

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

COMMERCIAL DIVISION

AT DAR ES SALAAM

COMMERCIAL CASE NO. 20 OF 2023

NAS TYRE SERVICES LIMITED..... PLAINTIFF

Versus

UKOD INTERNATIONAL COMPANY LIMITED.....1st DEFENDANT

JAMA IBRAHIM MOALIM.....2nd DEFENDANT

AHMED ABDALLAH HASSAN.....3rd DEFENDANT

KASIM ALI ABDIRAHMAN.....4th DEFENDANT

Date of Last Hearing: 06/09/2023

Date of Judgment: 03/11/2023

JUDGMENT

MKEHA, J

The plaintiff is a limited liability company incorporated under the Companies Act duly authorized to carry on the business of manufacturing and supplying various products. The first defendant is on the other hand, a limited liability company incorporated under the Companies Act dealing with transportation of petroleum products and oil marketing. The 2nd, 3rd

and 4th defendants are natural persons described in the plaint and the written statement of defence, as Directors of the 1st defendant.

The plaintiff's claim against the defendants jointly and severally is for payment of TZS 347,538,185.50/= comprised of TZS 287,530,600.00/= as specific damages on unsettled invoices issued by the plaintiff to the defendants on credit by the plaintiff and TZS 60,007,585.50/= being the accrued interest on the unsettled invoices.

Specifically, the plaintiff prays for judgment and decree against the defendants as follows: -

- (a) An order for immediate payment of TZS 347,538,185.50/= being the total amount outstanding comprised of the principal amount and interest on the unsettled invoices in respect of goods supplied on credit to the defendants by the plaintiff;
- (b) An order for payment of interest on the decretal amount mentioned in paragraphs (a) above at the court rate of 12% per annum, computed from the date of the judgment to the date of payment in full;

- (c) An order for payment of general damages in respect of unbearable stress and disturbance to the plaintiff, costs and loss of productive time and resources in following up and engaging in exchange of tedious correspondences in attempts to ensure the defendants' performance of their contractual obligations.
- (d) Costs of this suit be borne entirely by the defendants herein and;
- (e) Any other relief as the Honourable court may deem fit and just to grant.

In response thereto, the defendants filed a joint written statement of defence in which they jointly disputed the plaintiff's claims thereby stating that, they never entered into an agreement with the plaintiff for supply of tyres and batteries on credit. According to the defendants, the alleged unsettled invoices had been forged and fabricated. The defendants therefore, denied indebtedness and having any payment obligation against the plaintiff.

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

- (i) Whether there was a valid contract for supply of goods between the plaintiff and the defendants.
- (ii) Whether the defendants breached the contract for supply of goods.
- (iii) If the 2nd issue is answered in the affirmative, to what extent are the defendants indebted to the plaintiff.
- (iv) To what reliefs the parties entitled.

Whereas Mr. Franklin Chonjo and Gilbert Mushi learned advocates represented the plaintiff, Mr. Godlove Godwin learned advocate represented the defendants. The plaintiff offered a single witness for cross examination. Although two witness statements had been filed for the defendants' case, only one witness appeared in court for cross examination. As for the witness who failed to appear in court to be cross examined for reasons of ill health, his witness statement was admitted in court pursuant to Rule 56 (3) of the High Court (Commercial Division) Procedure Rules.

Mr. Satyam Sharma appeared as the sole witness for the plaintiff's case. The witness (PW1) produced his witness statement in court and the same was admitted without objection as the witness' evidence in chief.

In his witness statement, the witness stated that, sometimes in 2020, the plaintiff started doing business with the 1st defendant for supply of tyres and batteries on credit basis and the 1st defendant used to pay the outstanding amount as agreed. According to the witness, the terms and conditions governing the business relations between the parties were contained in the invoices issued by the plaintiff to the defendants. To prove existence of business relationship between the parties, the witness produced the plaintiff's CRDB bank statement for the period between 28/02/2021 and 09/09/2021. The said bank statement was admitted into evidence as Exhibit P3 without objection. The said Exhibit indicates various bank deposits made by the first defendant through bank account number **01J1094782500** held by the plaintiff at CRDB Bank, TPA WATERFRONT BRANCH. In terms of the witness statement, the payments made by the 1st defendant to the plaintiff as reflected in Exhibit P3 were for no other reason but for clearance of debts resulting from supply of tyres and batteries by the plaintiff to the defendants, on credit basis.

