IN THE HIGH COURT OF THE UNITED REUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT MWANZA

COMMERCIAL CASE NO. 11 OF 2022

TANGA CEMENT PLC …….....PLAINTIFF

VERSUS

LEGOMARK COMPANY LTD…..…… DEFENDANT

Last order: 21ST February, 2023
Judgment: 22ND February, 2023

JUDGEMENT

NANGELA, J.

This is a judgement on admission. In law, where the defendant materially admits the facts constituting the Plaintiff's claim, the Court, may, upon application by any of the parties, enter a judgment as the Court may think just for the case. That is basically what Order XII Rule 4 of the Civil Procedure provides. For avoidance of doubts, I will reproduce the said provision here below:

> "Any party may at any stage of a suit, where admissions of fact have been made either on the pleading, or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for determination of

> any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just."

The facts constituting this case are fairly brief. The Plaintiff is a cement producer and distributor duly incorporated as a public limited company under the Companies Act, Cap.212. The Plaintiff sales and distributes not only cement but also clinker and its branded products include Simba Cement, Simba Imara, Simba Barabara and Simba Bora. On the other hand, the Defendant is a limited liability company, duly incorporated and existing under the Companies' Act, Cap.212. She carries on her business in Geita town-ship, Geita District, Geita Region.

The Plaintiff averred and claims from the Defendant a total of **TZS 74,733,309.60** being an outstanding amount for cement supplied by the Plaintiff to the Defendant. The Plaintiff has as well claimed for payment of interest on the outstanding amount, general damages and damages for breach of contract and costs of the suit. The genesis of that claim is a contract of supply (on credit) which was inked between the Plaintiff and the Defendant wherein the Plaintiff was to supply cement to the Defendant on credit subject to the terms and conditions of the said contract. The maximum credit agreed was TZS 80,000,000 and the Defendant was to effect payments within 30 days from the date of invoices.

The Plaintiff averred that, in the course of performance of the said contract of supply on credit, between 10/12/2021 and 5/9/2022, the Plaintiff supplied to the Defendant 330tons of cement 42.5 -50kgs Bags valued at TZS 81,420,000.00. It is

averred that, the same was collected by the Defendant's transporters from the Plaintiff's premises in Tanga and got delivered in Defendant's place of business at Tambuka Reli, Geita Township. It is averred that, tax invoices were raised with the Defendant for settlement purposes in tune of TZS 81,420,000.00, being the amount of the cement supplied. Out if such, it is averred that, the Defendant paid TZS 6,686,690.40/=. As such, a balance of TZS 74,733,309.60 remained unpaid, hence, this suit.

The Defendant filed a very brief written statement of defense. I think it can easily be reproduced here below as follows.

> "1. That, paragraph 1 and 2 of the Plaint are noted save for Defendant's address ….
>
> 2. That, the contents of paragraph 3 of the Plaint are partly noted and partly disputed for being exaggerated; therefore, the Plaintiff is put to strict proof thereof. In relation to the same the Defendant states that the outstanding debt was substantially a result of the Plaintiff's negligence and unbalanced performance to the said agreement.
>
> 3. The contents of paragraph 5 and 6 of the Plaint are partly noted as to the extent of acknowledging the existence of the agreement and payment advance to the Plaintiff. But the rest of the facts and interpretation of the said agreement and performance thereof are strongly denied for being baseless and irrelevant. Therefore, the Plaintiff is put to strict proof thereof.

4.**The contents of paragraph 7, 8, 9 and 10 of the Plaint are partly noted to the extent that there was a supply of cement to the Defendant and the outstanding sum of TZS 74,733,309.60/=.** However, rests of the facts to the paras are vehemently denied for being exaggerated and unfounded. The Plaintiff is put to strict proof thereof.

5. The contents of paragraph 11 and 12 of the Plaint are facts best known to the Plaintiff hence require proof thereof.

6. The contents of paragraph 13 of the Plaint are hereby noted."

On the 21st February, 2023, the matter came before this Court for a pre-trial conference but the parties urged the Court to allow them to reflect on the suit since the defendant intended to have it settled out of Court. I did grant them the prayer and adjourned the matter to 22nd February 2023 at 2:30 pm.

On the 22nd February, 2023, the learned advocate for the parties appeared before me and informed me that no settlement was reached. For the Plaintiff, Ms. Rosemary Makori, learned advocate entered appearance while Mr. Majura Jakson, learned Advocate, appeared holding the brief of Mr. Mashauri Miyasi. Since there was no settlement agreement reached, Ms. Makori rose to address the Court and submitted that, since it is clear in the pleadings that the Defendant has materially admitted to the claims, there is no need to waste much time but this Court should proceed to enter judgment on admission and grant the rest of the reliefs prayed for by the Plaintiff.

For his part, Mr. Jackson did admit that, the Defendant has materially admitted to the claims and was ready for a judgement on admission but costs should not be granted, neither should the Court agree to award interest at a commercial rate on the outstanding amount admitted. Ms. Makori insisted on payment of all reliefs as prayed.

I have looked at the submissions and the following are issues to be addressed:

(1) Whether there is indeed an admission of the claims to warrant a judgement by admission under Order XII rule 4 of the CPC.

(2) Whether the Plaintiff shall be entitled to all reliefs as prayed.

