

IN THE HIGH COURT OF TANZANIA

COMMERCIAL DIVISION

AT DAR ES SALAAM

COMMERCIAL CASE NO.86 OF 2021

POSHH DESIGNS LIMITED PLAINTIFF

VERSUS

NURAN DEVELOPERS LIMITED..... DEFENDANT

IN COUNTER CLAIM

NURAN DEVELOPERS LIMITED PLAINTIFF

VERSUS

POSHH DESIGNS LIMITED DEFENDANT

Date of Last Order: 22/08/2022

Date of Judgment: 21/10/2022

JUDGEMENT

MAGOIGA, J.

The Plaintiff, **POSHH DESIGNS LIMITED** by a plaint instituted the instant suit against the above-named defendant praying for judgment and decree against the defendant jointly and severally for the following orders: -

- (a) Payments of USD.69147.00 being outstanding and unpaid amount for supply of various accessories;
- (b) Payments of USD.100,000.00 being a general damages;



- (c) Interest at commercial rate per annum on the claimed amount indicated on paragraph one from the date it became due;
- (d) Interest on decretal sum at this court's rate from the date of judgement till payment is made in full.
- (e) Costs of and incidental to the suit.
- (f) Any other relief this court may deem fit and just.

Upon being served with the plaint, the defendant filed written statement of defence disputing the plaintiff's claims, among others, on rider that, money unpaid, if any, was payments for want of completion of work and replacement of defective/substandard accessories fixed and installed in defendant's apartments. In the circumstances, the defendant's some tenants terminated lease agreements with the defendant who was behoved to employ another contract to redo the works as such incurring more expenses. On those reasons, among others, the defendant prayed that the instant suit be dismissed with costs.

Simultaneously, the defendant in her written statement of defence filed on 20th October, 2021 raised a counter claim against the plaintiff praying for judgement and decree in the following orders namely:-



- (a) Declaration that defendant's act of supplying and installing substandard accessories and kitchen ware and failure to complete the work amount to breach of contract;
- (b) Payment of USD 323,696.63 being specific damages suffered by the plaintiff as direct consequences of breach of the agreement by the defendant;
- (c) Payment of USD.100,000.00 being a general damages;
- (d) Interest at commercial rate per annum on the decretal sum at paragraph (ii) from the date it became due to the date of instituting the suit;
- (e) Interest on the decretal sum at this court's rate from the date of the judgement to the date of payment in full;
- (f) Costs of the suit be borne by the defendant;
- (g) Any reliefs as this court may deem fit and just.

The brief facts of this suit are imperative to be stated for better understanding the gist of this suit. According to the pleadings, it is averred and not disputed by defendant that, sometimes on 2016 plaintiff and defendant executed supply agreement whereby plaintiff was obliged to supply the defendant with electric appliances and other products including kitchen ware, wardrobes, stove, wardrobes bathrooms cabinets, interior doors, fire door, external security door and bathroom tiles which were to



be fixed in the defendant's apartment situated on plot No 999 along CCM street in Masaki, Dar es salaam while defendant was to effect payments for supplied and installed accessories. Facts go further that, subsequent to that arrangement, plaintiff performed his obligation as required, However, defendant managed to effect payments of USD.715,171.00 out of agreed amount contrary to what agreed, the act which constitute breach of supply agreement. This state of affairs culminated the institution of this suit for breach of supply agreement by the plaintiff claiming the reliefs as contained in the plaint.

On the other hand, the facts as to the counter claim were that, under that agreement as earlier stated in the plaintiff's case above, the plaintiff supplied substandard accessories in the circumstance, defendant withheld the outstanding balance for want of replacement of accessories and kitchen ware of good quality. Facts go that, plaintiff refused rectify the defects, following such refusal defendant decided to purchase accessories from other suppliers so as to replace the defective accessories. Further facts were that, in the course of replacement defendant incurred the total costs of USD.323,696.63 and others costs, hence, this counter claim; claiming the prayers as contained in the amended written statement of defence. In this suit, each party claim against each other for breach of contract.



The plaintiff at all material has been enjoying the legal services of Mr. Erick Mkandara learned advocate, while on the other adversary part, the defendant at all material time was equally enjoying the legal service Mr. Norbert Mlwale learned advocate.

Before hearing started, during Final Pre Trial Conference, the following issues were framed, recorded and agreed between the parties for determination of this suit, namely: -

- (i) Whether there is breach of contract by either party?
- (ii) If issue No 1 is answered in affirmative, whether there was loss suffered by either party as direct consequence of the breach.
- (iii) To what reliefs are the parties entitled?

In proof of the suit, the plaintiff called three witnesses. The first witness was Mr. **CUNEYT UNAL** (to be referred herein in these proceedings as **PW1**). PW1 under affirmation and through her witness statement adopted in these proceedings as his testimony in chief told the court that, he is Managing Director of the plaintiff with roles, among others, to oversee daily business transactions of the plaintiff, hence, conversant with the facts of the suit. PW1 went on telling the court that, plaintiff claims against defendant is for payments of USD.69,147.00 being outstanding and unpaid amount for supply of accessories in diver times



in the years 2016, 2017 and 2018. It was the testimony of PW1 that, plaintiff entered into contract with defendant for supply of interior designs products and service of the Nuran residence situated along CCM street, in Masaki Dar es salaam.

PW1 went on telling the court that, it was among the terms of the agreement that, the plaintiff was to deliver, fix and install interior products including wooden tiles, kitchen ware, bathroom cabinet, ward robe interior, door, fire door, vanity for bathroom, built in oven, built in hob, built in hood, built in microwave, security door and sample door. It was also agreed, among others, that immediately after completion of each consignment the defendant was to effect payments in respect of each consignment as per proforma invoice. According to PW1, the defendant did not make payments as agreed but kept raising excuses such as they are not in a good financial position to make payments. It was further testimony of PW1 that, it was a common knowledge of the parties that, the products expected to be supplied had no warranty because these kind of products are intended by manufacture to have no warranty given their nature. Further testimony of PW1 was that, the supply of interior designs in 27 apartments was done at different times from 2016 to 2019 whereby in each of consignment plaintiff received some advance as such there is unpaid remaining balance of USD.



