement of the hearing of this suit, both parties called one witness each. Further, the Plaintiff relied on one exhibit (Exh.P-1). On the other hand, the Defendant relied on one exhibit (Exh.D1) as well. At the closure of both the Plaintiff's and the Defence's case, both counsels for the parties herein prayed to file closing submission. I readily granted the prayer and they have duly complied with the filing schedule given by this Court.

I will therefore consider the testimonies offered by the witness for each party and their supporting documents and submissions in the course of addressing the issues before I render my final verdict. To begin with, let me commence by summing up the case for the Plaintiff. As I stated herein earlier, although the Plaintiff had indicated that he would be calling two witnesses to aid his case, it turned out, however, that, the Plaintiff ended up calling only one witness only named James Jerome Olotu, who testified as Pw-1.

In his testimony in chief, Pw-1 told this Court that, he works as a principal officer of the Plaintiff and, that, the Plaintiff is a registered company dealing with

wholesale and retail business, making available for sale various building materials.

Pw-1 told this Court further that, the Plaintiff entered into a credit supply transaction with the Defendant sometimes in 2019 worth **TZS 1,136,002,000/=**. He testified that, in their agreement, the Defendant had committed to pay the Plaintiff, but at a future date. Pw-1 testified further that, out of the amount owed, the Defendant paid **TZS 389,000,000/=** only. Pw-1 told this Court as well that, after many efforts in demand of the payment, the Plaintiff's Director, met with the Defendant on the 22nd, 23rd and 24th of January 2020 at Southern Sun Hotel, and the Defendant made a commitment or undertook to clear the remaining balance.

Pw-1 tendered in Court a Memorandum of Understanding (MoU) dated 24th January 2020. The same was admitted as Exh.P.1. However, Pw-1 told this Court that, despite signing the MoU, the Defendant failed to clear the outstanding amount, and hence, the Plaintiff was forced to knock at the doors of this Court seeking for justice of the case.

On being cross-examined as to whether there was any local Pro-forma or Tax Invoices from the Plaintiff or EFD receipts issued to the Defendant in respect of the cargo alleged to have been supplied, Pw-1 responded that, there was no such document. He also acknowledged

that, there was no evidence of delivery note from the Plaintiff to the Defendant or any document evidencing that the Plaintiff had supplied to the Defendant such hardware and building materials worth **TZS 747,002,000/=**.

However, Pw-1 reiterated that, the parties had signed a MoU (Exh.P1) which indicated that the Defendant was indebted to the Plaintiff to the tune of such an amount, and, that, initially the Defendant had paid TZS 389,000,000/=. He reiterated the fact that, the Defendant signed Exh.P1, acknowledging to be indebted to the Plaintiff and, that, Exh.P1 was signed after the supply had been effected.

On further cross-examination, Pw-1 told the Court that, Exh.P1 was signed after the Plaintiff had reported the matter to the Police, following the reluctance on the part of the Defendant to pay for the supplies made to him on credit by the Plaintiff. Pw-1 told the Court further, that, the parties have had a long business relationship since 2019, and that, the last payment made was in December 2019 when the Defendant paid TZS 30,000,000/. However, he failed to submit evidence regarding that payment.

On a further cross-examination, Pw-1 conceded that, much as the matter being a civil claim was improperly reported to the Police, it was still right for the

Plaintiff to have reported it as the Defendant had absconded. He conceded that the MoU (Exh.P1) was discussed on 22nd, 23rd and on 24th January 2020 it was signed by both parties.

While still under cross-examination Pw-1 stated that, the actual value of the supplies which remain unpaid for was **TZS 797,842,080/=.** However, he admitted that, what is stated in paragraph 3 of the Plaint is a claim of **TZS 747,002,000/=**.

On being re-examined, Pw-1 stated that, there were no local Pro-forma Invoices issued since the parties had been in a business relationship and the Defendant used to ask for the materials and the Plaintiff would supply as per the request on credit, and without issuing any document. As regards the issuance of payment receipts (EFD Receipts), Pw-1 stated that, the Cargo was supplied on credit so receipts were to be issued after receiving payments. He confirmed that the Plaintiff's claim is for TZS **747,002,000/=**, and that, that amount is reflected in Exh.P1. So far that is what was stated in support of the Plaintiff's case.

