

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

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 80 OF 2022**

**BETWEEN**

**PETROFUEL (T) LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**PETROLOGISTICS LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**KATAVI MINING COMPANY LIMITED.....1<sup>ST</sup> DEFENDANT**

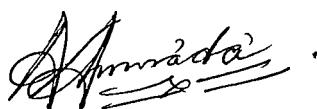
**AHMED ALI AHMED ALHOQANI..... 2<sup>ND</sup> DEFENDANT**

**ALHOQANI INTERNATIONAL GROUP ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

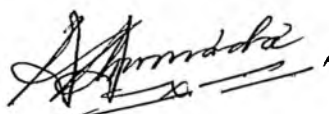
**A.A. MBAGWA J.**

In this suit, the plaintiffs' claims against the defendants arise from the alleged breach of contract for supply of petroleum products and installation of storage and handling equipment. The 1<sup>st</sup> plaintiff, PETROFUEL (T) LIMITED is a legal personality licensed to trade in petroleum products whereas the 2<sup>nd</sup> plaintiff, PETROLOGISTICS LIMITED is a legal entity authorized to provide transportation services. On the other hand, the 1<sup>st</sup>



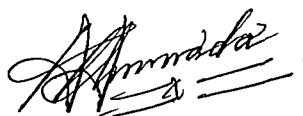
defendant, KATAVI MINING COMPANY LIMITED is a limited liability company duly incorporated under the laws of Tanzania and it is licensed to extract and export minerals whereas the 2<sup>nd</sup> defendant, AHMED ALI AHMED ALHOQANI is a natural person and one of the shareholders and directors of the 1<sup>st</sup> and 3<sup>rd</sup> defendants. In addition, the 2<sup>nd</sup> defendant stood as guarantor to the contract in dispute. The 3<sup>rd</sup> defendant, ALHOQANI INTERNATIONAL GROUP is also a limited liability company and guarantor to the contract in dispute.

It is alleged that sometimes in April, 2017, the plaintiffs entered into agreement with the 1<sup>st</sup> defendant for supply of petroleum products and installation of storage and handling equipment on credit basis. According to the plaint, prior to entering into agreement, the plaintiffs and 1<sup>st</sup> defendant had preliminary discussion on the modality of carrying the business. Following the preliminary discussion, the 1<sup>st</sup> defendant subsequently passed a resolution authorizing the company to enter into contract with the plaintiffs. The plaintiffs added that the 1<sup>st</sup> defendant authorized one Mueen Hussein Mohamed, the defendant's country manager to sign the contract on behalf of the 1<sup>st</sup> defendant. Consequently, on 18<sup>th</sup> April, 2017, the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant entered into a business agreement to supply fuel products

A handwritten signature in black ink, appearing to be 'Ahmed Ali Ahmed Alhoqani', with a horizontal line underneath it.

and install storage equipment on credit basis. Moreover, it was the plaintiffs' averment that the contract was secured by guarantee of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. It was further contended that the contract (business agreement dated 18<sup>th</sup> April, 2017) was, at different times, amended by four addenda. The plaintiffs contend that they supplied petroleum products and installed the required storage equipment namely, fuel dispensing pump, 35,000 – liter capacity calibrated storage tanks and fixtures, fitting and other consumables as per the agreement. The plaintiffs further stated that they supplied fuel products from April, 2017 to June, 2022 but the defendants did not pay the purchase price and transportation services as per the agreement as such, the outstanding amount stood at USD 801, 629.00 as of 30<sup>th</sup> June, 2022. In view thereof, the plaintiffs filed this suit praying for judgment and decree against the defendants in the following orders;

- (a) A declaration that the 1<sup>st</sup> defendant is in breach of the business agreement and the addenda thereto and the implied agreement of transportation of the supplied fuel entered into between the plaintiffs and 1<sup>st</sup> defendant for non-performance of its contractual obligation under the said agreements.