159,038,100.00 since 2016. According to PW1, the allegations that plaintiff supplied substandard stoves was raised after receiving the request for payments of unpaid balance from plaintiff by December, 2019 as a means of avoiding to effect payments. PW1 went on telling the court that if there was broken glasses defendant could have shown plaintiff but defendant was not willing to show how the broken glasses happened and refused plaintiff to access broken glasses even when plaintiff visited the residence. According to PW1, the breaking of glasses may be caused by the daily use by the tenants and faulty electric wiring in the defendant's residence.

It was further testimony of PW1 that during final meeting which was scheduled by the defendant's director, the defendant acknowledged the debt of USD.65,244.14, however, it requested for set-off on ground that some of the fixed products and accessories were damaged as such it was proposed for payment of USD.26,904.23 to be repaid by way of installments of Tshs. 2 million per month. It was the testimony of PW1 that defendant had no intention of effect the remained balance nor VAT tax because the allegation of substandard assigned as a reason for non-payments are afterthought. It was further testimony of PW1 that, despite the clear terms of the agreement, but the defendant opted not



to pay the remained balance of USD.69,147.00 for service rendered by plaintiff as a result it caused financial difficulties to the plaintiff including failure to pay rent which attracted penalties and TRA liabilities.

Testifying on counter claim PW1 disputed all prayers contained in the counter claim and called them as baseless, frivols and vexations on ground that defendant cum plaintiff in the counter claim has no justifiable reasons to decline to pay unpaid amount in the plaint. Testifying further on the counter claim PW1 told the court that, there were different agreement and requests for supply orders which were entered at different times starting from 2016 to 2018 and each supply of products was to be paid separately after completion. PW1 went on telling the court that, the description for supply orders and payments were as follows;

- 1) On 13.2.2016 proforma No 00177 wooden Tiles
- 2) 29.9.2016 proforma No 00067 Tiles
- 3) 29.9.2016 proforma No 00092 kitchen
- 4) 29.9.2016 proforma No 00095 Bathroom cabinet
- 5) 1.2.2017 proforma No 00169 Extra Tiles
- 6) 29.6.2017 proforma No 00235 Ward rope
- 7) 5.6.2017 proforma No 00093 Interior Door and fire door



- 8) 3.11.2017 pro forma No 00292 Vanity for Bathroom
- 9) 3.11.2017 pro forma No 00295 Nuran 3 wardrobe
- 10) 13.11.2017 pro forma No Nuran2 Tiles
- 11) 25.05.2018 pro forma No built-in oven, built in hop, built in hood and built-in microwave
- 12) 24.11.2018 pro forma No 003404 Security door and Sample door

PW1 told the court that, Nuran Developers were supposed to effect payments immediately after completion of each assignment as agreed, instead he paid for new assignment without clearing the previous outstanding balances. PW1 further testified that defendant supplied quality products which were in good quality with international and local standard which was verified by TBS. According to PW1, the complaint came as a scheme not to repay plaintiff remaining balance on the services rendered. PW1 went on to tell the court that, it was common understanding of the parties that, products to be supplied had no warranty due to its nature as such the liability of the supplier ended when products were being fixed and tested at Nuran residence. PW1 went on further telling the court that defendant was obliged only to deliver the requested product and not to monitor how plaintiff or his



tenants use those fixed products. PW1 added that no proof if any of alleged defects were due to the product quality or misuses or related reasons from use, misuse and mishandling by the plaintiff or their tenants.

According to PW1 stove glasses were not exploded but rather there was normal breakings which was to be replaced by defendant in the name of friendship without charging extra costs after paying the remained balance. Following that condition plaintiff did not take stove for replacement because it failed to effect payments on outstanding balance. PW1 went on to tell the court that, defendant in the counter claim is not aware of new stove purchased and if purchased at all was for plaintiff wish to satisfy their tenants as such the defendant cannot be liable for payments paid to other contractors after handling over the consignment requested by the plaintiff .Further testimony of PW1 was that, the defendant made painstakingly on the allegation of refund made against the state of Qatar at Dar es salaam whereby it denied to have received any refund from plaintiff concerning apartment No 33 and No 54. PW1 added that even the payments of USD 197,737.83 is a false claim because plaintiff never paid the claimed VAT as out of USD.761,238 worth work done the required 18% VAT of



137,022.84 and only USD.696,649.86 as principal amount was paid as such only 18,218.14 VAT was paid.

It was the testimony of PW1 that the plaintiff instructed defendant to issue receipts as per VAT paid and the rest will be settled at the end of the work. According to PW1, it was common understanding that tax will be paid after completion of the entire work, however, plaintiff never complained for any tax invoice issued or proforma invoice while plaintiff shared with defendant as agreed. According to PW1, the defendant was trying to avoid paying tax on the reasons that their financial flow was not good. It was further testimony of PW1 that managing director of the defendant invited plaintiff and scheduled the meeting which was held in Nuran residence, during the meeting defendant acknowledged the debt of USD.65,244.14. However, plaintiff after the meeting prepared settlement plan of USD.26,904.23 to be paid on installment of 2 million per monthly contrary to what was agreed in the meeting.

On the basis of the above testimony PW1 prayed that this court to grant all payers as contained in the plaint and dismiss the counter claims with costs.

