

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

AT DAR ES SALAAM

COMMERCIAL CASE NO. 63 OF 2022

PETROFUEL (T) LIMITED.....PLAINTIFF

VERSUS

BAHDELA COMPANY LIMITED.....DEFENDANT

Date of Last Order: 29th September 2023

Date of Judgment: 16th October 2023

JUDGMENT

MKEHA, J.

The plaintiff is a limited liability company registered under the laws of Tanzania dealing with importation and supply of petroleum products. The defendant is also a limited liability company registered under the laws of Tanzania and a licensed oil marketing company. At the time of instituting the plaint, the plaintiff was claiming TZS 4,046,696,990/= allegedly being the outstanding principal amount plus accrued interest on the value of the supplied fuel from 2016 to May 2022, interest from the date of filing the suit, damages and costs of the suit.

In terms of the plaint, the dispute arose in the following way: The plaintiff was requested by the defendant to supply fuel on credit and that, the plaintiff accepted the request whereupon she did supply fuel worth TZS 5,160,894,000/=. According to the plaintiff, the defendant paid the purchase price through the plaintiff's Bank Accounts vide DTB Bank, NMB Bank and I & M Bank save for the balance of TZS 893,394,400/= which remained unsettled since 2016 up to when the present suit was instituted.

The plaint indicates that, in terms of the agreement between the parties, in the event of failure to pay the value of the invoices in time, there would be an interest of 3% per month and that the interest rate chargeable would be reflected in each of the invoices issued. It is the said interest which enabled multiplication of the principal sum of TZS 893,394,400/= to TZS 4,046,696,990/=. Specifically, in terms of the plaint, the plaintiff prays for judgment and decree against the defendant as follows: -

- (a) Payment of TZS 4,046,696,990 being the outstanding principal sum plus accrued interest on the value of supplied fuel as of 31st May 2022.
- (b) Payment of compound interest of 25% from the date of filing the suit to the date of judgment and or earlier settlement.

- (c) Decretal interest at court's rate.
- (d) General damages of TZS 500,000,000 and or as per court's discretion.
- (e) The defendant be ordered to pay costs of this suit and;
- (f) Such further orders or reliefs this Honourable court deems just, equitable and convenient to grant.

On the other hand, through her written statement of defence, the defendant disputed the plaintiff's claims and maintained that, she never entered into an agreement with the plaintiff for supply of fuel on credit at all. The defendant denied indebtedness and having payment obligation in respect of TZS 4,046,696,990/= as alleged by the plaintiff.

Before commencement of hearing, the following were framed as issues for determination:

1. Whether there was an agreement for supply of fuel between the plaintiff and the defendant.
2. If the 1st issue is answered in the affirmative, whether the defendant breached the agreement.
3. To what reliefs are the parties entitled.

During hearing of the suit the plaintiff was represented by Messrs Steven Masha and Stanslaus Ishengoma learned advocates. On the other hand, the defendant was represented by Messrs Godwin Musa and Samson Mbamba learned advocates.

Only one witness appeared for cross examination on part of the plaintiff's case. Like the plaintiff, the defendant offered only one witness to be cross-examined in respect of the defendant's case.

Mr. Anoop Kumar who happened to be the Chief Executive Officer for the plaintiff appeared as the sole witness for the plaintiff's case. He commenced his testimony in court by tendering his own witness statement as evidence in chief. The same was admitted as such.

According to the witness statement of PW1, sometimes in January 2016, the plaintiff started doing business with the defendant; a company incorporated in Tanzania, venturing in retail sale of petroleum products. The statement indicates that, the defendant had sought for supply of fuel on credit basis. The witness statement indicates further that, from 18/01/2016, the plaintiff commenced the supply of fuel according to purchase orders from the defendant. The witness stated that, throughout

the supply period the parties did not execute a formal agreement but the supply arrangement was based on an oral agreement and banked on mutual trust between the parties as they knew each other before entering into business relationship. In view of the witness, the oral terms for the supply were such that, after the supply and receipt of goods the invoices would be payable for full value of the goods on the date specified in the invoices and that; all overdue payments would attract finance interest of 3% per month as per invoices.