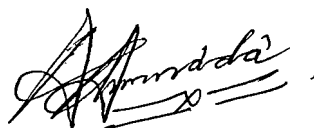


- (b) A declaration that the 2<sup>nd</sup> Defendant is in breach of the personal guarantee executed on 13<sup>th</sup> April, 2017 in favour of the 1<sup>st</sup> Defendant for failure to pay upon demand, the outstanding amount plus interest due in the business agreement for the supply of the fuel and transportation;
- (c) A declaration that the 3<sup>rd</sup> Defendant is in breach of the second guarantee executed on 3<sup>rd</sup> September, 2018 in favour of the 1<sup>st</sup> Defendant, for failure to pay upon demand, the outstanding amount plus interest due in the business agreement for the supply of the fuel and transportation;
- (d) An order for immediate payment to the Plaintiffs of USD 801,629 (Say Eight Hundred One Thousand Six Hundred Twenty-Nine Dollars only) being the outstanding principal amount and interest as of 30<sup>th</sup> June, 2022;
- (e) An order for immediate payment to the Plaintiffs of USD 507,782 (Say Five Hundred Seven Thousand Seven Hundred Eighty-Two Dollars only) being loss of income and profit;
- (f) An order for payment to the Plaintiffs of USD 115,218 (Say One Hundred Fifteen Thousand Two Hundred Eighteen Dollars only);



- being compensation for misappropriation and diminished condition and market value for the said equipment, to wit; (3) Fuel Dispensing Pump, (5) 35,000-Liter Capacity Calibrated Storage Tanks and Fixtures, fittings and other consumables;
- (g) An order for the Defendants to pay to the Plaintiffs a penal interest over and above the contractual rate of 2% per month charged from 31<sup>st</sup> March, 2022 to the date of judgment;
  - (h) Interest at the commercial rate of 15% p.a. from the date of filing this suit until the date of judgment and decree;
  - (i) Further compound interest of item (c) above, at the commercial rate of 12% p.a. from the date of decree until payment in full;
  - (j) An order for payment of general damages for inconvenience caused to the Plaintiffs;
  - (k) That the Defendants be condemned to pay the Plaintiffs costs of and any incidental detriments to the suit; and
  - (l) Any other reliefs that the court may deem fit, equitable, just and proper to grant.

Upon service, the defendants filed a joint written statement of defence disputing the plaintiff's claims. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants denied to have



A handwritten signature in black ink, appearing to read "Amridda", with a horizontal line underneath it.

guaranteed the contract. In addition, the 1<sup>st</sup> defendant denied to have authorized Mueen Hussein Mohamed to sign the alleged business agreement (contract). However, the 1<sup>st</sup> defendant admits to have been supplied fuel products by the plaintiffs from 19<sup>th</sup> April, 2017 to May 2022. She strongly contended that the business was based on oral agreement and not on the basis of the business agreement executed on 18<sup>th</sup> April, 2017.

Upon completion of the pleadings, when the matter came for final pre-trial conference, this court, in agreement with parties, framed the following issues;

1. Whether there was a contract of fuel supply between the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant.
2. Whether there was contract of supply of fuel storage and handling equipment between the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant.
3. Whether there was an implied contract of transportation of fuel between the 2<sup>nd</sup> plaintiff and the 1<sup>st</sup> defendant.
4. Whether the 2<sup>nd</sup> and 3<sup>rd</sup> defendants guaranteed the contracts in issues No. 1 to 3 above.
5. Whether there is breach of contracts in issues No.1 to 3 above by the defendants.

A handwritten signature in black ink, appearing to read 'Amrinda', with a date '20' written below it.

6. What reliefs are the parties entitled to.

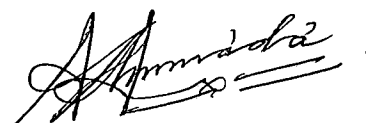
During hearing, the plaintiffs were represented by Mr. Steven Mosha, learned counsel whilst the defendants enjoyed the services of Mr. Peter Kibatala, learned counsel as well.

In striving to prove the case, the plaintiffs paraded two witnesses namely, Anoop Satish Kumar (PW1) and Satish Kumar (PW2). In addition, through PW1, the plaintiffs tendered several documents which were admitted and marked from exhibit P1 to P6. On the adversary, the defendants had filed three witness statements. However, during hearing, they were able to bring only two witnesses for cross examination namely, Esaki Muthu Thangiaya (DW1) and Mohamed Ebrahim Abdel Halimu Sawyid (DW2). Ahmed Ali Hooqan could not be availed for cross examination as such, his witness statement was admitted under rule 56(3) of the High Court (Commercial Division) Procedure Rules, 2012.