In proof of the plaintiff's suit, PW1 tendered in evidence the following exhibits, namely:

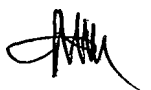


- i. Pro forma invoice as **exhibit P1_{a-k}**
- ii. Certificate of authentication, 5 emails 3 demand letters as **exhibit P2₁₋₁₀**
- iii. Demand letter dated 19.3.2021 as **exhibit P3**
- iv. 12 pro forma invoice as **exhibit P4₁₋₁₂**
- v. Statement showing invoice, outstanding balance as **exhibit P5**
- vi. TBS application form for import certificate, Receipt application letter for TBS certificate, Bill of lading Batch certificate, letter and clarification by TBS import process as **exhibit P6₁₋₆**
- vii. Examination certificate as **exhibit P7**
- viii. Settlement proposal as **exhibit P8**
- ix. Notices from NHC dated 1.10.2020, notice from NHC dated 4.5.2020, Letter from NSSF dated 11.7.2019 and letter from TRA dated 24.5.2019 **exhibit P9₁₋₄**
- x. Payment of outstanding on products and Tax payments as **exhibit P10**
- xi. Emails correspondence as **exhibit P11**
- xii. What up correspondence as **exhibit P12**
- xiii. Payment statement and email as **exhibit P13₁₋₄**
- xiv. Statement showing total amount as **exhibit p14**



Under cross examination by Mlwale, learned advocate for the defendant, PW1 told the court that, he has been a Managing Director of the plaintiff for 10 years. PW1 when pressed with questions told the court that, since 2014 plaintiff has worked for defendant in several projects. PW1 when pressed into more questions told the court that, the products supplied had no warrant because there was no such clause in the contract. PW1 when questioned on the product told the court that, all product were exported from Turkey with a good quality. PW1 when shown exhibit p6 identified it and told the court that, it is not dated but he was quick to point that it refers to all consignment, certificates and appliance. PW1 when asked on the proof of work told the court that, emails show that work was finished and plaintiff handed over the work to defendant despite the absence of handing over note for the work done.

Under re-examination by Goodluck learned advocate for plaintiff PW1 told the court that by the time defendant complained the work was already done and handed over. PW1 when pressed with questions told the court that plaintiff did several projects, however, was quick to point out that in this suit she only supplied products. PW2 when pressed with more questions told the court that, it was agreed on advance payments, middle payments and last payments and defendant was paying in cash,



and by cheques. PW1 when further questioned told the court that goods were inspected and the certificate of compliance with importation regulations was issued.

Under re-examination by Mr. Mkandara advocate, PW1 told the court that, all products were imported and allowed to enter into market. PW1 when pressed with question told the court that proforma invoice was the main contract and tax was paid by defendant.

The next witness to testify was one ELA UNAL (to be referred in these proceedings as '**PW2**'). PW2 under affirmation and through his witness statement adopted in these proceedings as his testimony in chief told the court that, he is in-charge of the daily business transactions of the company hence, conversant with the facts of the suit. PW2 went on telling the court that, sometimes on 2016 plaintiff and defendant entered into arrangement for supply of product to be used in the defendant projects. Following such arrangement plaintiff prepared pro forma invoice and after its approval on 26 October, 2016 it ordered bathroom cabinet while they were waiting for the arrival of the bathroom cabinets, defendant presented its offers by choosing models for tiles, kitchen cabinets and wardrobes. It was the testimony of PW2 that on October, 2016 plaintiff ordered tiles after receiving the approval



of the tiles and some pre-payment. It was further testimony of PW2 that the ceramics ordered arrived in February, 2017 and on June, 2017 the bathroom cabinets arrived and the same both ceramic and cabinet were delivered to the construction site. Further testimony of PW2 was that in July, 2017 plaintiff accepted another offer for wardrobe and kitchen whereby the defendant made some upfront payment. Following that order plaintiff ordered products for production from Turkey. PW2 added that on September, 2017 plaintiff accepted another offer for designing interior room doors and on November, 2017 the said ordered material were delivered to the construction site. According to PW2, on 2018 the defendant had financial constraint as such the remaining balance of the products delivered to the construction site remained unpaid to date. PW2 went on telling the court that, defendant kept placing new orders and making small prepayment with each new order, in that process they had to beg for payment but the payments were always delayed for various reasons and they started begging for money almost every day.

PW2 told the court that, in November, 2018 defendant approved plaintiff offer for the main entrance doors and fire exit doors but received a small payment. PW2 went on telling the court that in February, 2019 the main entrance doors and fire exit doors arrived and the same were delivered



to the construction site while the remaining payments of the orders placed in 2016 to February, 2019 were unpaid. According to PW2, plaintiff met with different excuses for payment of money and they were always getting amount below against the arrived ordered products to the construction site. Further testimony of PW2 was that, the plaintiff company had invested in the project by purchasing a lot of products from its own equity capital and thus this later cause a lot of hardship on plaintiff side making it unable to pay rent, NSSF for staffs and it failed to pay taxes to TRA as a result TRA issued Agency notice to plaintiff. PW2 added that, at the end of 2018 defendant requested plaintiff to assemble kitchen and wardrobe because the defendant could not sell or rent an apartment without a kitchen. According to PW2, the plaintiff performed all the work defendant wanted but they could not get a payment from defendant as agreed.

PW2 added further that when plaintiff finished assembling of the kitchen and wardrobes in the specified apartments it could not get a payment again on the ground that the money received from customers went to different payments, but defendant promised that it could pay plaintiff after completion of other flats. PW3 told the court that, plaintiff had to accept that reluctantly because they thought that they would not be



able to get paid in any other way, unfortunately, that approach did not result in positive outcome because defendant did not make any payments after completion of flats. PW3 told the court that, during their negotiations on payments plaintiff was informed that the glass of some of the stoves was broken. The plaintiff informed the defendant company that, they would change the cooker glasses so that these stove glass breakages would not be an excuse for defendant not to make payments, however, for a long-time the plaintiff did not receive any response from them. On the basis of above testimony PW3 prayed that this court be pleased to enter judgment and decree against defendant as prayed in the plaint.