As for the Defendant's case, the Defendant called one witness Mr Baraka Nyang'anyi Marela, who is the Managing Director of the Defendant. He testified as Dw-1 and I will refer to him as such. In his witness statement which was received in Court as his testimony in chief,

Dw-1 told this Court that, on 19th March 2020 he purchased building materials from the Plaintiff worth **TZS 50,000,000/-**. He state, however, that, he only deposited a sum of **TZS 35,000,000/-**. He tendered in Court as exhibit, a Single Customer Credit Transfer (TT) which was admitted and marked as Exh.D1.

Dw-1 told this Court, however, that, towards the end of 2020, the Defendant failed to repay the amount owed due to outbreak of Covid 19, and, that, the Plaintiff took the matter to the Police at Oysterbay where he was given OB/IR/433/2020. Dw-1 stated that, he was detained for 3 days and after interrogation it was agreed that MoU (Exh.P1) be prepared and the parties sign the same.

He told this Court that, he was released from the Police on condition that he signs the MoU which he later signed. Dw-1 told the Court that, he signed the MoU (Exh.P1) under the undue influence since he signed it immediately after his release from the Police. He denied that the Defendant ever signed or entered into any contract with the Plaintiff in relation to the supply of hardware and building materials and that the alleged claim of TZS 747,002,000/- was untrue and unjustifiable. He prayed that the suit be dismissed with costs.

During cross-examination, Dw-1 told this Court that, it is indeed true that the parties have had a business

relationship and that, the Defendant once took goods from the Plaintiff on credit. He denied, however, that the claim for the unpaid goods is **TZS 747,002,000**/-and stated that, the remaining balance is **TZS 15,000,000/**=.He conceded, however, that the amount he claim to be the remaining balance was not stated in his testimony in chief.

Besides, while under cross-examination, Dw-1 affirmed to have said that the MoU was signed under an undue influence of the Police. However, he conceded that, that fact was nowhere pleaded in the Written Statement of Defence. He told this Court that he was arrested on 18th January 2020 and was not release until after four (4) days, on 22nd January 2020.

However, Pw-1 acknowledged to have signed Exh.P1 on the 24th January 2020, but, he stated that, at the time he was still under the Police Custody. However, Dw-1 did acknowledge that, at the time of signing the Exh.P1, he was accompanied by his advocate, who also signed it. As regard the purchase he made from the Plaintiff, he stated that, Dw-1 stated that, such purchase was made on the 19th March 2020 and, that, he paid TZS 35,000,000/-, a payment he made via Exh.D1.

Dw-1 stated further that, that payment had no relationship with the claims made by the Plaintiff. He acknowledged, however, that, Exh.D-1 is dated 20th

March 2019 but stressed that it has a relationship with the purchase he made on the 19th March 2020 as he was not given the supplies on the material date. He stated that, he had paid and waited for the whole year before being supplied as he used to take supplies on credit.

Dw-1 further stated while under cross-examination that, the Defendant was not given receipts or pro-forma invoices when he purchased the supplies as the Plaintiff refused to give him. There was no re-examination of Dw-1 and that marked the end of the Defendant's case. As I stated, both learned counsels for the parties herein filed their closing submissions which I will, alongside the testimonies made to the Court, consider them as I deliberate on the agreed issues.

To begin with, however, let me reiterate the principle that, in law, he who alleges must prove. The principle is firmly established under our law of evidence. See **The Registered Trustees of Joy in the Harvest vs. Hamza K. Kasungura**, Civil Appeal No.149 of 2017 and the case of **Manager, NBC Tarime vs. Enock M. Chacha** [1993] TLR 228.

In particular, sections 110, 111 and 112 of the Evidence Act, Cap.6 R.E 2019 provides as here below:

> "**110.**-(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the

> existence of facts which he asserts must prove that those facts exist. (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.
>
> **111.** The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side.
>
> **112.** 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."

It is also a cardinal principle of law that, in civil cases, parties are to prove their cases on the balance of probability. See the case of **Silayo vs. CRDB (1996) Ltd** [2002] 1 EA 288 (CAT) and **Catherine Merema vs. Wathigo Chacha,** Civ. Appeal No.319 of 2017 (unreported). That being said, has the Plaintiff in this case discharged his duty to prove the case to the required standards? To respond to that pertinent question, let me address the issues I raised earlier one after the other and see what culminates in their aftermath.

The first issue was:

> "Whether there was any agreement to supply hardware and building materials between the Plaintiff and the Defendant."