PW1 Anoop Satish Kumar told the Court that he was the Chief Executive Officer and Director of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. It was the testimony of PW1 that the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant after preliminary discussions with directors of the 1<sup>st</sup> defendant, entered into business agreement. According



to PW1, the contract was preceded by the 1<sup>st</sup> defendant's company resolution which authorized the 1<sup>st</sup> defendant to enter into business agreement. Besides, the 1<sup>st</sup> defendant appointed Mr. Mueen Hussein Mohamed, the country manager to sign the contract on behalf of the company. Under the agreement, the 1<sup>st</sup> plaintiff was required to supply petroleum product to the 1<sup>st</sup> defendant at Mpanda in Katavi region. PW1 further testified that the contract also provided for supply of storage and handling equipment. The supply of both fuel and storage equipment was done on credit basis. Consequently, in fulfilment of the contractual obligations, the 1<sup>st</sup> plaintiff supplied petroleum products and storage equipment based on the orders that were pressed by the 1<sup>st</sup> defendant. The said products were being transported and delivered to the 1<sup>st</sup> defendant's site at Mpanda in Katavi by the 2<sup>nd</sup> plaintiff, Petrologistics. On 17<sup>th</sup> October, 2017 through addendum 1, parties agreed to extend the contract period to five (5) years. PW1 tendered the 1<sup>st</sup> defendant's board resolution dated 13<sup>th</sup> April, 2017, guarantee confirmation dated 13<sup>th</sup> April, 2017, the business agreement dated 18<sup>th</sup> April, 2017 and addendum 1 which were admitted and marked exhibit P1 collectively. PW1 stated that the plaintiffs continued to supply fuel but the 1<sup>st</sup> defendant was not paying accordingly. As such, on 3<sup>rd</sup>

A handwritten signature in black ink, appearing to read 'Aminda', with a horizontal line underneath it.



September, 2018, the parties entered into tripartite agreement between 1<sup>st</sup> plaintiff, 1<sup>st</sup> defendant and 3<sup>rd</sup> defendant in which the 1<sup>st</sup> defendant acknowledged the outstanding debt which stood at TZS 1, 096,434,000/= and committed itself to pay. Additionally, in that agreement, the 3<sup>rd</sup> defendant Al Hooqan International Group undertook to settle the outstanding debt. PW1 tendered the said agreement dated 3<sup>rd</sup> September, 2018 and the same was admitted and marked as exhibit P3. Exhibit P3 was signed by Mueen Hussein Mohamed and Mahmood Abdul Razzak Yass Al Jubori on behalf of the 1<sup>st</sup> defendant, Issa Ali Ahmed Al Hooqani on behalf of the 3<sup>rd</sup> defendant and Satish Kumar on behalf of the 1<sup>st</sup> plaintiff. The plaintiffs continued to supply fuel but payments were not being made timely. Thus, in order to arret the situation, the 1<sup>st</sup> defendant executed deed of undertaking in which she acknowledged the outstanding debt of USD 610, 894/= as of 24<sup>th</sup> March, 2019. PW1 also told the Court that in the course of discharging contractual obligations, parties unanimously amended some terms of contract through addenda. PW1 tendered a deed of undertaking and other three addenda namely, II, III and IV and the same were received and marked exhibit P4 collectively. All the three addenda were signed by Ahmed Ali Al Hooqani and Syed Adnan on behalf of the 1<sup>st</sup> defendant