In proof of the above facts, PW3 tendered in evidence the following exhibits, namely:

- i. Certificate authenticating authenticity of what sap conversation between PW2 and the director of defendant admitted as **exhibit P15** 1-2

Under cross examination by Mr. Mlalwe, learned advocate for the defendant, PW2 told the court that, since 2014 he has been a director of the plaintiff in Dar es Salaam and pointed that plaintiff also do business in Turkey. PW2 when asked on product told the court that some of the



products they use are manufactured locally here in Tanzania. PW2 when pressed with questions told the court that this was not a first job with Nuran. PW2 when pressed with more question told the court that, Turkey had good quality and plaintiff could not compromise her quality while TBS had to approve for products. When shown exhibit P6, PW2 identified it and told the court that it is similar to certificate of 2017 but it is dated 6.4.2019 and he pointed that he has it, but it was not in court that day. PW3 when further questioned told the court that, plaintiff handed over the project in August 2019 but was quick to point that it did not sign any handover note. PW2 when pressed with question told the court that, plaintiff has more than 500 clients in Dar es Salaam and every month it imports products from Turkey. PW2 when pressed with more questions told the court that, plaintiff issued receipts upon payment, however, PW2 pointed out that Nuran never replied to their demands. PW2 when asked on settlement told the court that, the plaintiff wanted to settle the matter but it could not work. PW2 when asked on visitation of the site told the court that the plaintiff never visited the sites but he sent his technician to change the blocked ones.

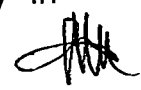
Under re -examination by Mr. Goodluck, learned advocate for the plaintiff, PW2 told the court that, plaintiff refused to accept defendant



offer because it was low and unreasonable .PW2 when pressed with questions told that court that remaining balance was dating back to 2021 because they never close their balance and were carrying on. PW2 went on telling the court that, they had no issue with defendant on receipts or handover of the work.PW2 when questioned on the work told the court that the work was completed in 2019.

Under re-examination by Mr. Mkandara, learned advocate for the plaintiff, PW2 told the court that the defendant promised to pay VAT after full payment, however, when payments were being made plaintiff issued receipts. PW2 when pressed with questions told the court that proforma invoice were issued in exclusion of VAT.PW2 went on telling the court that TBS has to import and issue certificate before goods enters in market. PW3 when shown exhibit P6 identified it and stated that it is from TBS relating to consignment batch number.PW2 when pressed into more questions told the court that the quality of products supplied was in accordance with TBS standards and they are here because of unpaid balance of money not paid by the defendant.

The next witness was one **Mr. SERDAR KARAKAS** (to be referred in these proceedings as '**PW3**'). PW3 under affirmation and through his witness statement adopted in these proceedings as his testimony in



chief told the court that, he is a Technical Manager of Poshh Design Limited his duties among other is make furniture's, to fix and to install interior designs accessories for and on behalf of the plaintiff hence, conversant with what happened in this matter. It was a testimony of PW3 that, at various time particularly in 2016, 2017 and 2018 he was assigned by the plaintiff to supply, fix and install the interior design products at Nuran residence situated along the CCM street, in Masaki, Dar es Salaam. It was further testimony of PW3 that, among the works he performed to defendants was to deliver interior products including wooden tiles, tiles, kitchen, bathroom cabinet, wardrobe interior door, fire door, vanity for bathroom, built in oven, built in hob, built in hood, built in microwave, security door and sample door.

Testifying on the products delivered PW3 told the court that, the products he delivered, fixed and installed had no warranty. PW3 added that, he checked the construction site before he started installing the accessories and noticed that the condition of the construction sites was not suitable because electrical supply (electrical voltage) was not suitable. PW3 stated that in the premises, he informed and advised the management of Nuran Developers, Mr. Girish who was an engineer on electrical voltage, Mr. Girish responded that the owner of construction



site is aware of the problem. Testifying further, PW3 told the court that, after completion of fixing of the interior design products, PW3 and Nuran Developers tested the products and the same were in good condition with good standard as such plaintiff handled over the site to Nuran Developers. PW3 went on telling the court that, on diver dates being a technician manager was instructed by the plaintiff to make follow-ups on the alleged broken cookers for purpose of repairing. Further testimony of PW3 was that, after plaintiff completion of his work there was another ongoing activity on the site, such as ceiling, plaster and painting. According to PW3 this could have compromised the functionality of the appliances and electrical products installed. PW3 went on to tell the court that, stoves were being used by Nuran Developers' tenants and since the stoves are made of glasses can be broken if not used properly by the tenants. On the basis of above testimony, PW3 prayed that this court be pleased to enter judgment and decree against the defendant as prayed in the plaint. PW3 tendered no exhibit.

Under cross examination by Mr. Mlalwe, learned advocate for the defendant PW3 told the court that, his roles as technician manager are on technical issues and that is what any company does in design. PW3 when pressed with question told the court that, he has been working for

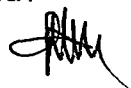


5 years as such he has experiences for house finishing. PW3 when pressed with more questions told the court that, he was involved in the projects from beginning up to completion of fixing kitchen, wardrobes, cookers, cabinets and tiles and all works were done under the supervision PW3.

PW2 when pressed with question told the court that, the project ended in 2019, however, admitted that there was no document for handing over the project. PW3 added that plaintiff used best quality products which was similar products fixed to other clients. PW3 when pressed with more question told the court that, plaintiff imports materials from Turkey.