Under the law of contract, if a Plaintiff is to succeed in an action regarding breach of contract as it seem to be the case in this suit, the Plaintiff must, in the first place, prove that: there was a contract between the parties, that the Defendant was in breach of the contract, and that the Plaintiff had suffered loss as a result of that breach.

In essence, however, existence or otherwise of an agreement to supply building materials between parties is a matter to be ascertained from the facts of the case as adduced by the witnesses. As it was succinctly discussed by the Court of Appeal in the case of **Louis Dreyfuls Commodities Tanzania Ltd vs. Roko Investment Tanzania Ltd**, Civil Appeal No.4 of 2013 (unreported), the general principle about contract is that, it arises because one party makes an offer or proposal and the other party accepts it to procure what in law is referred to as *consensus ad idem*.

The Court of Appeal also emphasised in the case of **Zanzibar Telecom Ltd vs. Petrofuel Tanzania Ltd**, Civil Appeal No.69 of 2014 (Unreported), that:

> "Under our law, all agreements are contracts if they are made by free

> consent of the parties who are competent to contract, for a lawful consideration and with a lawful object and are not on the verge of being declared void. That is the essence of section 10 of the Law of Contract Act, Cap. 345 of the Revised Edition, 2002 (the Contract Act)".

The particular section 10 under the Law of Contract Act, Cap.345, R.E 2019, provides that:

> "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void:"

Furthermore, section 7 of the Act makes it clear that; acceptance of an offer must be clear and unambiguous. Under section 8 of the said Act, performance is amongst the modes of acceptance.

In this present suit, the learned counsel for the Defendant has, in his closing submissions, denied that the Defendant ever entered into a contract of supply with the Plaintiff. He has submitted that, there has been no single document tendered by the Plaintiff to prove that the two entered into a contract.

In my view, even though it is true that there was no written agreement between the Plaintiff and the

Defendant, it cannot be denied that the Plaintiff and the Defendant entered into a contractual relationship. I hold so because; existence of a contract may be also inferred from the conduct of the parties and the circumstantial evidence surrounding the particular case.

See, for instance the case of **Zanzibar Telecom Ltd vs. Petrofuel Tanzania Ltd** (supra). In that case, the Court of Appeal referred to the English case of **Reveille Independent LLC vs. Anotech International (UK) Ltd.** [2015] EWHC (Comm.), a case whose facts were similar to the situation which the Court was faced with. Having narrated the facts the Court noted that the English Court:

> "ruled that even where a contract clearly contains completion formality requirements, the conduct of the parties amounted to a waiver of those requirements, and that it constituted acceptance."

With such a finding, the Court of Appeal in the case of **Zanzibar Telecom Ltd vs. Petrofuel Tanzania Ltd** (supra) was convinced that, such a holding by the English Court was "*a sound principle, which we accordingly approve.*"

Another analogous situation may be observed from the case of **Catherine Merema vs. Wathigo Chacha,** Civ.Appeal No.319 of 2017 (unreported) whereby, the

Court of Appeal, quoting with approval its own decision in **Engen Petroleum (T) Ltd vs. Tanganyika Investment Oil and Transport Ltd**, Civ. Appeal No.103 of 2003 (unreported) stated, at page 16 that:

> "a careful scrutiny of the evidence, conduct of the parties and the circumstances of the case established that there was an oral contract of sale of petroleum products by the appellant (plaintiff company) to the respondent (defendant company)."

In this case, it is clear, from the evidence of Pw-1, that, the Plaintiff and the Defendant had a business relationship wherein the Plaintiff supplied hardware and building materials to the Defendant on credit basis. This fact was approved by Dw-1 who, while under cross-examination, acknowledged that, it was indeed true that the parties have had a business relationship and, that, the Defendant used to collect goods from the Plaintiff on credit basis.

In addition, there was also tendered in Court Exh. P1 and D1, all of which tend to cement the proposition that the two parties had a contractual relationship wherein the Plaintiff supplied goods to the Defendant and the supply was based on credit. Further still, even if the Defendant seems to be contesting the amount claimed, it is clear that, in his testimony in chief, Dw-1 admit that,

the Defendant purchased goods from the Plaintiff and, that, towards the end of 2020 the Defendant failed to repay the amount owed due to outbreak of Covid 19.

The same version of admission can be gleaned from the Amended WSD filed in Court by the Defendant. The reading the WSD from paragraph 4 thereof, shows that, the Defendant admits there being an agreement between the parties regarding payments which were to be made within a time. This was definitely payments based on the supply of goods between the two. In particular, the Defendant states further, under that paragraph, that:

> "However, the Defendant further states that, due to the serious effects of the Defendant's business caused by the deadly Corona Virus Decease Pandemic (sic), she could not make further payments on the agreed time."

