

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 66 OF 2023

BETWEEN

LAKE STEEL AND ALLIED PRODUCTS LIMITED..... PLAINTIFF

VERSUS

JALEMA COMPANY LIMITEDDEFENDANT

JUDGMENT ON ADMISSION

Date of last order: 17/10/2023

Date of Judgment:27/10/2023

AGATHO, J.:

Briefly, the Plaintiff, one **LAKE STEEL AND ALLIED PRODUCTS LIMITED** filed a suit against the Defendant, **JALEMA COMPANY LIMITED** before this Court in which she is seeking judgment against the Defendant as follows:

- i. Payment of TZS 191,900,000/= (Tanzania Shillings One Hundred Ninety One Million Nine Hundred Thousand Only) being the outstanding amount for the steel bars supplied to the defendant by the Plaintiff.
- ii. Payment of the interest on the above said amount in prayer (i) at Commercial Mercantile rate of 18% per annum from 15th August, 2022 to the date of Judgment.

- iii. Payment of interest at the court rate of 7% per annum on the decretal sum from the date of judgment to the date of full and final payment.
- iv. General damages TZS. 50,000,000/= (Tanzanian Shillings Fifty Million Only).
- v. Costs of this suit.
- vi. Any other reliefs as this court may deem fit and just to grant.

In a nutshell, the Plaintiff and the Defendant had a sale and purchase of steel bars agreement. On diverse dates between 16th July 2022 and 15th August 2022 the Plaintiff supplied the Defendant steel bars to the tune of TZS 191,900,000/=. The Defendant defaulted to pay that amount despite being reminded to do so through demand notice. The plaintiff sought the intervention of the court by filing this suit.

Upon being served with the plaint, the Defendant filed her written statement of defence (WSD) in which paragraphs 5 and 6 of the same noted the claims in paragraph 9 and 10 of the plaint. Both parties engaged service of legal counsel. Whereas the plaintiff was represented by Mr Odhiambo Kobas, the defendant was represented by Mr. Faisal Seif, learned counsel.

Before proceeding further, it is worth noting that the defendant had on several occasions (25th July 2023, 24th August 2023, 6th September 2023, 29th September 2023, and 17th October 2023) been absent when the matter was set for first pre-trial conference. Under Rule 31 of High Court Commercial Division Procedure Rules there are implications for non-appearance of a party during pre-trial conference. But luckily when she entered appearance through advocate on 17th August 2023, she prayed for some time to settle the matter where she

promised to start by paying TZS 50,000,000/=. This did not work well as they she failed to pay the amount due. She ended up paying TZS 40,000,000/=. That prompted the counsel for the plaintiff to pray for judgment on admission.

It is on record that the Plaintiff effected the service of the plaint upon the Defendant, the latter filed her Written Statement of Defence (WSD). The Defendant, in her WSD noted paragraphs 9 and 10 of the plaint constituting the amount claimed. When the matter came for first PTC on 27th October 2023 the Plaintiff counsel Mr. Odhiambo Kobasprayedfor judgment on admission. That prayer met no resistance from the Defendant for she was absent when the matter was fixed for first pre-trial conference.

The Plaintiff's counsel prayed for judgment on admission based on paragraphs 9 and 10 of the plaint that the Defendant admitted the Plaintiff's claim. In addition to that on his appearance on 17th August 2023 the defence counsel, Mr Faisal Seif told the court that the Defendant in essence does not dispute the Plaintiff's claim. Thereafter, he prayed for adjournment so that they can settle the amount claimed. The court granted the prayer. On 6th September 2023 the plaintiffentered appearance and informed courtthat the Defendant has paid TZS 40,000,000/= contrary to her promise of paying first instalment of TZS 50,000,000/=. However, as of 17th October 2023 the amount outstanding was TZS 151,900,000/=. Until that time when the matter was called for first pre-trial conference following adjournment to enable the parties to settle it, the Defendant has failed to finalize the payment of TZS 151,900,000/=. Since the Defendant has admitted the plaintiff's claim in her WSD, the Plaintiff prayed for judgment on admission with respect to amount due.

It is crystal that the Defendant's response to the claims in paragraphs 9 and 10 of the plaint was that they are noted. That amounts to clear admission of the plaintiff's claims. Such admission is in line with the case of **Full Gospel Bible Fellowship Church v Goodness Emmanuel Rwatto, Civil Revision No. 4 of 2021, HCT, Bukoba District Registry**, at page 7 the Court held that judgment on admission must be explicit and not open to doubt. The defendant's admission is clear and unequivocal. It is equally unambiguous.

The Defendant's admission is expressly as it was held in the case of **Imani Omari Madega v Yusuf Mehbob Manji and 3 Others, Civil Appeal No. 135 of 2019, CAT at Dar es Salaam**, at page 10 that admission can be express or constructive. In the case at hand, it is express.