Under re -examination by Mr. Goodluck, learned advocate for the plaintiff, PW3 told the court that, defendant wanted to fix the internal fittings and after fixing plaintiff handed over the work to Manager of the defendant. According to PW3, it is not possible for cooker to explode, however, he pointed out that they can be broken because there is a hole taking smoke and smell outside the house so explosion is impossible.

Under re- examination by Mr. Mkandara, learned advocate for the plaintiff, PW3 told the court that, he is electrician engineer with his experience he knows much about electricity. When PW3 pressed with



more question told the court that, plaintiff obligation after installation was to replace broken glasses and it replaced broken glasses because defendant asked plaintiff to do so. PW3 insisted that it is not possible for cooker to explode.

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

In defence, the defendant was defended by the two witnesses, the first witness to testify was one, **LILIA VERGILOVA GEORGIEVA** (to be referred in these proceedings as '**DW1**'). DW1 under oath and through her witness statement adopted in these proceedings as her testimony in chief told the court that, she is the Director of the defendant company registered and trading in Tanzania by the name of Euro Games Technology, hence, well acquainted with the facts of the case.

It was a testimony of DW1 that, on 20th August, 2019, Euro Games Technology, executed a lease agreement with Nuran Developers Limited for the residence of their director, one Lilia Vergilova Georgieva. DW1 told the court that following that agreement, Nuran Developers Limited leased apartment No.54 within Nuran residence on plot No.999 CCM Road/ Kahama Road Masaki Dar es Salaam to Euro Games Technology. It was further testimony of DW1 that, the lease was for twelve (12) months to running from 20th day of August, 2019 to 19th day of August,



2020 at a monthly rent of USD.4700 (United States Dollars Four Thousand Seven Hundred) payable six months in advance. DW1 went further telling the court that, Euro Games Technology paid USD.28,200.00 for six months' rent.

DW1 testified that, on the 5th day of July, 2020, Nuran Developers Limited and Euro Games Technology executed an addendum to the lease agreement whereby a three (3) months' rent-free lease was given to DW1 from 5th January, 2020 to 4th April, 2020, after breaking down of the hob, hood fan and explosion of the microwave that were fixed in the leased apartment No.54. DW1 went on telling the court that, the breakdown of the hob, hood fan and explosion of the microwave rendered the apartment inhabitable as it was a threat to her life and safety of the apartment and the landlord took efforts to repair the apartment by replacing the hob and hood fan and exploded microwave so that the apartment could be habitable. DW1 told the court that, during the repair she was availed an alternative unit to occupy for thirty days until the repair in the apartment was complete.

DW1 in disproof of the plaintiff's claims tendered the following exhibits, namely: -



- i. 3 invoices dated 14/8/2019; 30/3/2020 and 5/1/2019 are admitted **as exhibit D1** I-III

Under cross examination by Mkandara, learned advocate for the plaintiff, DW1 told the court that, she is Managing director of Euro Games Technology Limited and she stays in Masaki apartment owned by Nuran Developers Limited. DW1 when asked on the agreement told the court that she doesn't have it in court, however, she stated that there is an agreement. DW1 when asked on the apartment she was staying told the court that she was staying in an apartment No 54. DW1 when shown exhibit D1_I identified it and told the court that it has name of the company and changed his previous statement and said they were occupying apartment No 64. DW1 when pressed with more questions told the court that, she started renting in 2019 for apartment 54 and the rest of the invoices admitted as exhibit D1 was for rent. DW1 went on telling the court that, she knew it was for the apartment she accepted because it had a contract though not tendered.

Under re-examination by Mr. Mlalwe, learned advocate for defendant, told the court that, the invoices were prepared by Nuran Developers, however, she pointed out that she doesn't know why numbers are at variance much as it is the same company.



The next witness to testify was one, **SHAZMIN MITHA** (to be referred in these proceedings as '**DW2**'). DW2 under affirmation and through her witness statement adopted in these proceedings as her testimony in chief told the court that, she is the Director of Finance of the defendant, and in charge in overseeing day to day financial affairs of the defendant, among other activities, hence, well acquainted with the facts of the case.

DW2 went on telling the court that, in her written statement of defence, the defendant denied all the plaintiff's claims and by way of cross suit, the defendant raised a counter claim against the plaintiff praying the reliefs as stated in the counter claim. That the defendant who is also the plaintiff in the counter claims engages her in the business of real estate development and leasing the apartments for commercial and residential purposes among other activities. It was the testimony of DW2 that, in 2016 the plaintiff entered into agreement with the defendant whereby the plaintiff was required to supply and install various products and services for interior designing of the Nuran residence belonging to the defendant situated on plot. No.999 along CCM Street in Masaki, Dar es Salaam.



It was further testimony of DW2 that, it was agreed, among others, that plaintiff would supply accessories and house wares to the residency to wit: apartments' kitchens wardrobes, bathrooms cabinets, interior doors, fire doors, external security doors to mention but a few. According to DW2, apart from supplying the accessories and kitchen wares, the plaintiff was also required to install, test the accessories and kitchen wares in the residence while the defendant was required to effect payments to the tune of USD.715,171 (United States Dollar Seven Hundred Fifteen Thousand One Hundred Seventy-One only) as per agreement. However, he pointed out that remaining balance was withheld as a direct result of providing faulty equipment, non-replacement of the same and provision of faulty accessories such as faulty soft closure accessories and in some cases no accessories for wardrobes at all. DW2 told the court that plaintiff has misrepresented the court because payment was not made due of liquidity issue.