From the above facts taken together, there is no doubt, as I stated herein earlier, that, the two parties entered into a contract of sale of goods and their conducts do suggest, that there was offer and acceptance. A contract of sale of goods is governed as well by the Sales of Goods Act, Cap.214 [R.E.2002].

Under the Sale of Goods Act, section 3(1), (2), (3) and (4) provides that:

> "(1) A contract of sale of goods is a contract whereby the seller transfers

or agrees to transfer the property in goods to the buyer for a money consideration, called the price, and there may be a contract of sale between one part owner and another.

(2) A contract of sale may be absolute or conditional.

(3)Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some conditions to be fulfilled after the transfer, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses, or the conditions are fulfilled, subject to which the property in the goods is to be transferred. "

It is also clear, under section 5(1) of the Sale of Goods Act, Cap.214 R.E 2002, that, a contract of sale may be oral or written or partly both. In this particular case, there was no written agreement as such but the available evidence does point, with no doubt, towards existence of a contract of sale. That being said, the first issues regarding whether there was an agreement to

supply hardware and building materials as between the Plaintiff and the Defendant, is responded to affirmatively.

The second issue was: *"If the 1st issue is in the affirmative, whether the Plaintiff supplied the Defendant with hardware and building materials worth TZS 747,002,000/-.* In this case, the evidence adduced and relied upon by the Plaintiff to establish that the Defendant was supplied with hardware and building materials worth **TZS 747,002,000/-** on credit. According to the evidence of Pw-1, and Exh.P.1, there is no doubt that the Plaintiff supplied goods worth that amount.

In his testimony both in chief and during cross-examination, Dw-1 did not deny to have signed Exh.P1 to acknowledge that the Defendant was indebted to the Plaintiff to the tune of **TZS 747,002,000/.** What the Defendant raised in his WSD and also supported by Dw-1 in his testimony is the alleged fact that Dw-1 was under **undue influence** of Police when he signed Exh.P1. However, before I discuss as to whether there was any undue influence on the party of Dw-1 or not, let me discuss the value of Exh.P1.

Exh.P1 is a memorandum of understanding, (MoU) between the Plaintiff and the Defendant. Essentially, in the arena of commercial interactions, the use or signing of MOUs is not uncommon. Such documents and sometimes contracts stand as one of useful ways to

define commercial relationship between parties involved. In this particular suit at hand, the MoU was signed by both parties on 24th January 2020 as part of their joint reconciliation to end their dispute.

For the sake of clarity, I will reproduce the operational parts of Exh.P1, in verbatim here below. It reads as follows:

> "NOW THEREFORE:
>
> Upon carrying out a joint reconciliation parties have agreed as follows:
>
> 1. THAT, the total value of the hardware supplied and delivered to Tanzaland Textiles Limited by Global Hardware Limited is **TZS 797,842,080.**
> 2. THAT, out of the total of **TZS 1,136,002,000/=** being value of the hardware supplied and delivered, Tanzaland Textiles Limited effected payment of TZS 389,000,000/=.
> 3. THAT, the balance of **TZS TZS (sic) 747,002,000/-** remain unpaid to date and the partied (sic) have agreed that the same paid (sic) in 02 (two) instalments for a period of 02 (two) months from the date of signing this MOU.

4. Any party in the MOU shall at any time be at liberty to contact the other party to ensure compliance to (sic) the MOU agreement hereof.
5. THAT, in the event of default by either party, the aggrieved party will be at liberty to take necessary steps for appropriate remedy."

As I stated earlier, the vital question that needs to be looked at before disposing the second issue is: *what is the value of Exh.P1?* In other words, *does it bind the parties?* Essentially, the binding nature of a document regarded as a Memorandum of Understanding (MoU) is not a matter of mere definition but is dependent upon some factors ascertainable from the document itself. That approach was endorsed by the Court of Appeal of Tanzania in the case of **M/s Mwananchi Engineering and Construction Corporation Ltd vs. Mr Silvano Copetti**, Civil Appeal No.104 of 2011, CAT (unreported).