PW1 went on to state that, between July 2021 and October 2022 the plaintiff made various supplies of tyres and batteries to the defendants on the same terms. According to the witness, payments had to be made within 60 days after the date of invoice. The witness stated that, during the said period, tyres and batteries worth TZS 287,530,600/= were supplied to the defendants. According to the witness, the defendants failed to pay for the supplies made between 28th July 2021 and 06th October 2022. The Unsettled Invoices and Account Statements were produced as Exhibits P1 and P2 respectively. According to PW1 and in terms of Exhibit P1, invoices not paid within 60 days from the date of invoices would attract compound interest of 1.5% per month equivalent to 18% per annum. Therefore, according to PW1, for the period between July 2021 and October 2022, the principal outstanding amount of TZS 287,530,600.00/= yielded interest to the tune of TZS 60,007,585.50/=. The witness produced a document indicating calculation of interest and a demand notice as Exhibits P4 and P5 respectively.

During cross-examination, PW1 told the court that, invoices used to be issued after delivery of goods and that, the purchaser would acknowledge receipt of goods by signing the invoices. Upon being further questioned,

PW1 admitted that there was no agreement for charging interest as the plaintiff did.

Mr. Edward Michael Ngatunga appeared as the defendants' sole witness. His witness statement was admitted in court without objection as his evidence in chief.

DW1 renounced existence of any business relationship between the parties. In terms of the witness statement of DW1, there was no evidence that the parties had entered into an agreement for the plaintiff to supply tyres and batteries to the defendants on credit basis. The witness stated further that, there was also no evidence to the effect that the plaintiff did supply the alleged goods and that the defendants received the said goods from the plaintiff. In view of DW1, the persons alleged to have received the invoices were strangers to the 1st defendant.

When DW1 was cross examined, he told the court that he joined the 1st defendant company in 2022. He was however emphatic that, there had never been business relationship between the parties. According to the witness, the fact that the plaintiff had forged documents to obtain money from the defendants had been reported to the police. Upon being further

questioned, DW1 told the court that, the defendants never informed the plaintiff that, those who received the invoices were strangers to the first defendant.

I have read all the closing submissions filed by the learned counsel for the parties. In the course of deciding this case, due regard is paid to the submissions without necessarily reproducing them.

The first issue is whether there was a valid contract for supply of goods between the plaintiff and the defendants. Throughout the trial and in the final submissions filed in court, the defendants maintained that, there had never been any business relationship between the parties. However, Exhibit P3 which was admitted into evidence without objection provides for a different story. This Exhibit indicates the way at different times, between 18/03/2021 and 09/09/2021, the first defendant made some payments through the plaintiff's bank account number **01J1094782500** held at CRDB BANK, WATERFRONT BRANCH. Particularly, the said Exhibit indicates that, on 18/03/2021 the first defendant deposited TZS 16,750,000/= in the said account; On 12/04/2021 the first defendant deposited TZS 22,370,000/= in the said account; On 31/05/2021 the first defendant deposited TZS 57,060,000/= in the said account; On 27/07/2021 the first

defendant deposited TZS 40,000,000/= in the said account; On 18/08/2021 the first defendant deposited TZS 37,000,000/= in the said account; On 18/08/2021 the first defendant deposited TZS 13,000,000/= in the said account and that, on 09/09/2021 the first defendant deposited TZS 30,000,000/= in the said account. According to PW1, the payments hereinabove, were made by the first defendant for no other reason than clearance of debts resulting from supply of tyres and batteries by the plaintiff to the defendants, on credit basis. Neither the witness statement of DW1 nor that of Mr. Jama Ibrahim Moalim addressed the question as for what service did the first defendant effect the payments reflected in Exhibit P3 to the plaintiff. Despite absence of formal agreement between the parties, the conduct of the first defendant to effect various payments through the plaintiff's bank account is a sufficient indication of presence of business relationship between the parties. And, in the absence of evidence from the defendants rebutting PW1's testimony that the payments were made as part payment for the supplies made by the plaintiff to the defendants, I hold that, there was a valid contract for supply of goods between the plaintiff and the defendants. The first issue is therefore answered in the affirmative.

