

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 99 OF 2023

GULF AGGREGATES (T) LIMITED PLAINTIFF

VERSUS

SUMA JKT CONSTRUCTION COMPANY LIMITED 1ST DEFENDANT

THE ATTORNEY GENERAL 2ND DEFENDANT

CONSENT JUDGMENT

Date of last Order: 15/11/2023

Date of Judgment: 15/12/ 2023

GONZI, J.;

The facts put forward by the Plaintiff show that on diverse dates between January 2019 and December 2021, the Plaintiff and the 1st Defendant entered into an agreement for the Plaintiff to supply to the 1st Defendant with stones, base course, and aggregates for the 1st Defendant's NSCD-dry port project. It was agreed between the parties to the contract that the 1st Defendant would make payments to the Plaintiff for the supplies upon issuance of invoices. By the time of institution of the suit, the Plaintiff had supplied the 1st Defendant with the specified materials worth TZS. 493,

754,526/= (Shillings Four Hundred Ninety-three million, Seven Hundred Fifty Four Thousand, Five Hundred Twenty Six only). It was alleged by the Plaintiff that despite the issuance of invoices and several reminder letters for the above stated amounts, the 1st Defendant did not heed to its contractual obligations. The Plaintiff therefore filed this suit against the 1st and 2nd Defendants praying for Judgment and Decree against the 1st Defendant thus:

- (a) Declaration that the first Defendant is in breach of stones, base course, and aggregates supply agreement;
- (b) An order for payment of TZS. 493,754,526 being outstanding payments for the stones, base course, and aggregates supplied to the First Defendant by the Plaintiff;
- (c) General damages for breach of contract as will be assessed by the court;
- (d) Interest on the decretal sum at the commercial rate of 20% from the date of breach to the date of Judgment;
- (e) Interest on the decretal sum at the court's rate of 12% from the date of Judgment to the date of final and full satisfaction of the decree;
- (f) Costs of this suit; and

(g) Any other and further reliefs as this court will deem fit to grant.

In their joint Written Statement of Defence, the 1st and 2nd Defendants disputed and refuted all the claims levelled by the Plaintiff against the 1st Defendant.

On 15th November 2023, when the case came for necessary orders the plaintiff was represented by Mr. Robert Mosi Learned Advocate while the Defendants were represented by Ms. Luciana Kikala Learned State Attorney accompanied with and assisted by Constantine Mahamba and Faisal Yahaya, also learned State Attorneys. Counsel for both sides informed the court that they were in the course of negotiations with a view to reaching an out of court settlement and requested an extension of time for them to continue and finalize their on-going settlement. The Court (Hon. Nangela, J.) granted the parties up to 24th November 2023 to conclude their ongoing settlement processes and file in court the deed of settlement, if any. The case was then scheduled for necessary orders on 15th December 2023.

On 15th December 2023 when the matter was called before me for necessary orders, Mr. Robert Mosi - learned Advocate, and Miss Luciana

Kikala learned State Attorney accompanied with Mr. Faizal Yahya learned State Attorney, informed the court that parties had successfully reached an out of court settlement and that they had already filed in court a deed of settlement dated 22nd day of November 2023. The learned counsel for both sides also prayed that a consent judgment be pronounced by the court pursuant to the terms contained in the deed of settlement executed by the parties and filed in Court on 22nd November 2023.

I verified that indeed there is a deed of settlement executed by both parties and filed in court on 22nd November 2023; and I read out the terms of the filed deed of settlement in the court file for the counsel for both sides to confirm its authenticity, whereby they confirmed it without any changes.

As the parties have executed an out of court deed of settlement and filed the same in Court; and as both parties confirm the genuineness of the terms thereof; I proceed to enter Judgment and decree of the court pursuant to the terms agreed upon by the parties in their deed of settlement as follows:

- (1) That the total outstanding amount payable by the 1st Defendant to the Plaintiff is TZS. 473,754,526 (Four Hundred Seventy-Three*

Million, Seven Hundred Fifty Four Thousand, Five Hundred Twenty Six Shillings only) which is the outstanding amount as of the date of filing the deed of Settlement in Court namely 22nd November 2023.

- (2) That the 1st Defendant shall make payment of the outstanding amount as soon as they are paid by the Tanzania Ports Authority (TPA) through the final account.*
- (3) That in the meantime, the 1st Defendant shall keep reducing the outstanding amount by making payments of TZS. 20,000,000/= (Twenty Million Shillings only) through Interim Payment Certificates (IPC) whenever issued.*
- (4) That in whatever scenario and notwithstanding the above, the 1st Defendant shall have made full payment of the outstanding amount by end of March 2024 and has agreed to have the entire debt settled by that date.*
- (5) Each party shall bear its own costs.*

It is so ordered.



A. H. Gonzi

JUDGE

15/12/2023

Judgment by consent is delivered in Court this 15th day of December 2023 in the presence of Mr. Robert Mosi, learned Advocate for the Plaintiff and Miss Luciana Kikala assisted by Mr. Faisal Yahya, learned State Attorneys.



A. H. Gonzi

JUDGE

15/12/2023