According to DW2, contrary to the agreement the plaintiff supplied substandard accessories and kitchen wares to wit: kitchen materials, stoves which kept on exploding, microwaves with un-functioned digitals which also kept on exploding, hoods and ovens were defective and they stopped working just a few weeks after installation. It was DW2



testimony that after noting the shortcoming and defects displayed by the accessories supplied and installed by the plaintiff, the defendant contacted plaintiff officers and informed them on the defects noticed and it requested the plaintiff to replace the defective and substandard accessories she supplied because they were causing loss to the defendant and posed a threat to the life and safety to the tenants but the plaintiff did not heed to the demands of the defendant.

It was DW2 testimony that, plaintiff agreed that it was their fault and agreed to change the same but never showed up. DW2 told the court that, the defendant kept requesting the plaintiff to rectify the defects by supplying and replacing the accessories of good quality, the plaintiff ignore to honor the defendant's request and kept on asking for the balance payment claiming to have completed the work while the plaintiff had only partially performed the work and supplied faulty equipment's. DW2 went on telling the court that, the defendant maintained the position the balance will only be paid after replacing the defective kitchen wares and upon completion of the work as per the agreement. DW2 testified further that, after the plaintiff refused to honor the defendant's request of rectifying the defects by replacing the substandard and exploded kitchen ware, this state of affair forced



defendant to purchase new stoves and kitchen ware from other suppliers so as to replace the defective products supplied and installed by the plaintiff so as to mitigate losses on the side of the defendant.

DW2 went on telling the court that, in the course of replacing the defective and exploded kitchen wares, the defendant incurred extra costs amounting to USD.103,163 (United States Dollars One Hundred and Three Thousand One Sixty-Three Only) which was expended for purchasing new stoves and kitchen ware. Further testimony of DW2 was that, the plaintiff was asked to collect the defective and exploded stoves and kitchen wares she supplied but refused to do so. DW2 told the court that, the defendant also expended extra costs by engaging an alternative contractor to install the new kitchen wares and accessories purchased by the defendant to replace the defective ones after the plaintiff refused to remedy the defects arising from the supply of substandard accessories and kitchen wares not only that but also defendant was forced to transfer some of the tenants who were residing in the residency apartments to alternative apartments for the period of three month's rent free but unfortunately some of the tenants decided to terminate the lease agreement and claimed refund of the rent paid in advance.



DW2 went to tell the court that some of the tenants were EURO GAMES TECHNOLOGY and Tanzania International Container Services Limited whose staff members were residing in apartments' number 52 and 54 by virtue of the lease agreements executed on the 4th of September, 2019 and 19th day of August, 2019 respectively. The said tenants decided to terminate the lease agreements with immediate effect and claimed refund of the rent paid in advance and the defendant managed to contain the situation by providing them with rent free period and alternative living arrangements. According to DW2, the reason for terminating of the lease agreement was the breakdown of hob, hood fan and explosion of microwave that were supplied and installed by the plaintiff in the residence.

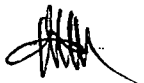
DW2 testified that , the rent free lease incentive and alternative living arrangements has caused the defendant a financial loss to a minimum of USD 36,400 as an income that she would have generated if she did not have to freeze the rents to keep the clients from moving. DW2 testified further that, the plaintiff also failed to issue tax invoice to the defendant for the payment of USD.640,684.58 to her as payment for part of the work done it has caused serious tax implications to the defendant as such the defendant has incurred a loss of USD.192, 205.37 for failure to



account for the payment made as amounting to expenses which could be treated as allowable expenses by the tax authorities.

Further, DW2 testified that the act of supplying substandard accessories and kitchen wares which kept on exploding has brought the defendant loss of business not only that but also the supply, installation of substandard accessories has seriously affected plaintiff business and reputation to her tenants who reside in the residence. It was the testimony of DW2 that, the explosive kitchen wares, cookers and stoves supplied by the plaintiff-imposed fear and danger to life and safety of the tenants and consequently some tenants were transferred to alternative residences at the expense of the defendant and some terminated the lease agreements because the apartment was now considered as a threat to life and unsuitable for human habitation.

DW2 went on telling the court that, it is out of all shortcomings and inconvenience that the plaintiff in the counter claim, claims for general damages amounting to USD.100,000. DW2 went on telling the court that, the defendant in the main suit deployed all the means within her capacity and in several occasions requested to the plaintiff to cure the defects by supplying and installing alternative kitchen ware but in vain instead she kept on insisting on payments.



On the foregoing, DW2 contests all the claims of the plaintiff and urged this court to dismiss the entire suit with costs and consequently grant plaintiff's claims in the counter claim as against the defendant in counter claim as prayed.

In disproof of the plaintiff claims, DW2 tendered the following exhibits namely: -

- i. An affidavit of authentication and whatsApp conversation admitted **as exhibit D2** (I)-(V)
- ii. 22 receipts and invoices admitted **as exhibit D3** (I)-(XXII)
- iii. Invoice from Nuran Development to Ticts dated 11/9/2019 as **exhibit D4**
- iv. Certificate of authenticity and 3 photos as **exhibit D5** (I)-(IV)
- v. Letter dated 26/1/2022 and record of disposal **as exhibit D6** (I)-(II)
- vi. Two contracts and therein 2 addendums as **exhibit D7** (I)-(IV)
- vii. Letter dated 5/5/2022 admitted **as exhibit D8**

Under cross examination by Mr. Mkandara, DW2 told the court that, he is minority shareholder and director of the defendant that is why he knows most of the business of the defendant. DW2 when pressed with questions told the court that defendant engaged plaintiff on 2017/2018

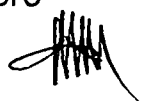
and they had LPO with the plaintiff. According to DW2, LPO is a contract. DW2 admitted that plaintiff supplied the defendant with a lot of supplies. DW2 when shown her written statement and asked to read paragraph 15 read it and acknowledged to have withheld the balance which was approximately USD.90,000.00. DW2 when pressed with more questions told the court that, plaintiff never replace defective equipments. DW2 when pressed with question told the court that, they did not sign handing over. Commissioning was to test and see if they are working. DW2 when pressed with more question told the court that, plaintiff provided warranty to them in the email from kitchen equipment's but when product supplied and stopped working, the question of warrant becomes irrelevant. DW2 went on to tell the court that the defendant was not given warrant in writing also plaintiff never handed over the project. When shown exhibit D15, DW2 recognized it and acknowledge WhatsApp message that it is her message replying by informing plaintiff that there were financial problems.