Truly, the judgment on admission under the CPC is regulated by Order XII Rule 4 of the Civil Procedure Code [Cap 33 R.E. 2019]. It provides that any party at any stage of the suit where admission of facts has been made either on the pleadings or otherwise apply to the Court for such judgment or order upon such admission, he may be entitled to judgment 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.

Relying on the above provision the Plaintiff's counsel applied for judgment on admission following the Defendant's admission of the claim. The admission which is found in the WSD.

Besides admission in the WSD, and as mentioned earlier the defence counsel on 17th August 2023 told the court that in essence the Defendant does not dispute the Plaintiff's claim. The law under Order XII Rule 4 of CPC provides that any party at any stage where admission has

been made either on pleadings or otherwise a party may make an application to the court for judgment on admission or order on such admission. The admission in the case at hand has been both in the pleadings and even in the submission of the defence counsel.

By virtue of the Defendant's WSD paragraphs 5 and 6 noting the plaintiff's claims means that her admission is clear, unequivocal, and unambiguous. That was also held in the case of **NAS Tyres Services Limited v Anthony Seleman Kombe t/a Moshi Investment, Commercial Case No. 175 of 2018 High Court Commercial Division at Dar es salaam** (unreported) cited in the case of **Solvochem East Africa Limited v Jielong Holdings Tanzania Limited, Commercial Case No 65 of 2020 High Court Commercial Division at Dar es salaam** at page 5.

In the end this court finds that the Defendant's WSD paragraphs 5 and 6 noting paragraphs 9 and 10 of the plaintiff's plaint constituting the claims amounts to admission that she is liable to payment of TZS. 191,900,000/= (Tanzania Shillings One Hundred Ninety-One Million Nine Hundred Thousand Only) to the Plaintiff being outstanding balance for the Steel Bars of different sizes and quantities the Plaintiff supplied to her on account of her request on diverse dates from 16th July, 2022 to 15th August, 2022.

Therefore, judgment is entered in favour of the plaintiff with respect to the admitted claims. The Defendant is ordered to pay the amount so admitted to the Plaintiff. Since it is on record that the parties negotiated and the Defendant paid TZS 40,000,000/= out of TZS 191,900,000/=, the outstanding sum is TZS 151,900,000/=. The Defendant shall thus pay the Plaintiff TZS 151,900,000/= being the amount due.

In addition to that the Defendant shall pay interest thereon at the commercial rate of 18% per annum per their contract. Moreover, the Defendant shall pay interest at the court rate of 7% per annum on the decretal sum from the date of judgment to the date of full and final payment.

As for general damages, it is the law that parties must perform their contractual obligations. The law is reluctant to admit any excuses for non-performance of such obligations. See **Simon Kichele Chacha v Aveline M. Kilawe, Civil Appeal No. 160 of 2018 CAT at Mwanza**. The same is also stated in Section 37 (1) of the Law of Contract Act [Cap 345 R.E. 2019]. In this case, the Defendant's failure to pay the amount due is a breach of contract.

The law under Section 73 (1) of the Law of Contract Act [Cap 345 R.E. 2019] further provides that where a contract is breached a party who was not at fault is entitled to receive compensation from the party who breached it. In the circumstance of this case the Plaintiff shall be awarded general damages because she is not at fault. Since the Defendant paid to the Plaintiff TZS 40,000,000/= out of TZS 191,900,000/= while the suit was still pending in court that is a good gesture that ought to be considered though does not exonerate her from the liability. The Defendant shall thus pay TZS 20,000,000/= as general damages.

Regarding costs, a general principle of civil litigation is that a successful party ought to be awarded the costs. In the present case, the plaintiff is the successful part. Consequently, the Defendant shall pay the costs of this suit.

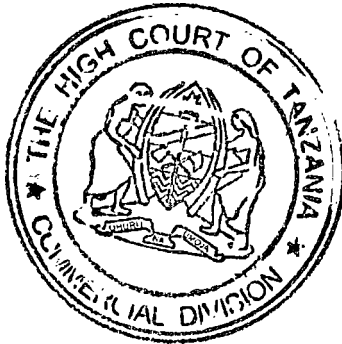
In fine the court declares, and orders as follows:


- i. Judgment on admission is entered in favour of the plaintiff.

- ii. The Defendant shall thus pay the Plaintiff TZS 151,900,000/= being the amount due.
- iii. Defendant shall pay interest thereon at the commercial rate of 18% per annum.
- iv. the Defendant shall pay interest at the court rate of 7% per annum on the decretal sum from the date of judgment to the date of full and final payment.
- v. The Defendant shall thus pay TZS 20,000,000/= as general damages.
- vi. The Defendant shall pay costs of this suit.

It is so ordered.


DATED at DAR ES SALAAM this 27th Day of October 2023.




U. J. AGATHO
JUDGE
27/10/2023

Court: Judgment will be delivered today, this 27th February 2023 by Hon. Minde, Deputy Registrar in the presence of the parties.




U. J. AGATHO
JUDGE
27/10/2023