In that particular case, the Court had the following to say concerning a Memorandum of Understanding which was relied on by the trial Court:

> "First, whether or not a M.O.U amounts to a contract is not a matter of mere definition. Second, the intention of the parties to the M.O.U was to be gathered primarily

from the terms and conditions stipulated therein and not the mere appendage of their signatures to that instrument. ....In our respectful view, the M.O.U itself provides in large measure, the means of resolution of the acute question whether or not it was an enforcement sale contract. Third, the title of the document "memorandum of understanding" could not have been determinant of the parties' intention or of its legal character as a sale agreement."

Referring to **Mitra's Law of Contract and Specific Relief, 6th Ed.**, 2011, pp.177-178, the Court went ahead and stated that:

"It is well established that, the Court, in order to construe an agreement, has to look to the substance or the essence of it rather than to its form.... It is true that the nomenclature and description given to a contract is not determinate of the real nature of the document or of the transaction thereunder. These, however, have to be determined from all the terms and clauses of the documents and all the rights and results flowing

> therefrom and not by picking and choosing out of the ultimate effects of result."

From the above excerpts of the Court of Appeal's decision, it is clear, therefore, that, even if a document may be titled as an MOU, it may still be considered legally binding depending on the language used in the MOU and the certainty of the terms.

In the instant case at hand, if I am asked about the status or value of the Exh.P.1 as per its operative part captured earlier here above, I am of a settled view that, it constituted a separate agreement between the parties to settle the existing debt of **TZS 747,002,000/-** which stood unpaid on the date of the signing of the MOU (Exh.P1).The agreement though not the subject of the parties dispute, it does provide corroborative evidential value to the Plaintiff's case. In fact, as Exh.P1 was found to be reliably useful in establishing the first issue, so it in establishing the second issue.

It is worth noting, however, that, when Dw-1's gave his testimony in chief, and, in particular, with regard to the MoU (Exh.P.1), Dw-1 stated that the document (Exh.P1) was signed under an undue influence state of affair. That fact was further reiterated in his testimony during cross-examination.

In my view, what he seems to be alluding to is a defence of undue influence. Looking at the pleadings, it is

clear that what Dw-1 brought to the attention of the Court was not pleaded by the Defendant in his Amended Statement of Defence. Rather, the undue influence issue was canvassed by the parties when Dw-1 submitted his testimony in chief and during cross-examination.

However, in law, although an issue may have not been pleaded, once that matter is canvassed by the parties, the Court may as well make a finding on that matter.

That particular point was well considered in the case of **Agro Industries Ltd. V, Attorney General** [1990-1994] 1EA1. In that particular case, which was also cited by our Court of Appeal in the case of **Rungwe Freight Constriction & Another vs. International Commercial Bank (T) Ltd**, Civil Appeal No.133 of 2015 (CAT) (unreported), the Court held as follows on that point:

> "A Court may base its decision on an unpleaded issue if it appears from the course of the trial that the issue has been left to the Court for decision... So long as a Court allows the counsel to address it on certain issues, then the judge has to conclusively decide them."

In this suit at hand, the closing submissions by Defendant's counsel did canvass on the issue of undue influence in relation to the signing of Exh.P1. This fact

was also raised in the course of the hearing when Dw-1 was testifying both in chief and when he was being cross-examined. The Plaintiff's closing submissions have also alluded to it submitting that it is baseless. With those submissions I am indeed entitled to deliberate on that point as well since, if established will taint the reliability of Exh.P1.

In law, undue influence is an equitable doctrine that involves a claim that, one person has taken advantage of a position of power over another person. Section 16(1) of the Law of Contract Act, Cap.345 R.E 2019, provides to that effect. If proved, that sort of inequity in power between the parties can vitiate one party's consent and renders any ensuing agreement from their dealings unenforceable simply because, parties are required to freely exercise their independent will.

Section 16 (2) and (3) of the Law of Contract Act, Cap.345 R.E 2019 further provides that:

> "(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-
>
> (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other:

Provided that, nothing in this subsection shall affect the provisions of section 120 of the Evidence Act."

Having stated the legal position regarding the plea of undue influence, I now turn to consider whether or not Dw-1 signed Exhibit P.1 under a state of undue-influence. As stated by Pw-1 and well accepted by Dw-1, it is undisputed fact that the dispute between the parties had dragged them to the Police at Oysterbay *vide* **OB/IR/433/2020.**

In my view, even if the respective **OB/IR/433/2020** was not produced in Court, there was no dispute about that fact. It is also an undisputed fact that Dw-1 was placed under Police arrest on 18th January 2020 till 22nd January 2020 when he was released and, that; after his release, the parties thereafter negotiated their matter and signed Exh.P1 on 24th January 2020 not at the Police Station, but at South Sun Hotel, and, in the presence of their lawyers.