DW2 when asked on payment told the court that defendant has paid for work done and since equipments exploded they can't pay for them. According to DW2, the remaining balance is USD.69,000.00, however, out of that amount, USD.46,000.00 was for kitchen equipments and the



rest was for wardrobes. DW2 when asked to read paragraph 20 of her witness statement read it and admitted that it is true Euro techno was residing in the apartment No 54 because it was complete with all finished equipment. However, she pointed out that, there was ongoing installation. DW2 when asked to read paragraph 25(1) of Written Statement of Defense read it and told the court that, it is a typing error on the number of apartments but she was quick to point out that Euro Techno occupied apartment on 64 and not 54. DW2 when questioned the contract she acknowledged that it is true he said in the contract there was a typing error because members of the Qatar Embassy stayed in the apartment and occupied apartment 64, however, she pointed out that it was not forgery it was just a typing error because people who prepare the documents are not the one who were handling the apartment.

DW2 when pressed with questions told the court that, she is not aware that Poshh Design were in contact with Turkey embassy and if it Qatar embassy visited Poshh. When shown exhibit D1, DW2 identified it and told the court that, she is not the signatory and she doesn't know when it was prepared because she is not the one who issued it. DW2 when pressed with more question told the court that, defendant issued pro



forma invoice and that she is not aware of what TRA signature signifies. DW2 when asked to read paragraph 25(1) of Written Statement of Defence read it and told the court that, defendant never refunded cash to Qatar Embassy and she was not there when the lawyers met to discuss the issue. DW2 when shown her witness statement and asked to read paragraph 16 read it and told the court that, it is true the defendant incurred a loss worth more than USD. 103,000.00.

DW2 when shown exhibit P4, she recognized it and told the court that, VAT was included, however, she was quick to point out that she can't recall the exact figure paid for VAT because VAT is paid after the completion of work. DW2 went on to tell the court that, the issue of Tax is legal and where exempted the document has to state so. DW2 when asked on Poshh Design service responded that, Poshh Design provided services to 27 apartments and they had other projects with other companies. DW2 when shown exhibit P14, denied to have any the knowledge of exhibit P14. DW2 when pressed with questions told the court that, the plaintiff issued some invoices but she stated that Siveta was defendant accountant. DW2 when shown exhibit P12 told the court that, she doesn't know in details and she insisted that she can't recall



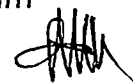
how much VAT was paid but she pointed out that VAT is paid after getting tax invoice.

DW2 when asked to read paragraph 23 of her witness statement read it but she was unable to explain variance between the amount as USD.197,737.30 and USD.192,205.57 but she was quick to point out that their claims are not on VAT but corporate dues or tax because defendant never issue tax invoice for an amount of more than USD.640,000.00 that means without tax invoice, she can't claim anything, so this caused defendant not to claim a refund. DW2 when shown exhibit D5 recognized it and told the court that, she doesn't recall exactly when were taken because there were so many pictures taken but he was quick to point that it was taken on 2022. DW2 when pressed with more questions told the court that, the date on pictures shows when they were taken. DW2 into further cross examination told the court that defence was filed in 2021 but the pictures were taken in 2022. DW2 when shown exhibit D6 told the court that, she never prepared it but is from the defendant's office. DW2 denied to have told the local government on what TBS observed on the products and that, she doesn't know if Poshh Design went to TBS.



Under re-examination by Mlalwe, DW2 told the court that, some payments were withheld because some items supplied were not working. DW2 when questioned on the meeting told the court that the meeting was trying to resolve the different between parties. According to DW2, the plaintiff acknowledged the default equipments but could not replace. DW2 when pressed with questions, told the court that the handing over was not done because the work was not yet to be complete. DW2 when shown exhibit P15 identified it and told the court that, it was referring to not working equipments. DW2 when shown exhibit D1 identified it and told the court that, it was prepared by company accountant on 14/8/2019 and 30/3/2020. DW2 when asked on the meaning of paragraph 25 told the court that defendant had to replace to other apartment because other apartments could not be used and that why they asked for refund. DW2 pointed that the variation between figures in paragraph 16 of her witness statement of because they were referring to two different items one for kitchen and another for wardrobes. DW2 when pressed with question told the court that the apartments were in one building at Masaki.

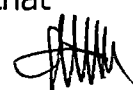
DW2 when asked to read paragraph 3 of her witness statement read it stated that, defendant was not given tax invoice so plaintiff cannot claim



VAT but as corporate tax and their profit overstated by 640,684.58 USD which translate to USD 192,205.32. When DW2 shown exhibit D5 told the court that, the photos were taken earlier but were printed on 26/1/2022 and regulations or stabilizer regulate the amount of electrical equipment's where there but products supplied with the plaintiff were affected.

This marked the end of hearing of the defence case and same marked closed.

The learned advocates for parties prayed for leave to file final closing submissions under Rule 66(1) of the court's Rules. I granted the prayer. I have had time to go through the rivaling submissions, and I truly commend them for their immense research and contribution which will assist this court on resolving the disputed issues. However, to avoid this already long judgement, I will not repeat each and every thing argued but here and there will refer to them. And where I will not, it suffices to say all have been taken and considered in determination of this suit. However, having gone through pleadings, testimonies of the witnesses, exhibits tendered and rival submissions for and against the parties, I wish to point out that there are some facts not in dispute in this suit, which in a way will narrow down the contentious issues. These are; **One**, it is not disputed between parties that



plaintiff entered into agreement with the defendant for supply of electrical accessory and other product. **Two**, it is not disputed between parties that defendant withheld USD.69,147.00 as a remaining balance.