whereas the deed of undertaking was signed by Ahmed Ali Al Hooqani and Issa Ali Al Hooqani. PW1 stated that the plaintiffs continued to supply fuel to the 1<sup>st</sup> defendant up to June, 2022 when they stopped service following the defendants' persistent default in payment. PW1 expounded that the mode of transaction was that, the 1<sup>st</sup> defendant was issuing purchase order indicating the amount of fuel required. Then, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were transporting and delivering the products as per the purchase order. Upon delivery, the 1<sup>st</sup> defendant was signing and stamping on the tanker description notes and delivery notes. Thereafter the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff were issuing invoices for payment of supplied goods. PW1 tendered in evidence thirty-nine (39) pairs of documents containing purchase orders, tax invoices, tankers description notes and delivery notes from April, 2017 to June, 2022 and the same were admitted and marked **exhibit P2 collectively**. Moreso, it was the plaintiffs' evidence that due to the 1<sup>st</sup> defendant's default of payment for supplied fuel, the amount due accrued to USD 801,629 being principal sum and accrued interest as of 30<sup>th</sup> June, 2022. PW1 tendered a summary spreadsheet which shows the pending invoices, principal amount and interests from 2018 to 2022 attached with their respective ledger accounts and the same were received and marked **exhibit P5 collectively**.



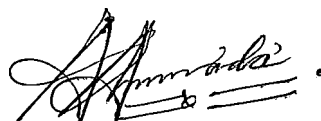
Mr. Anoop Satish Kumar (PW1) told the Court that he sent several reminders to the defendants with respect to the outstanding payment but to no avail. PW1 tendered a batch of email correspondences between the plaintiff and the defendants regarding the outstanding payments and the same were admitted and marked **exhibit P6 collectively**. Furthermore, the plaintiffs paraded Satish Kumar (PW2), the Chairman and Managing Director of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. His evidence was substantially similar to that of PW1.

In defence, Esaki Muthu Thangiaya (DW1) who introduced himself as Sales and Executive Manager of the 1<sup>st</sup> defendant told the Court that the 1<sup>st</sup> defendant does not recognize the business agreement dated 18<sup>th</sup> April, 2017 (part of exhibit P1) on the ground that Mueen Hussein Mohamed who signed the document on behalf of the 1<sup>st</sup> defendant was not authorized by the company to execute the business agreement. He also denied the deed of guarantee by Ahmed Ali Al Hooqani on the ground that it does not state the extent of guarantee. Further, DW1 denied all the addenda produced in evidence (exhibits P1 and P3). However, DW1 admitted to have traded with the 1<sup>st</sup> and 2<sup>nd</sup> defendants in respect of supply of fuel but he insisted that the business was based on oral contract and not on business agreement (part of exhibit P1). He said that the plaintiffs supplied fuel from 19<sup>th</sup> April,



2017 up to May, 2022. During cross examination, DW1 changed his version and said that the 1<sup>st</sup> defendant was doing business with 1<sup>st</sup> plaintiff only and not the 2<sup>nd</sup> plaintiff, Petrologistics Limited. He also confirmed that they were signing on delivery notes upon delivery of goods. Further, DW1 confirmed to the Court that they were receiving invoices of both 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. He also admitted that the plaintiffs supplied fuel up to June, 2022. On further cross examination, DW1 said that he knows Ahmed Ali Al Hooqani and Mahamoud Abdul Razzak.

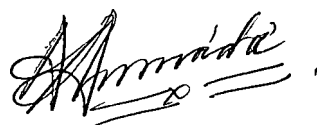
In addition, the defendants marshalled Mohamed Ebrahim (DW2) who told the Court that he was working with the 3<sup>rd</sup> defendant Al Hooqani International Group. He said that there is relationship between the 1<sup>st</sup> and 2<sup>nd</sup> defendants in that Issa Ali Hooqani and Ahmed Ali Hooqani are owners of Katavi Mining Company. Apart from the two witnesses, the defendants counsel prayed to tender the statement of Ahmed Ali Hooqani for the reason that he could not be available for cross examination. As such, the Court admitted the witness statement under rule 56 (3) of the Rules. In his witness statement, Ahmed Ali Hoqani denied knowledge of the guarantee confirmation and the addenda.



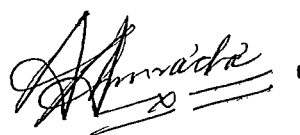
Upon conclusion of hearing, both parties were allowed to file final written submissions in terms of rule 66 of the Rules. I appreciate both counsel for their informed submissions on the matter. However, I will not be able to reproduce them verbatim in this judgment. Suffice it to say that I have considered them in my decision.

