

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM.

COMMERCIAL CASE NO. 18 OF 2021

MANTRAC TANZANIA LIMITED PLAINTIFF

VERSUS

TANZANIA BUILDING AGENCY 1ST DEFENDANT

ATTORNEY GENERAL OF TANZANIA 2ND DEFENDANT

Date of Last Order: 12/04/2021

Date of Judgement: 30/04/2021

JUDGEMENT ON ADMISSION.

MAGOIGA, J.

The plaintiff, MANTRAC TANZANIA LIMITED by a plaint instituted the instant suit against the above named defendant praying for judgement and decree in the following orders, namely:

- a. Specific damages of Tanzania Shillings One Hundred Ninety Two Million Five Hundred Twenty One Thousand One Hundred (TZS.192,521,100.00) being the outstanding amount of the purchase price;



- b. Specific damages on accrued interest amounting to Tanzania Shillings One Hundred Seventy Seven Million Five Hundred Eighty Seven Thousand Three Hundred Forty Five (TZS.177,587,345.00);
- c. Interest on item (a) above at commercial rate of 15% per month from when the last balance was due i.e. 20th February, 2017 till the date of the judgement/decreed;
- d. Interest on item (a) and (b) above at commercial rate of 12% from the date of judgement/decreed till final payment;
- e. General damages to be assessed by the Honourable court;
- f. Costs of this suit; and
- g. Any other relief (s) as the court deem fit and just.

Upon being served with the plaint, the defendants filed a joint written statement of defence admitting the claim of TZS.143,303,700/= being unpaid balance of the contract price for generators 250 Kva and 350 Kva supplied and received by the 1st defendant in paragraph 2 of the written statement of defence by stating that, **"that the contents of paragraph 4 of the plaint are noted to the extent that generators 250 Kva and 350 Kva were indeed supplied to the 1st defendant at his request. The 1st defendant acknowledge the unpaid balance of**



the contract price amounting to TZS.143,303,700.00 and disputes the claimed amount of TZS.192,521,100.00 by the plaintiff.”

More admission was well stated in paragraphs 3, 4, 5, and 6 of the written statement of defence. This triggered the learned counsel for the plaintiff to make oral application when this suit was called on for orders on 12th April, 2021 under the provisions of Order XII rule 4 of the Civil Procedure Code [Cap 33 R.E.2019] praying for this honourable court be pleased to award a judgement on admission in favour of the plaintiff to such extent of admission of facts as made by the defendant in her written statement of defence filed in court on 15th March,2021 to wit: TZS. 143,303,700/=.

The brief facts of this suit as gathered from the pleadings are that, on 3rd February 2016, the 1st defendant awarded the plaintiff a contract for tender AE/012/2015-16/HQ56 LOT III for supply of 250 Kva and 350 Kva generators via a letter dated 3rd February 2016 with reference No. GB:64/110/01/94. Consequently, the plaintiff and 1st defendant entered into contract for supply and purchase of the aforesaid generators on 1st April, 2016 for contract price of TZS.455,893,000.00 with conditions, inter alia that, the payment of 10% advance payment within 30 days of signing 90% of the purchase price upon full delivery of the goods.



Further facts were that the 1st defendant paid the 10% of contract price as agreed to be advance payment, and the plaintiff did purchase and deliver the said generators but the 1st defendant failed and neglected to pay the unpaid balance of TZS.192,521,100.00 which is 90% of the contract price. It was against the above background, the plaintiff instituted the instant suit claiming the reliefs as contained in the plaint.

The defendants in their written statement of defence, admitted that the unpaid balance of contractual price was amounting to TZS.143,303,700.00 and not the TZS.192521,100.00 as claimed in the plaint.

It was against the above background that moved the learned advocate for the plaintiff Mr. Frateline Munale upon being served with the written statement of defence, on 12th April, 2021 orally moved this court to enter judgement on admission against the defendants without necessarily waiting to any further prove. Mr. Munale's prayer was made under Order XII Rule 4 of the Civil Procedure Code, [Cap 33 R.E 2019] read together with Rule 2(2) of the High Court (Commercial Division) Procedure Rules 2012 as amended by G.N. 107 of 2019. To bolt up his prayer the learned advocate for the plaintiff cited the case of MANTRAC TANZANIA LIMITED



vs. JUNIOR CONSTRUCTION CO. LIMITED AND 3 OTHERS, COMMERCIAL
CASE NO.10 OF 2017.

