

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT MWANZA

COMMERCIAL CASE NO. 5 OF 2021

BETWEEN

AGGREKO ENERGY RENTALS TANZANIA LIMITED.... PLAINTIFF

Versus

CATA MINING COMPANY LIMITED..... DEFENDANT

Date of last order: 14th November 2022

Date of Judgment: 14th November 2022

JUDGMENT ON ADMISSION

MKEHA, J

The plaintiff's claim against the defendant is for payment of USD 1, 313,030.57 being money payable in respect of power equipment rented and related services delivered by the plaintiff to the defendant comprising of the principal amount of USD 1, 145,845.91 and USD 167,188.66 being interest as at 1st November, 2021 at a rate of 1% per month of the unpaid amount. According to the plaint, sometimes in the

years 2015 and 2018 the plaintiff delivered to the defendant, at the defendant's request, power equipment and related services at the defendant's gold mine at Kiabakari, Bunda, Mara, Tanzania at agreed prices. It was a term contract that the sum was payable upon delivery of each service and in any case within 30 days of the invoice date. The plaintiff indicate that, the plaintiff rendered the agreed services to the defendant but the defendant failed to settle its payments obligations according to the agreed terms.

By an Acknowledgment of Debt document executed by the parties on 29th November, 2019, the defendant confirmed its indebtedness to plaintiff, admitted the correctness of the amount due and undertook to liquidate the outstanding debt in instalments by 31st December 2020. It was a term in the Acknowledgement of Debt document that in the event the defendant could not pay any due debt the amount payable under the acknowledgment of debt, then, the full amount outstanding would become due and payable. It was a further term in the Acknowledgment of Debt document that, in the event of any payment not being made on the date and in the amount agreed, interest would be chargeable at a rate of 1% per month. As at the time of filing of this suit, in breach of the terms of the Acknowledgment of Debt document, the defendant had

not paid anything towards settling the due debt to the plaintiff on any part thereof.

The plaintiff intended to rely on the contract between the parties dated 26th February 2015, tax invoices in relation to which payments were claimed without success and the Acknowledgment of Debt document in which the defendant admitted the liability. As a result of the foregoing the plaintiff prayed for judgement and decree against the defendant as follows:-

- (i) Payment to the plaintiff of USD 1, 313,030.57;
- (ii) Payment to the plaintiff of interest on (i) at the rate of 1% per month from the date of filing the suit to the date of judgement;
- (iii) Payment to the plaintiff of interest on the decretal sum at the court's rate of 7% from the date of judgement till the date of final and full payment;
- (iv) Payment of General damages to be assessed by the court to the tune of USD 100,000.00
- (v) Costs of the suit to be provided for;
- (vi) Any further reliefs this Honourable court would deem just and fit to grant.

Upon being served with the plaint the defendant through Mr. Godchile Chirare learned advocate, filed a written statement of defence providing as hereunder:

1. That the contents of paragraphs 1 and 2 are noted save for the address for service for the purposes of this suit shall be in the care of:

KC ASSOCIATES,

2nd Floor, Room No. 2,

CCM (Nyamagana) District Block,

Nyerere Road,

P. o Box 3057,

Mwanza – Tanzania

2. That the contents of paragraph 3 of the plaint are disputed.
3. That the contents of paragraphs 4,5, and 6 of the plaint are disputed.
4. That the contents of paragraphs 7, 8 and 9 in respect of the default notice are disputed and the plaintiff is put to strict proof thereof.
5. That the contents of paragraph 10 of the plaint are disputed.
6. That from what is stated herein above the contents of paragraphs 11, 12 and 13 are contested.

7. That the contents of paragraph 14 of the plaint are noted.

When this suit was called for hearing, before commencement of the actual hearing, Mr. William Mang'ena learned advocate made a prayer for entering of judgment on admission. According to the learned advocate, in the written statement of defence, the defendant does not specifically deny the contents of the plaint as the law requires. For that reason, the learned advocate asked the court to enter judgement on admission in favour of the plaintiff.