Essentially, it is trite law that, admission may be express or may arise by implication from non-traverse of a material fact in the statement of claim. However, that, admission has to be clear and unambiguous and must state precisely what is being admitted if the Court is to enter judgement on the basis of that admission. It should not be open to doubt. Once an admission of facts is found to be expressly made by the Defendant, the Court is entitled, upon application by the Plaintiff, to enter judgment or make such order as it deems just. See: **Mohamed B.M. Dhanji v. Lulu & Co**. [1960] E.A. 541.

Having looked at the 4th paragraph in the WSD filed by the Defendant, it is my settled view that, the Defendant has materially admitted to the substance of the claim by the Plaintiff. I hold it to

be so, because, the basis of the Plaintiffs claims is the non-payment of the sum of **TZS 74,733,903.60.** Such claims are fully admitted under paragraph 4 of the WSD which reads:

> "4. The contents of paragraph 7, 8, 9 and 10 of the Plaint are partly noted to the extent that there was a supply of cement to the Defendant and the outstanding sum of **TZS 74,733,309.60/=**…."

As a trite legal principle, parties are bound by their pleadings and cannot be allowed to depart from them. See: ***Jani Properties Ltd v. Dar Es Salaam City Council (1966) EA 281***.Accordingly, the prayer by Ms. Makori that a judgement by admission be entered,which prayer was nevertheless not objected to by the learned counsel for the Defendant, is justified in the circumstance of this suit. A judgment on admission ought to be; and it is hereby entered for the plaintiff in the sum of **TZS 74,733,903.60/=.** This amount is even inline with what section 50 of the Sale of Goods Act, Cap.214 R.E 2019 provides, i.e., that:

> "50-(1) Where, under a contract of sale, the property in goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him **for the price of goods**."

In her submission, the Plaintiff's learned counsel address me on the issue of reliefs sought, including payment of general damages, interest on the outstanding sum and costs. The learned counsel for the Defendant did also address me but his prayers were that, since the Defendant has made an early admission of the claims, the issue of costs should be dispensed with. He also contended that, interest prayed for on commercial rate should also be waived.

I have considered their submissions as well since, as I look at what is left in the pleadings, I find no other issue which will make this case to proceed to its hearing course for the determination of such issue. From the submissions of the parties, I find that, there being an admission regarding breach of the underlying contract as the Defendant concede to have not paid the TZS 74,733,903.60/= which arose from the supply of cement by the Plaintiff, it is my view that, the Plaintiff will also be entitled to damages.

Under section 73 of the Law of Contract Act, Cap.345 R.E 2019, the law is clear that:

> "73.-(1) Where 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."

In law, damages may be specific or general. Already the Plaintiff has been awarded the specific damage which is the payment of the price of the supply made to the Defendant, i.e., the TZS 74,733,903.60. However, general damages are assessed by the Court and granted solely at its discretion. Plaintiff has claimed to have suffered due to the breach. In my view, paying the Plaintiff TZS 1,500,000 (*One Million, Five Hundred Thousand Only*) as constituting general damages to be made payable to the Plaintiff would be just and fair.

As regards interest, the law as stated by the Court of Appeal in the case of **Zanzibar Telcom Ltd vs. Petrofuel Tanzania Ltd** Civil Appeal No.69 of 2014, CAT, (unreported), defined the term "interest: to mean:

> "money paid in addition to loaned money or upon delay to effect payment…"

However, in that above cited decision, the Court of Appeal made it clear that, for interest to be awarded one must have pleaded it in the Plaint and must be proved. In particular, the Court stated, and, I quote:

> "We would like to emphasize at this stage that as a matter of substantive law, the court cannot grant interest in a case where such interest was not pleaded and proved - See the case of *National Insurance Corporation (T) limited & Another v. China Engineering*

Construction Corporation (supra). In that case the Court observed that:

> *"Upon scrutiny of the pleadings in their totality, we would agree ... that the claim for interest in controversy. . . was not particularized in the body of the plaint. The pleadings did not contain any material facts on which the respondent relied upon for claiming that interest as a relief. Moreover. . the foundation on which the claim for interest ought to have stood was also not laid down in the pleadings…."*

In the context of the suit at hand, the Plaintiff did not adhere to the above stated principle by the Court of Appeal since, as I look at the pleading (the Plaint), I see no particularized item on the interest claim in the body of the plaint. As such, I will not grant interest save the normal court interest on the decretal sum which is 7% from the time of this judgement till full payment of the decretal sum thereof.

Finally, as to the claim on payment of costs, I would tend to be in agreement with Mr. Jackson that, in the circumstances of this case, this Court should dispense with costs. The Defendant having entered admission at these early stages, I see no reason why I should condemn her to pay costs. On the contrary, I make an order that, each party shall bear its own costs.

From the above considerations, therefore, this Court settles for the following orders:

(1) That, the Defendant is hereby ordered to pay the Plaintiff a sum of TZS 74,733,903.60 being the outstanding amount arising from the supply of cement by the Plaintiff.

(2) That, the Defendant is to pay TZS 1,500,000 as general damages.

(3) That, the Defendant is to pay 7% interest on the decretal amount from the date of this judgement until the time of full payment thereof.

(4) That, in the circumstances of this Case, I make no order as to costs as each party shall bear its own costs.

It is so ordered.

DATED AT MWANZA ON THIS 22nd DAY OF FEBRUARY 2023

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
COMMERCIAL DIVISION

.....

DEO JOHN NANGELA
JUDGE