The second issue is whether the defendants breached the contract for supply of goods. In terms of Exhibit P1 the supplied goods were to be paid for within 60 days from the date of receipt of the invoices. Exhibit P1 indicates that, up to when the plaintiff opted to institute the present suit, more than five months had lapsed since when the last invoice dated 06th October 2022 was issued to the defendants, the oldest invoice having been issued on 28th July 2021. DW1 testified, as equally submitted by the learned advocate for the defendants that, the persons alleged to have received the invoices constituting Exhibit P1 were strangers to the first defendant. The pleadings and plaintiff's evidence provide otherwise. In paragraph 3 of the plaint it was stated that, the 2nd, 3rd and 4th defendants were the Directors of the 1st defendant. This fact was admitted through paragraph 1 of the Written Statement of Defence. Exhibit P1 indicates that, the 3rd defendant was one of the persons who received and signed some of the invoices forming part of the plaintiff's evidence. Invoices Nos. 21TI0810/037 dated 10/08/2021 and 21TI0818/022 dated 18/08/2021 were some of those invoices. The first defendant did not see the necessity of bringing such a witness in court, to rebut the plaintiff's evidence. This justifies drawing of adverse inference against the first defendant that, had

the witness appeared in court, he would have testified against her favour. The defendants' claims that Exhibit P1 was a product of forgery were not substantiated. There was no tangible evidence rather than mere words from the defendants' side to the effect that, the alleged forgery had been reported to relevant authorities as it was held in **ASHRAF AKBER KHAN VS. RAVJI GOVIND VARSAN, CIVIL APPEAL NO. 5 OF 2017, CAT, AT ARUSHA.** As a matter of fact, Exhibit P1 is one of the plaintiff's exhibits which were admitted into evidence without objection. For all these reasons, I hold that, indeed, the defendants were in breach of the contract for supply of goods for their failure to settle the invoices constituting Exhibit P1 within the agreed time. The second issue is as well answered in the affirmative.

The third issue relates to the extent to which the defendants are indebted to the plaintiff. It was the plaintiff's position that the defendants were indebted to the tune of TZS 347,538,185.50/= being the total outstanding amount on the unsettled invoices plus interest of 18% per annum as per the terms contained in the invoices issued to the defendants. According to the plaintiff, whereas the principal outstanding amount was TZS 287,530,600/=, interest had accrued to TZS 60,007,585.50/=. However,

during cross examination, PW1 admitted that there was no agreement for payment of compound interest reflected in Exhibit P1. As such, what the plaintiff is entitled to is a commercial rate interest per the court's discretion because of the fact that, this being a commercial debt, it attracts interest in terms of mercantile practices. See: **YARA TANZANIA LIMITED VS. IKUWO GENERAL ENTERPRISES LIMITED**, CIVIL APPEAL NO 309 OF 2019, CAT, AT DAR ES SALAAM.

For the foregoing reasoning and holdings, judgment is hereby entered in favour of the plaintiff against all the defendants. It is decreed as hereunder:

- (i) The defendants shall jointly pay TZS. 287,530,600/= to the plaintiff.
- (ii) The defendants shall jointly pay commercial rate interest of 10% per annum on (i) above from the date when the suit was filed in court to the date of judgment.
- (iii) The defendants shall pay court rate interest of 7% per annum on the decretal amount from the date of judgment to the date of full satisfaction.

- (iv) The defendants shall pay to the plaintiff, general damages of TZS 25,000,000/=.
- (v) The defendants are condemned to bear costs of the suit.

DATED at DAR ES SALAAM this 03rd day of NOVEMBER 2023.




C. P MKEHA

JUDGE

03/11/2023

Court: Judgment is delivered in the presence of Mr. Franklin Chonjo learned advocate for the plaintiff and Mr. Godlove Godwin learned advocate for the defendants.




C. P MKEHA

JUDGE

03/11/2023