Having summarized the evidence, I find it apt to determine the issues framed.

The 1<sup>st</sup> issue is whether there was a contract of fuel supply between the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant. The plaintiff's account was that the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant, on 18<sup>th</sup> April, 2017 entered into a contract for supply of fuel product and installation of storage and handling facilities. The plaintiffs' witnesses stated that the contract was preceded by conversation between the directors which resulted into board resolution and confirmation guarantee. The plaintiff evidence also revealed that the business agreement (contract) was followed by four addenda. PW1 tendered the business agreement dated 18<sup>th</sup> April, 2017, 1<sup>st</sup> defendant's board resolution and confirmation letter dated 13<sup>th</sup> April, 2017 which authorized Mueen Hussein Mohamed to sign the contract on behalf of the 1<sup>st</sup> defendant and the same were admitted and marked exhibit **P1 collectively**. In rebuttal, the



defendants denied the alleged business agreement stating that it did not authorize the said Mueen Hussein Mohamed to sign on its behalf. I have carefully analysed the evidence of both parties in whole. I have also paid the candid attention to the documentary exhibits in particular exhibit P1, P3 and P4. The defendants, throughout their evidence, do not dispute the board resolution dated 13<sup>th</sup> April, 2017. They, however, deny the business agreement (contract) on the argument that, the board resolution did not authorize Mueen Hussein Mohamed to sign the contract. Nevertheless, the said board resolution which is admitted by the defendants was signed by Mueen Hussein Mohamed as company secretary. I have also scanned the guarantee confirmation dated 13<sup>th</sup> April, 2017 and found that the same was duly signed by Ahmed Ali Al Hoqani and therein authorized the said Mueen Hussein Mohamed to sign the agreement on behalf of the 1<sup>st</sup> defendant. Besides, the confirmation guarantee bears the stamp of Katavi Mining Company. Mr. Ahmed Ali Hoqani denied knowledge of the guarantee confirmation however, since the said Ahmed Ali Hoqani did not appear for cross examination, his evidence is accorded lesser weight. Furthermore, addenda II, III and IV were signed by Ahmed Ali Hoqani and to crown it all, the debt acknowledgement and undertaking for payment dated 24<sup>th</sup> March,

A handwritten signature in black ink, appearing to read 'Ahmed Ali Hoqani', with a horizontal line underneath it.

2019 (exhibit P4) was executed by Ahmed Ali Al Hoqani and Issa Ali Ahmed Al Hoqani who are Chairman and Chief Executive Officer of the 1<sup>st</sup> defendant respectively. Nowhere Ahmed Ali Hoqani, in his statement, denied exhibit P4. There is also evidence to the effect that the plaintiffs were supplying fuel and the same was received by the 1<sup>st</sup> defendant. This is established through the invoices, purchase orders, tanker description and delivery notes (exhibit P2 collectively). On this, the plaintiff's evidence was corroborated by DW1 who admitted, during cross examination, that they were receiving fuel products from the plaintiffs and they were signing and stamping on the delivery notes and tanker description notes to signify the receipt of fuel. The defendants counsel struggled to challenge the business agreement on technical issues but, upon consideration of evidence cumulatively, it follows that there was contract between the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant. One would ask himself, if there was no contract as contended by the defendants, on what basis was the 1<sup>st</sup> defendant issuing purchase orders (exhibit P2) and receiving petroleum fuel from the plaintiffs? I am convinced that the transaction was based on the written agreement dated 18<sup>th</sup> April, 2017 (P1). The answer to this question confirms the plaintiff's account. The 1<sup>st</sup> issue is therefore answered in affirmative.



The 2<sup>nd</sup> issue is whether there was contract of supply of fuel and installation of storage and handling equipment between the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant. Having deliberated in details on issue No. 1, this 2<sup>nd</sup> issue would not detain me more. Clause 9 of the business agreement (contract) dated 18<sup>th</sup> April, 2017 which forms part of exhibit P1 is very clear that the 1<sup>st</sup> defendant would supplier and install storage and handling equipment. It was the testimony of Anoop Satish Kumar (PW1) at paragraph 7 of his witness statement that, based on clause 9, the plaintiff supplied and installed the storage and handling equipment to wit, fuel dispensing pump, 35,000- liter capacity calibrated storage tanks and fixtures, fittings and other consumables. Indeed, there was no counter evidence in respect of the storage and handling equipment. Consequently, I am equally convinced that there was contract to supply and install storage and handling equipment at the 1<sup>st</sup> defendant's premises in Katavi.