However, in the circumstances of this suit, what is in serious dispute between parties' is apparent blames to each other for breach in supply agreement and breach in paying for the goods supplied and received. The plaintiff believes that the defendants breached supply agreement for non-payment of the remaining balance. On the other hand, defendant believes that the plaintiff breached supply agreement for supplying substandard products contrary to supply agreement.

Now in order to answer these blames, it is high time now to answer issues framed, recorded and adopted for the determination of this suit. The first issue was couched that ***"whether there was breach of contract by either of the parties"***. The plaintiff and his learned counsel in one part alleges and argued that she did her part in the performance of the contract and any excuse for not paying was lay excuse and unjustifiable on the part of the defendant. On the other part, the defendant cum plaintiff and his learned counsel in the counter claim alleges and argued that the defendant in the counter claim supplied substandard goods which after installation



exploded and cause much inconveniences and loss to the plaintiff in the counter claim.

I have carefully considered the pleadings, the exhibits tendered by parties, the final closing submissions by the learned advocates for parties, with very keen legal eye and mind and I am incline to find this issue in the affirmative on the part of the defendant/ plaintiff in the counter claim that he breached the contract. I will endeavour to explain. **One**, there is no dispute that the amount of USD.69,147.00 claimed by the plaintiff is the balance unpaid and there was no dispute as to the amount of equipments supplied, hence, the sudden change of goal post that the equipment supplied were defective is as argued by the plaintiff counsel that is an afterthought on the part of the defendant. **Two**, exhibit P15 which is whatsapp conversation the reasons for nonpayment was financial difficulties or financial problems and not substandard because the substandard issue came in January 2022 when this case was in court. **Three**, the claim of USD.323,696.63, was not, being specific damages strictly proved in this suit to guarantee this court to say the defendant in the counter claim contributed to the damages which were taken in January 2022 while the same were installed in 2016 after five years down to the road in use. **Four**, while I acknowledge that there was agreements with Euro Games and TICTs which was amended but nothing was tendered



to show that apart from that addendum no money was refunded and actually caused any loss as claimed. The amount, if any, was one month's rent of USD.4700.00 but which was never proved at all. It is trite law in our jurisdiction that whoever alleges must prove. In this case, the defendant cum counter claimant never proved this amount. No scintilla of evidence was tendered to prove this claim.

It is on the totality of the above reasons, I find the claim, the evidence and submissions of the defendant devoid and far from convincing me otherwise. I am rather persuaded by the case for the plaintiff.

On the foregoing reasons, I answer the first issue that the defendant in the main suit breached the terms of the contract for failure to pay the unpaid balance of USD.69,147.00 for good supplied and received as ordered by the defendant.

This takes me to the second issue which was couched that **"if issue number one is answered in the affirmative, whether there were losses or damage suffered by either party as direct consequences of breach?"** The plaintiff quantified and claimed general damages to the tune of USD.100,000.00 as result of breach of contract. Much as this court has found issue number one above in favor of the plaintiff and much as there is no dispute that the defendant had no reasonable excuse for not paying

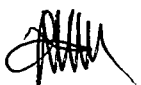
unpaid balance, I find that the law is clear that where on party suffers out of breach of contract is entitled to some damages for breach of contract. Section 73 of the Law of Contract is clear on this point. The said section provides as follows:

Section 73. Compensation for loss or damage caused by breach of contract, etc.

(1) When a contract has been broken, 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 things 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) When 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-performance of the contract must be taken into account.

Guided by the clear and literal wording of the above provisions, I find that the breach of the contract was direct to the contract and no remedy was justified from the defendant why he never paid the money in dispute as required under section 37(1) of the Law of Contract [Cap 345 R.E.2019]. Without much ado, I hereby grant the plaintiff USD.20,000.00 as general damages suffered for failure to use and generate the money in dispute which was for business.

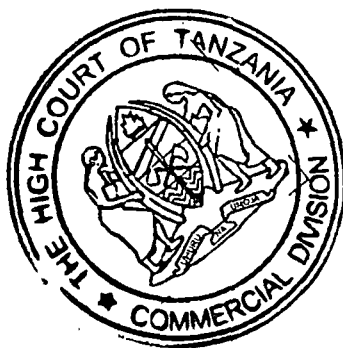
This trickles down to the last issue which was couched that **"what reliefs parties are entitled to.?"** The defendant prayed that this court dismiss this suit. But given this court's finding on issue number one this suit cannot be dismissed. The plaintiff as well prayed that the counter claim be dismissed with costs. Given my findings in issue number one the counter claim must be and is hereby dismissed for want of evidence. Moreover, the plaintiff claimed several consequential reliefs as contained in the plaint. Given my findings above, I allow this suit in the following orders, namely:-



- (a) The defendant is ordered to pay the plaintiff USD.69,147.00 (say United State Dollars Sixty Nine Thousand One Hundred Forty seven Only) being outstanding and unpaid amount for supply of various accessories;
- (b) The defendant is equally ordered to pay USD.20,000.00 being general damages for the anxiety caused in the follow ups and unjustifiably denial to pay;
- (c) The plaintiff is entitled to interest at commercial rate of 18% per annum from when they became due;
- (d) The plaintiff is entitled to interest at court's rate of 7% per annum from the date of this judgement till payment in full;
- (e) The plaintiff will have costs of this suit.

It is so ordered.

Dated at Dar es Salaam this 21st day of October, 2022.



S. M. MAGOIGA

JUDGE

21/10/2022