In my view, since Dw-1 signed the MoU after his release from the Police, and since the same MoU was negotiated and agreed upon away from the Police Station and, in the presence of the Dw-1's lawyer who also signed it, I do not see how the issue of being under an undue influence arises.

I, therefore, find it clear, that, the contention that Exh.P1 was signed by Dw-1 under undue influence, meaning that he signed it contrary to his own volition, is not meritorious. With such a finding, Exh.P1 is a valuable piece of evidence which prove the fact that, the Plaintiff supplied the Defendant with hardware and building materials worth **TZS 747,002,000**/- and that the latter was still indebted to the Plaintiff to that extent claimed. The second issue is thus responded to affirmatively.

The third issue need not take my time longer. It is about ***whether the Plaintiff is entitled to payments***

if the second issue is in the affirmative. I would say definitively that the Plaintiff is entitled to be paid since the two earlier issues discussed here above, have established that the parties were in a contract of supply of goods on credit and, that, the goods were supplied but payments were not paid in full.

In my considered views, the Defendant's reliance on the outbreak of Covid 19 Pandemic as a *scapegoat* or ***force majeure*** event cannot shield her from liability under the contract. There was no evidence led to the effect that the products supplied were affected by the Pandemic. Moreover, there was nowhere the parties had agreed or discusses matters regarding ***force majeure***. As such that was an afterthought on the part of the Defendant.

Finally is the last issue which is: ***to what reliefs are the parties entitled***. In this case, there is no doubt that, the Plaintiff has been able to discharge his burned of proving his case within the required standard. Since the balances of probability tilts in favour of the Plaintiff, he is the one who is entitled to the reliefs prayed in the Plaint filed in this Court. However, I note, in one of the Plaintiff's prayers, that, the Plaintiff has asked to be paid general damages. In law, unlike specific damages which need to be pleaded and proved, general damages need not be proved.

It follows, therefore, that, if the Plaintiff merely avers that he suffered general damages that averment will suffices. Such averment may be a mere statement in the pleadings or in the prayer part of a claim and will be adequate to establish general damages for purposes of award by the Court. This particular principle is well supported by numerous decisions of this Court and the Court of Appeal. (See the cases of **Cooper Motor Corporation Ltd vs. Moshi/Arusha Occupation Health Services** [1990] TLR 96 and **Fredrick Wanjara, M/S Akamba Public Road Service Limited A.K.A Akamba Bus Service vs. Zawadi Juma Mruma**, Civil Appeal No. 80 Of 2009 CAT (Unreported).

In the **Wanjara's case** (supra) the Court was of the view that, there are no hard and fast rules in the determination of general damages and, that, such damages cannot be approached with mathematical precision. However, if they are to be awarded, it is a trite law that such award must be assessed as being the direct, natural or probable consequences of the wrongful act of the party condemned to pay them. See the decision of the Court of Appeal in the case of **African Marble Co. Ltd vs. Tanzania Saruji Corporation**, Civ. Appeal No.38 of 93 (unreported).

In view of the above, and in respect of this case at hand, it is my considered assessment, taking into account

the evidence of Pw-1 and the fact that the Plaintiff has suffered inconveniences regarding the payments since 2019 to date, I find it appropriate to award the Plaintiff **TZS 5,000,000/** as general damages.

In the upshot, and since the Plaintiff has managed to prove its case to the required standards, I hereby enter judgement and decree in favour of the Plaintiff and make consequential orders as follows, that:

1. the Defendant is hereby ordered to pay the Plaintiff the sum of **TZS 747,002, 000** (Tanzania Shillings Seven Hundred and Forty Seven Millions and Two Thousand only) as outstanding amount owed to her, being an amount resulting from the supply of hardware and building materials made by the Plaintiff to the Defendant;
2. the Defendant is to pay interest at bank rate of 14% on the dectretal amount calculated from the date of filing the suit to the date of final judgment.
3. The Defendant is to pay the Plaintiff **TZS 5,000,000** (Tanzania Shillings Five Million) as general damages.
4. The Defendant is to pay costs of this Suit.

It is so Ordered

Right of Appeal Explained.

DATED at **DAR-ES-SALAAM**, this **30th Day of November, 2021**

.....

HON. DEO JOHN NANGELA

JUDGE