

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

AT ARUSHA

COMMERCIAL CASE NO. 01 OF 2021

HANSPAUL INDUSTRIES LIMITED PLAINTIFF

VERSUS

MOUNT MERU FLOWERS LIMITED DEFENDANT

Date of Last Order: 20/05/2022

Date of Judgement: 25/05/2022

EX PARTE JUDGEMENT.

MAGOIGA, J.

The plaintiff, HANSPAUL INDUSTRIES LIMITED by way of plaint instituted the instant suit against the above named defendant praying for judgement and decree in the following orders, namely:

- a. An order that the defendant pays the plaintiff the amount owed to the tune of United State Dollars Sixty Four Thousand Two Hundred Forty-Four (USD.64,244.00) for failure to make payment of the accrued balance from the supply of boxes;
- b. General damages being compensation for the loss of profit for failure to re-invest the amount due for the past year, expenses incurred as stated in paragraphs 6,11,12, and 13;



- c. Interest on the amount mentioned in prayer (a) above herein at the rate of 12% per annum from the date of filing of the present suit to the date of judgement;
- d. Interest on the decretal sum at the rate of 7% per annum from the date of judgement to the date of full satisfaction of the decree;
- e. Costs of the suit.

To get the gist of this suit and its ex-parte judgement, I find it imperative to state albeit in brief the facts of this suit as gathered from the pleadings. The plaintiff and defendant had business relationship where the plaintiff supplied boxes to the defendant for a number of years in consideration of money from 26th January, 2019 to 6th April, 2020.

The defendant, however, failed to meet the plaintiff's requirement to make payment as agreed causing the plaintiff to incur expenses in follow up of the debt, delay causing loss of profit for failure to re-invest the amount claimed.

As such non-payment of the outstanding balance by the defendant ignited this suit.



Upon being served with the plaint, the defendant filed a written statement of defence disputing the plaintiff's claims and prayed that the instant suit be dismissed with costs for being baseless and lacks merits.

On 17th May 2022, when this suit was called on for Final Pre Trial Conference, Mr. Richard Masawe, learned advocate for the plaintiff moved this court to exercise its powers under Rule 31(1) (b) and (c) of this Court's Rules as amended by G.N. 107 of 2019 and struck out the written statement defence for failure of the defendant of attending the Final Pre Trial Conference despite being served and there was an affidavit to that effect and allow them to prove the suit by witness statement, and then, enter ex parte judgement against the defendant. The court being satisfied with service to the defendant granted the prayer and ordered the plaintiff counsel to file witness statement by 20th May, 2022 and bring the witness for further prosecuting the suit.

The provisions of Rules 31(c) as amended for easy of reference provide as follows:



Rule 31 – (1) Where at the time appointed for the pre-trial conference, one or more of the parties fails to attend, the Court may:-

(a) Dismiss the suit or proceedings;

(b) Strike out the defence or counter claim;

(c) Upon proof by witness statement or otherwise enter ex parte judgement;

It was against this background, the plaintiff was ordered on 20th day of May 2022 to file witness statement in proof of the other claims. In compliance of the Court's order, the plaintiff filed the said witness statement on 20th May, 2022 and when the suit was called for hearing on 20/05/2022 PW1 came to adopt his witness statement and tendered exhibits P1a-m, P2a-e,P3, and P4.

The task of this Court now is to scan through the witness statement and see if the claims by plaintiff have been proved to the standard required in civil cases. Before the Court goes into the witness statement, it is imperative to understand the import of Rule 31 of the Rules as amended by G.N. 107 of 2019. Going by the provisions of Rule 31 clearly set out



discretion but serious consequences to a party who default appearance to the proceedings on the day fixed for trial conference. These are; **One**, for the plaintiff's failure to appear, the Court may dismiss the suit or proceedings. **Two**, for defendant failure to appear, the Court may strike out defence or counterclaim. **Three**, the Court may upon proof by witness statement or otherwise enter ex parte judgement. **Four**, any party affected by the above three orders, have a remedy to make an application within 14 days from the date of the order to have the order set aside by the Court on such terms as it considers just. **Five**, where the Court has adjourned the pre trial conference, and in the subsequent trial conferences the party who fails to appear/attend the trial conference fails again to appear, the Court shall have no other option but to dismiss the suit.

Back to the instant suit, the Court upon being satisfied that summons were dully served to the defendant opted to exercise option number three by ordering the proof by witness statement and the intended witness to come to court to prosecute his/her case. The phrase "**witness statement**" is defined under Rule 3 of this Court's Rules to means a statement given



pursuant to Rule 48 of the Rules in lieu of examination in chief. Rule 48 as amended thus provide the following:

Rule 48- Notwithstanding the provisions of rule (1) of rule 49, the Court shall, at the final pre-trial conference, determine the manner in which evidence is to be given at any trial or hearing by giving appropriate directions as to-

(a) The issues on which evidence is required; and

(b) The way in which any matter is to be proved.

Guided by the above rule, issue to be proved is whether the amount of USD.64,244/= which is alleged to have not been paid for the boxes supplied and received by the defendant is genuine. The way in which this issue is to be proved was through witness statement. It should be noted further that the claim is for specific damages and as such should be strictly proved as well, being a trite law in our jurisdiction. See the case of ZUBERI AGOSTINO v. ANICET MUGABE [1992] TLR 137(CAT).

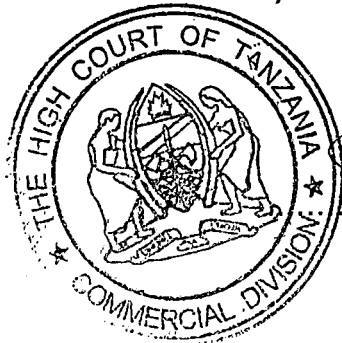
After going through the witness statement and exhibits P1a-m, P2a-e, P3, and P4 all proved the amount claimed in the plaint.




On that account, this court is satisfied that the plaintiff has been able to prove the balance of USD.64,244/= to the standard required in civil cases. The plaintiff is equally given other claims of interests as claimed in the plaint, save for loss of profit which was not proved, the plaintiff will be entitled to Tshs.5,000,000/= as general damages for inconveniencies caused for breach of contract of payment of the principal sum and costs of this suit .

It is so ordered.

Dated at Arusha this 25th day of May 2022




S. M. MAGOIGA
JUDGE.
25/05/2022