

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 53 OF 2022

CAR & GENERAL TRADING LIMITED.....PLAINTIFF

ELGON TRADERS LIMITED..... DEFENDANT

DEFAULT JUDGMENT.

Date Last Order: 27/07/2022.

Date of Judgment: 12/08/2022.

Z.A MARUMA J.

The Plaintiff is a limited liability company incorporated in Tanzania under the Company Law (Cap. 212 R.E. 2002) dealing with inter-alia sale of motorcycles, electrical generators and the Defendant is a limited liability company incorporated in Tanzania under the Company law (Cap. 212 R.E. 2002).

Before this Court the Plaintiff's prayers is for Judgment and Decree against the Defendant an order for payment of TZS 370,738,833.33 being principle sum and accrued interest as of 19th April, 2022, payment of general damages, an order for payment of interest on the principal sum at commercial rate and an order for payment of interests on the decretal amount at court's rate and costs of the suit.

The prayers above are resulted from supply of motorcycle, whereby the plaintiff in sometimes in 2020 supplied to the Defendant with 2-wheelers motorcycles worthy TZS 182,625,000/= and 3-wheelers motorcycles worthy TZS. 13,800,000/=. The Plaintiff thereof raised invoice for the payment which was to be effected within thirty (30) days counting from the date of issuance of the said invoices attached exhibit CGTL 1 collectively. These include some of the invoices No. D52208, F38640, F39053, F39239, F39809, F36935, 30905, 30906, 30975, 31056, B05389, F38364, B05420 and D52207 which were issued to the defendant. However, the Defendant did not effect the payment which resulted into e-mail correspondences on the due amount to be paid by the Defendant attached to affidavit as exhibit CGTL 3 collectively. Despite of sometimes both the Plaintiff and the defendant had a joint meeting held on the 14th December, 2020 whereby the Defendant

admitted the claim of Tshs. 196,425,000/= and promised to settle the claim by paying Tshs.6,000,000/= every month with effect from 15th January, 2021. The Defendant's act of neglecting and or/refusing to pay the outstanding sum, is unreasonable and the same has affected the Plaintiff by denying the nourishment of his business causing the Plaintiff. As a result the Plaintiff filed this suit against the Defendant claiming among others for the payment of the principal sum of Tshs.192,425,000/= (Tanzanian Shillings One Hundred Ninety Two Million, Four Hundred Twenty Five Thousands) and the accrued interest Tshs. I 78,313,833.33/= (Tanzanian Shillings One Hundred Seventeen Million, Six Hundred Twelve Thousand, Six Hundred) as of 10th September, 2021.

The Defendant was dully served by publication through Daily News and Mwananchi newspapers of 20th June 2022 after this Court had ordered for substituted service to him. The matter was set for hearing exparte after the filling of the application for default judgment and affidavit of proof claim which establishes the facts above.

Based on the sequential facts above, the compliance of sine qua non for the grant of the default judgment have been met. I have also gone through the application for default judgment and supported affidavits of one

Abdallah Amran Mohamed, the Operating Manager of the Plaintiff together with the plaint and attached documents therein to prove the claim. I find the claim has been established by supporting of invoices, purchase orders, emails correspondences between the plaintiff and the Bank, minute of the meeting between Car & General Trading Limited and Elgon Traders Limited on 14th December, 2020 and loss report for some invoices of which are not original documents. However, being guided by the decision of the Court of Appeal in the case of **Nitro Explosives T. Limited vs Tanzanite One Mining Limited**, Civil Appeal 175 of 2019 [2021] TZCA 634 (03 November 2021) at page 10-11 when it referred the case of **Bruno Wenceslaus Nyalifa vs. The permanent Secretary, Ministry of Home Affairs & Another**, Civil Appeal No. 82 of 2017 (unreported) in which the Court held that,

"...Annexures to the affidavit should not be ignored. This is for obvious reason that, affidavit is evidence and the annexure thereto is intended to substantiate the allegations made in the affidavit Unless it is controverted therefore, the document can be relied upon to establish a particular fact...."

On the guidance above, I am certain that the plaintiff's claims are established to the required standards except for the prayer of general damage which I find no sufficient weight to grant. In the event default Judgment is entered against the Defendant as follows:

1. The defendant to pay TZS 370,738,833.33 being principle sum.
2. The defendant to pay of interest on the principal sum at commercial rate from the date of issue arose to the date of the judgment.
3. The defendant to pay interest at courts rate of 7% from the date of the judgment to the date of full execution of the Judgment.

I further direct that the decree of this case should be executed in compliance with the terms under rule 22 (2) (a) and (b) of the Rules. It is so ordered.



Z. A. Maruma, J

12/08/2022