The 3<sup>rd</sup> issue is whether there was an implied contract of transportation of fuel between the 2<sup>nd</sup> plaintiff and the 1<sup>st</sup> defendant. Clause 6 of the business agreement (contract) caters for transportation of fuel. The provision entrusts the 1<sup>st</sup> defendant to arrange for transportation. The plaintiff's evidence was that the 2<sup>nd</sup> plaintiff was the one transporting fuel upon issuance of purchase





order. PW1 tendered the invoices (part of exhibit P2) which show that the 2<sup>nd</sup> plaintiff was claiming for transport costs and the 1<sup>st</sup> defendant was paying her. This was also admitted by DW1 during cross examination. In my opinion, the circumstantial evidence sufficiently establishes that there was implied contract between the 1<sup>st</sup> defendant and 2<sup>nd</sup> plaintiff, Petrologistics Limited.

The 4<sup>th</sup> issue is whether the 2<sup>nd</sup> and 3<sup>rd</sup> defendants guaranteed the contracts in issues No. 1 to 3 above. The guarantee confirmation (part of exhibit P1) dated 13<sup>th</sup> April, 2017 which was authored by Ahmed Ali Ahmed Al Hoqani provides;

*'We M/S Katavi Mining Company Limited and I as shareholder declare and confirm to you that we shall proceed any due amount carried by our contract with you regarding the diesel supply.'*

Further, as alluded to above, the subsequent addenda were signed by the said Ahmed Ali Ahmed Al Hoqani. Moreso, an agreement dated 3<sup>rd</sup> September, 2018 (exhibit P3), at paragraph 6, the 3<sup>rd</sup> defendant, Al Hooqani International Group undertook to settle the outstanding amount. Exhibit P3 was signed by Issa Ali Ahmed Al Hooqani on behalf of the 3<sup>rd</sup> defendant. Although the guarantee is not in the common form which we are used to, I am nevertheless satisfied that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants guaranteed the



contract. To sum up, I am satisfied that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, Ahmed Ali Ahmed Al Hoqani and Al Hooqani International Group guaranteed the contract.

The 5<sup>th</sup> issue is whether there is breach of contracts in issues No.1 to 3 above by the defendants. The plaintiff's evidence is to the effect that the defendants defaulted payment for the supplied fuel and therefore breached the contract. The plaintiffs tendered evidence to show that the defendants defaulted payment of the purchase price. There is evidence of a letter titled 'Due Outstanding Payment' (part of exhibit P4) in which the 1<sup>st</sup> defendant was acknowledging the outstanding debt of USD 610, 894. The defence, through DW1 Esaki Muthu Thangiaya admitted that they were supplied fuel by the plaintiffs up to June, 2022 when they stopped their service. DW1 could not tell the Court if the 1<sup>st</sup> defendant paid the outstanding purchase price. Moreso, through exhibit P6 (email correspondence printouts) at page 6 on the email sent on 18<sup>th</sup> November, 2021 at 2:15 PM, the 1<sup>st</sup> defendant's Chief Executive Officer one Issa Ali Ahmed Hoqani admits that there was outstanding payment. In that regard, it is my opinion that the plaintiffs have established that the defendants failed to discharge their contractual duties. It is the law that failure to discharge contractual obligations amounts to

A handwritten signature in black ink, appearing to be 'Amirah', with a flourish underneath.

breach of contract. See Section 73 of the Law of Contract Act and the case of **Simba Motors Limited vs John Achelis & Sohne GMBH and Another**, Civil Appeal No. 72 of 2020, CAT at Dar es Salaam. Thus, I hold that there was breach of contracts.