According to PW1, every supply of fuel was delivered to the defendant as requested only that, the delivery notes pertaining to these supplies were tragically misplaced within the plaintiff's former office premises. In terms of the witness statement, the unfortunate event transpired due to unlawful eviction of the plaintiff from her former office premises. That notwithstanding, the defendant had consistently failed to contest receipt of the fuel supply from the plaintiff.

According to PW1, from 18th January to 19th February, 2016, the plaintiff supplied a total of 3,534,859 litres of fuel in respect of which, a total of 116 tax invoices worth TZS 5,160,894,000.00/= were issued. Ledger

Statements of Accounts were admitted into evidence as Exhibit P2 collectively.

PW1 went on to state that, from time to time, the defendant honoured the tax invoices and effected payments thereto. The witness stated that, from 18th January 2016 to 4th April 2016 the defendant made numerous payments in respect of the supplied fuel at the tune of TZS 4,062,500,000.00/=

The witness stated that, the said payments were effectuated vide 12 bulk payments in the following sequence: That, on 27/01/2016 TZS 450,000,000.00/= was paid via I & M Bank Ltd; That, on 30/01/2016 TZS 250,000,000.00/= was paid via I & M Bank Ltd; That, on 02/02/2016 TZS 400,000,000.00/= was paid via I & M Bank Ltd; That, on 04/02/2016 TZS 100,000,000.00/= was paid via NMB Bank Plc; That, on 08/02/2016 TZS 400,000,000.00/= was paid via DTB Bank Ltd; That, on 10/02/2016 TZS 400,000,000.00/= was paid via I & M Bank Ltd; That, on 13/02/2016 TZS 400,000,000.00/= was paid via I&M Bank Ltd; That, on 16/02/2016 TZS 300,000,000.00/= was paid via I & M Bank Ltd; That, on 19/02/2016 TZS 100,000,000.00/= was paid via DTB Bank Ltd; That, on 08/03/2016 USD 180,000.00 equivalent to TZS 391,500,000.00/= was paid via NMB Bank

Plc; That, on 08/03/2016 USD 200,000.00 equivalent to TZS 435,500,000.00/= was paid via NMB Bank Plc; and on 04/04/2016 USD 200,000.00 equivalent to TZS 436,500,000.00/= was paid via NMB Bank Plc. Three Bank Statements evidencing payments made by the defendant through the plaintiff's bank accounts at Diamond Trust Bank, I & M Bank (T) Limited and NMB Bank PLC were collectively admitted into evidence as Exhibit P1. Invoices worth TZS 893,394,000/= were collectively admitted and marked as Exhibit P3.

Exhibit P4 (email correspondences) indicates that, between 30/12/2016 and 19/06/2017 Mr. Abubakar Bahdela and Maryam Bahdela (the defendant's officials), wrote some emails to the plaintiff. These emails suggest that, up to that time, the plaintiff's claims against the defendant were being acknowledged by the defendant. This Exhibit indicates commitment on part of the defendant to settle the debt.

The witness stated further that, up to 30th May 2016 the principal outstanding amount was TZS 1,098,394,000.00/=. The witness continued stating that, on 30th May 2016, in a bid to settle the said arrears, the defendant executed a written agreement for payment of the debt with the plaintiff. In view of PW1, the said agreement confirmed the outstanding

amount of TZS 1,098,394,000.00/= and the existence of the oral arrangements between the plaintiff and the defendant for the supply of fuel on credit basis. The agreement was to the effect that, the defendant was to settle the outstanding amount through monthly instalments effective from 1st June 2016 until when the whole outstanding amount would be cleared. The said agreement was counter signed by Mr. Omar Mohamed and Abdallah M. Bahdela on behalf of the defendant and Mr. Satish Kumar on behalf of the plaintiff. The said agreement was admitted into evidence as exhibit P6.