The learned Principal State Attorney, Mr. Lukelo Samwel for the defendants further admitted that they have no objection that they are indebted to the extent of admission but prayed that they be given more time to comply with the requirement of Rule 25(1) and (2) of this court's Rules. However, when probed by the court to read the provisions of the said Rule, Mr. Samwel admitted that they did not comply with the requirements of the said Rule.

On that note, Mr. Munale insisted that his client is entitled for judgement on admission as prayed above.

For better understanding of the importance of the provisions of Rule 4 of Order XII of the Civil Procedure Code,[Cap 33 R.E.2019] its production hereunder is imperative. The said Rule provides as follows:

Rule:4. Any party may at stage of a suit, where admission of any fact have been made either on pleading or otherwise, apply to the Court for such judgement or order as upon such admission he may be entitled to, without waiting for determination of any



other question between parties; and the Court may upon such application made such order, or give such judgement as the Court may think just.

This court faced with similar situation in the case of NAS TYRE SERVICES LIMITED vs. ANTHONY SELEMAN KOMBE t/a MOSHI INVESTMENT, COMMERCIAL CASE NO 175 OF 2018 (HCCD) DSM (UNREPORTED) had this to say in interpretation of Order XII Rule 4 of the Civil Procedure Code, [Cap 33 R.E. 2019]:

"the plain language of the above provisions of Rule 4 demonstrates that in order for rule 4 of Order XII to come into play, ***the admission must be in writing embodied in pleading or otherwise and must be an admission of truth as alleged in the plaint.***"

(emphasis mine)

Yet in another case of CRDB BANK PLC vs. FRANCIS ESAU MWINUKA, COMMERCIAL CASE NO. 92 of 2020, (HCCD) DSM (unreported) this court faced with similar situation had this to say "**with respect I add that, the essence of the provisions of Order XII Rule 4 of the CPC are meant to save time and costs in the determination of a fact in a**



suit which is not contested between parties, in particular, when admitted in writing or otherwise and there is an application to that effect for the court to enter judgement or order as for such admission."

Guided by the above position, and back to the instant suit, the defendants in their written statement of defence, in particular, paragraphs 2, 3, 4, 5, and 6 of the written statement of defence which was replying to paragraphs 4, 5, 6, 7, 8 and 9 of the plaint forming the basis of the plaintiff's claims are very loud and clear that apart from disputing the claimed figure of TZS.192,512,100.00 but in plain language, and, in particular, at paragraph 2 admitted that the amount due in the following language **"that the contents of paragraph 4 of the plaint are noted to the extent that generators 250 Kva and 350 Kva were indeed supplied to the 1st defendant at his request. The 1st defendant acknowledge the unpaid balance of the contract price amounting to TZS.143,303,700.00 and disputes the claimed amount of TZS.192,521,100.00 by the plaintiff."**

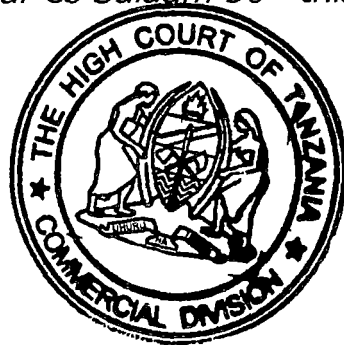
In this suit, therefore, there is no dispute that the defendants made an admission under paragraph 2 in writing. Equally important to note, the



plaintiff through his learned advocate has made oral application to this Court to enter judgement on admission on the admitted amount. This Court having gone through the pleadings and the law cited is satisfied that, this is a fit case to grant judgement on admission. It is on that note this Court hereby order and enter judgement on admission on the admitted amount of TZS.143,303,700.00 as prayed. The prayer by Mr. Samwel, learned Principal State Attorney to pay by installments under Rule 25 of this court's Rules could not be entertained for failure to comply with mandatory laid procedures under Rule 25(2) – (5) inclusive on how to request or apply for time to make payments admitted. Other remaining claims in the plaint are to be proved in accordance to the laid down procedures.

It is so ordered.

Dated at Dar es Salaam 30th this day of April, 2021.



A handwritten signature in black ink, appearing to read "S. M. Magoiga".

S. M. MAGOIGA

JUDGE

30/04/2021