When Mr. Chirare learned advocate for the defendant rose to reply, he conceded that, in fact, in the defendant's written statement of defence, the defendant does not specifically deny any of the allegations in the plaint. He could not therefore object entering of judgment on admission in favour of the plaintiff. He however asked the plaintiff to waive the costs. Mr. Mang'ena learned advocate for the plaintiff submitted in rejoinder that, the plaintiff was ready to waive costs of the suit.

The only determinative issue is **whether this is a fit case for entering of a judgment on admission on account of the defendant's failure to deal specifically with each allegation of fact which he does not admit.** To be able to respond to the issue framed hereinabove, reproduction of the provisions of Order VIII rules

(3) to (5) of the Civil Procedure Code is, I think, inevitable. The said Order provides as hereunder:

(3) it shall not be sufficient for a defendant in his written statement of defence to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact which he does not admit the truth, except damages.

(4) where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance, thus if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that sum or any part thereof or else set out how much he received. And if an allegation is made with diverse circumstances it shall not be sufficient to deny it along with those circumstances.

(5) every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.

Provided that, the court may in its discretion require any fact so admitted to be proved otherwise than by such admission. Order VIII Rules (3) to (5) of our Civil Procedure Code is couched in parimateria with Order VIII Rules (3) to (5) of the Indian Civil Procedure Code. Commenting on what these provisions of the law really mean, Sudipto Sarkar VR Manohar writes that, Rules 3, 4 and 5 of Order VIII of the

Indian Code of Civil Procedure ought to be read together. That, when read together, the provisions mean that, the defendant is bound to deal specifically with each allegation of fact not admitted by him. He must either deny or state definitely that the substance of each allegation is not admitted. It does not of course mean that every allegation in the plaint should be reproduced at length in the written statement of defence for the purpose of denial. The main allegations which form the foundation of the suit should be dealt with in that way and expressly denied. Such fact should be taken up separately as far as possible in the order stated in the plaint and the defendant should either admit them or deny or state definitely that he does not admit. Facts not specifically dealt with will be taken to be admitted. Read: **SAKAR, CODE OF CIVIL PROCEDURE, 11th EDITION at Page 1202.** I subscribe to the learned author's position as cited hereinabove.

In this case, the main allegations which form the foundation of the plaintiff's suit were not specifically dealt with in the defendant's written statement of defence whose operative portion is set out in full in this judgement. As indicated hereinabove, the defence is evasive from the first to last paragraph of the written statement of defence. This is also admitted by Mr. Chirare, learned advocate for the defendant. This is

therefore a fit case for invocation of rule (5) of Order VIII of the Civil Procedure as the defendant is not a person under disability.

For the foregoing reasons, judgement on admission and decree is entered in favour of the plaintiff in the following terms:

- (i) The defendant shall pay to the plaintiff USD 1,313,030.57

being the principal amount of UDS 1, 145,845.91 and USD 167,188.66 which is interest as at 1st November 2021 at a rate of 1% per month of the unpaid up amount.
- (ii) The defendant shall pay to the plaintiff interest on (i) above at the rate of 1% per month from the date of filing of the suit to the date of judgment.
- (iii) The defendant shall pay to the plaintiff interest on the decretal sum at the court's rate of 7% from the date of judgement till the date of payment in full.
- (iv) The defendant shall pay to the plaintiff General damages to the tune of USD 25,000.
- (v) I make no order to costs.

Dated at MWANZA this 14th day of November, 2022.




C.P MKEHA

JUDGE

14/11/2022

Court: Judgment on admission is delivered in the presence of Mr.

Mang'ena learned advocate for the plaintiff and Mr. Chirare

learned advocate for the defendant, this 14th day of November

2022.




C.P MKEHA

JUDGE

14/11/2022