The witness statement indicates further that, subsequent to execution of Exhibit P6, the defendant resumed payments whereupon, from 1st June 2016 to 21st November 2016 the following bulk payments were made: That, on 01/06/2016 the defendant paid TZS 40,000,000/= via the plaintiff's bank account at Diamond Trust Bank Ltd; That, on 15/08/2016 the defendant paid TZS 50,000,000.00/= via the plaintiff's bank account at NMB Bank Plc; That, on 22/08/2016 the defendant paid TZS 30,000,000.00/= via the plaintiff's bank account at NMB Bank Plc; That, on 29/08/2016 the defendant paid TZS 25,000,000.00/= through the plaintiff's bank account at NMB Bank Plc; That, on 16/09/2016 the

defendant paid TZS 30,000,000.00/= through the plaintiff's bank account at NMB Bank Plc and That, on 21/11/2016 the defendant paid TZS 30,000,000.00/= through the plaintiff,s bank account at NMB Bank Plc.

PW1 stated further that, up to when the plaintiff opted to institute the present suit in court, the outstanding amount had since lost its value over time because of devaluation of Tanzania Shilling against United States Dollar and price increase in petroleum products. This according to the witness caused financial inconveniences to the plaintiff due to shortage of operational capital resulting from non-payment of the outstanding amount for nearly six years.

Upon being cross-examined, PW1 clarified that, the outstanding amount comprised of TZS 893,394,000/= as the principal amount plus TZS 3,153,302,991/= as the accrued interest. PW1 admitted that, there was no agreement for charging compound interest. The witness admitted also that, he was not certain whether those who signed Exhibit P6 on behalf of the defendant were Directors.

Mr. Sham Kiranga appeared as the sole witness in support of the defence case. The witness served as an accountant at the defendant's company

since July 2016 up to when he appeared in court to testify for the defendant. The witness commenced his testimony by tendering his own witness statement as evidence in chief. The same was admitted without objection. In the said statement, the witness stated that, the defendant did not recognize the business agreement dated 30th May 2016 (Exhibit P6) for the ground that, those who signed the document on behalf of the defendant were not authorized by the company to execute the said business agreement. According to the witness, those who signed Exhibit P6 faked directorship of the defendant company while they were not actual directors. The Memorandum of Association and Articles of Association as well as EWURA license were admitted and marked as Exhibits D1 & D2 respectively.

DW1 further stated that, the plaintiff did not bother to confirm presence of a Board Resolution from the defendant company on whether what the signatories of Exhibit P6 did was within their powers or otherwise. According to DW1, the defendant had always denied the claims by the plaintiff. Letters from the plaintiff and debt collectors dated 16th June 2021 and 31st July 2023 as well as letters from the defendant were admitted and marked as Exhibit D3 and D4 respectively.

Earlier on, the witness stated that, the defendant was trading in fuel products at its Buguruni Petrol Station in Dar es Salaam City; That, the defendant`s tanks capacity for receipt and storage of fuel was 155 litres of diesel and 50 litres of petrol per day and no more; That, the defendant used to buy fuel from different suppliers to wit, TOTAL, GBP, ORYX and PUMA OIL not in excess of the storage capacity and that, she was not capable of disposing off large quantities of fuel. The witness stated that, the plaintiff`s claims were fraudulent, false and fake as the plaintiff did not supply fuel to the defendant as claimed.

During cross examination, DW1 maintained that, at no time were the signatories of Exhibit P6 Directors of the defendant company. The witness told the court that, at the time relevant to the signing of the said document, persons authorized to sign documents on behalf of the defendant were Messrs Ally Omar Bahdela, Abubakary Ally Bahdela and Khalid Ally Bahdela and not Omar Mohamed and Abdallah M. Bahdela.