The 6<sup>th</sup> issue is what reliefs are the parties entitled to. The plaintiffs prayed for several reliefs including payment of diminished value and loss of profit. However, there was no sufficient evidence to strictly prove the alleged loss. It is a settled position that prayers such as loss of profit fall under specific damage which, according to the law, requires strict proof. See the cases of the cases of **Puma Energy Tanzania Limited vs Ruby Roadways (T) LTD**, Civil Appeal No. 287 of 2020, CAT at Dodoma, **Professional Paint Centre Limited vs Azania Bank Limited**, Commercial Case No. 53 of 2021, HC Commercial Division at Dar es Salaam, **Tanzania Electric Supply Limited vs Timber Enterprises Limited**, Civil Appeal No. 26 of 2000 (unreported) and **Reliance Insurance Company (T) LTD & 2 others vs Festo Mgomapayo**, Civil Appeal No. 23 of 23 of 2019, CAT at Dodoma. In my considered view, the plaintiffs failed to prove the alleged loss of profit and diminished value of the storage equipment to the required standard. This is because mere allegations are not sufficient proof of specific damages.

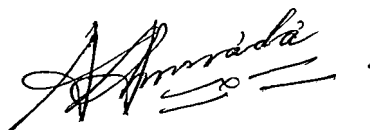


However, through the summary spreadsheet (exhibit P5), the plaintiffs were able to prove the outstanding sum of United States Dollars Eight Hundred and One Thousand Six Hundred Twenty-Nine (Dollars USD 801,629) only being the outstanding principal amount and interest as of 30<sup>th</sup> June, 2022. DW1, during cross examination, clarified that the amount due for Petrofuel is USD 610, 923 whereas for Petrologistics is USD 190,706.

As I wind up, I find myself compelled to remark that the defendants' defence was largely predicated on technical aspects of the documents executed by the parties, however it is worthwhile to recognize that with the advent of overriding objective principle introduced through sections 3A and 3B of the Civil Procedure Act, among other laws, this Court is enjoined to focus on substantive justice.

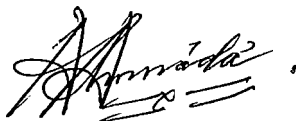
That all said and done, I am satisfied that the plaintiffs have established their case on balance of probabilities. As such, I enter judgment and decree in favour of the plaintiffs on the following orders;

- (i) It is hereby declared that the 1<sup>st</sup> defendant, **KATAVI MINING COMPANY LIMITED** is in breach of the business agreement for supply of fuel and the addenda thereto as well as the implied

A handwritten signature in black ink, appearing to be 'A. Amadi', with a horizontal line underneath it.

agreement for transportation of supplied fuel entered into between the plaintiffs and 1<sup>st</sup> defendant for non-performance of its contractual obligation under the said agreements.

- (ii) It is hereby declared that the 2<sup>nd</sup> defendant, Ahmed Ali Ahmed Al Hoqani is in breach of the personal guarantee executed on 13<sup>th</sup> April, 2017 in favour of the 1<sup>st</sup> defendant for failure to pay, upon demand, the outstanding amount plus interest due in the business agreement for supply and transportation of fuel.
- (iii) It is hereby declared that the 3<sup>rd</sup> Defendant is in breach of the second guarantee executed on 3<sup>rd</sup> September, 2018 in favour of the 1<sup>st</sup> defendant for failure to pay, upon demand, the outstanding amount plus interest due in the business agreement for the supply and transportation of fuel.
- (iv) The defendants are jointly and severally ordered to pay the plaintiffs USD 801,629 say, United States Dollars Eight Hundred and One Thousand Six Hundred Twenty-Nine only being the outstanding principal amount and interest as of 30<sup>th</sup> June, 2022;
- (v) Interest at the commercial rate of 5% from the date of filing this suit until the date of judgment.



- (vi) Interest at court rate of 7% on the decretal sum under (iv) from the date of judgment to the date of full satisfaction of decree.
- (vii) Payment of general damages for inconvenience caused to the plaintiffs to the tune of Tanzania Shillings Fifty Million (50,000,000/=) only.
- (viii) Costs of this suit be borne by the defendants.

It is so ordered.

The right of appeal is explained.



  
**A.A. Mbagwa**

**JUDGE**

**01/09/2023**