The first issue is whether there was an agreement for supply of fuel between the plaintiff and the defendant. It was the plaintiff`s position that there was an oral agreement between the parties which was based on mutual trust between them and that, based on the said oral arrangements,

the plaintiff made a supply of 3,534,859 litres of fuel worth TZS 5,160,894,000.00/= out of which the defendant managed to settle TZS 4,267,5000,000/=leaving a debt of TZS 893,394,000/=. The plaintiff`s witness testified further that, in terms of the oral agreement, overdue invoices would attract compound interest of 3% per month. The defendant on the other hand, renounced existence of any business relationship between the parties. To the defendant, simply, the claims were fraudulent, false and fake as the plaintiff did not supply fuel to the defendant as claimed.

Exhibit P1 collectively indicates a story suggesting existence of business relationship between the parties. Amongst other things, the said Exhibit indicates the way at different times; the defendant credited the plaintiff`s various bank accounts. The Exhibit indicates that, on 08/02/2016 the defendant credited the plaintiff`s account number 0800398001, held at Diamond Trust Bank, Nyerere Road Branch, with TZS 400,000,000/=: On 19/02/2016 the defendant credited the same bank account with TZS 100,000,000/=: Then on 02/06/2016 the defendant credited the same bank account with TZS 40,000,000/=:

Exhibit P1 collectively indicates further that, between 27/01/2016 and 16/02/2016, the defendant credited the plaintiff's account number 020038542202, held at I & M Bank, with a total amount of TZS 2,200,000,000/=. That is not all.

Exhibit P1 collectively indicates the way between 08/03/2016 and 04/04/2016 the defendant credited the plaintiff's bank account number 20110004887, held at NMB Bank, Bank House Branch, with a total amount of USD 580,000 equivalent to TZS 1,263,500,000/= These payments appear to have been made for purposes of fuel purchases.

Although the plaintiff did not produce any formal agreement evidencing existence of business relationship between the parties, the defendant did not succeed to challenge the fact that she indeed effected payments as demonstrated hereinabove through the plaintiff's three distinct bank accounts. As indicated hereinabove, some of the payments were effected after execution of Exhibit P3. Payments made on 02/06/2016 through the plaintiff's bank account at Diamond Trust Bank confirm the fact that, indeed, the defendant recognized and honoured the agreement signed on 30/05/2016 (Exhibit P6) unlike what DW1 stated in his witness statement, that, the signatories thereto, were strangers to the defendant. Surprisingly,

the witness statement of DW1 corroborated the contents of Exhibit P4 in stating that, one of the persons who would bind the defendant was Mr. Abubakar Bahdela. This happened to be one of the authors of Exhibit P4. Through his email (part of Exhibit P4) dated 19/06/2017, he was still committed to settle the debt more than a year after execution of Exhibit P6. It is for this reason I attach no weight to the defendant`s afterthought submissions that, when this suit was filed in court, the same was time barred. Exhibit P4 which is corroborated by the witness statement of the defendant`s own witness rebuts the fact that, the present suit was admitted in court while time barred.

The foregoing analysis of evidence leads me into answering the first issue in the affirmative, that, there was in place, an agreement between the plaintiff and the defendant, for the former to supply fuel to the latter on credit basis. However, I am unable to deduce from the conducts of the parties, existence of a specific term for payment of compound interest of 3% per month for overdue invoices, as pleaded by the plaintiff and as stated by PW1 in his witness statement. Neither did Exhibit P6 provide for such contractual interest rate.

The 2nd issue is, if the 1st issue is answered in the affirmative, whether the defendant breached the agreement. Through Exhibit P6 the defendant acknowledged being indebted to the defendant to the tune of TZS 1,098,394,000/=. PW1 testified that, up to when the plaintiff opted to institute the present suit in court, the defendant had failed to clear part of the acknowledged debt amounting to TZS 893,394,000/=. To prove this fact PW1 tendered in court invoices consisting of the unsettled debt. The invoices were admitted as Exhibit P3 collectively.

Against the evidence hereinabove the defendant adduced no evidence proving that she did pay for the fuel supplied to her as acknowledged in Exhibit P6. The foregoing analysis of evidence indicates that, regarding this issue, the scale of justice tilts against the defendant as it happened in respect of the first issue. I thus hold that, the defendant breached the agreement for supply of fuel on credit basis between herself and the plaintiff.

The third issue is to what reliefs are the parties entitled. The plaintiff had asked for an award of TZS 4,046,696,990/= claimed to be the outstanding principal sum of TZS 893,394,000/= and accrued interest amounting to TZS 3,153,302,990/= on the value of supplied fuel as of 31st May, 2022.

The plaintiff further asked to be awarded a compound interest of 25% from the date of filing the suit to the date of judgment or earlier settlement. The decretal interest at court's rate, costs, and general damages at court's rate were also asked.

It would appear that, in computing the whole outstanding amount as of 31st May 2022, the plaintiff applied a compound interest rate of 3% per month equals to 36% per annum as if there was a formal agreement between the parties specifying such rate of interest. Although the said rate of interest had been pleaded, the plaintiff's attempts to prove the same were unsuccessful. I have held against presence of any such agreement and that, in the circumstances of the present case, the same cannot be deduced from the conducts of the parties. I have found nothing in Exhibit P6 to the effect that, the said interest would be chargeable. However, I am mindful of the fact what the plaintiff claims against the defendant is a commercial debt. Under mercantile practice, commercial debts usually attract interest. In other words, even in the absence of evidence substantiating the rate proposed by the plaintiff/claimant, the court should award interest. See: **YARA TANZANIA LIMITED VS IKUWO GENERAL**

ENTREPRISES LIMITED, CIVIL APPEAL NO. 309 OF 2019, CAT, AT DAR ES SALAAM.

I am also mindful that, it is a settled position that, the rate of interest awardable for the period up to the delivery of judgment is entirely at the discretion of the court whereas interest for the period from the delivery of judgment until final satisfaction is also awardable at the discretion of the court but within the statutory prescribed limits of 7% to 12% per annum.

Read: Section 29 and rule 21 of Order XX of the Civil Procedure Code. See also: **ASHRAF AKBER KHAN VS. RAVJI GOVIND VARSAN**, CIVIL APPEAL NO. 5 OF 2017, CAT, AT ARUSHA and **NJORO FURNITURE MART LTD VS. TANZANIA ELECTRIC SUPPLY CO LTD** (1995) T.L.R 205. Therefore, in awarding interest in the present case, I will be guided by the principles cited hereinabove.

The plaintiff is also claiming general damages to the tune of TZS 500,000,000/= or at a rate to be assessed by the court. It is a settled principle that, general damages are discretionarily awarded by the court after consideration of the evidence on record able to justify the award.

See: **ANTONY NGOO AND DAVIS ANTONY NGOO VS. KITINDA KIMARO (2015) T.L.R 54**. In the present case, as stated by PW1 in his

witness statement, because of delay in settling the outstanding amount for nearly six years, the same lost value over time against United States Dollar and price increase in petroleum products. This is a sound reason justifying award of general damages. Because of the foregoing analysis of evidence and the findings I have made hereinabove, it is hereby decreed in favour of the plaintiff as hereunder:

- (1) A declaration is hereby made that the defendant breached the agreement for supply of fuel on credit basis between her (the defendant) and the plaintiff.
- (2) The defendant shall pay to the plaintiff TZS 893,394,000/= being the principal amount.
- (3) The principal amount in (2) above shall attract a commercial rate interest of 12% per annum from when it became due i.e. from 30th May,2016 to the date of judgment.
- (4) The plaintiff is awarded general damages in the sum of TZS 100,000,000/=.
- (5) The plaintiff is awarded court rate interest of 7% per annum from the date of judgment to the date of full satisfaction.
- (6) The defendant is condemned to bear costs of the suit.

DATED at DAR ES SALAAM this 16th day of OCTOBER 2023.




C. P MKEHA

JUDGE

16/10/2023

Court: Judgment is delivered on this 16th day of October, 2023 in the

presence of Mr. Stanlaus Ishengoma learned advocate for the plaintiff and Ms. Aziza Msangi learned advocate for the defendant.




C. P MKEHA

JUDGE

16/10/2023

