

TANZANIA / JUDGMENT

alaf ltd vs goodluck charles werema ta merry stel enterprises 2023 tzhccomd 304 4 september 2023

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TZHCCOMDDECIDED
4 September 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT
PAR ES SALAAM COMMERCIAL CASE NO. 40 OF 2022 ALAF
LIMITED..... PLAINTIFF VERSUS GOODLUCK CHARLES WEREMA
T/A MERRY STEL ENTERPRISES..... DEFENDANT

JUDGMENT

A.A. MBAGWA J. In this suit, the plaintiff's claim is for payment of TZS 123, 137, 629. 02 being outstanding purchase price of the supplied goods (roofing sheets). The plaintiff is a limited liability company incorporated under the laws of Tanzania and its main business is manufacturing and production of building materials in particular roofing sheets. On the other hand, the defendant is a natural person trading under the business name of Merry Stel Enterprises whose business is retail sales of the plaintiff's products. According to the pleadings, the plaintiff and defendant had business relationship since 2018 in which the defendant was buying the plaintiff's products (roofing sheets) on credit. However, in the course of doing business, the defendant failed to pay the purchase price for supplied roofing sheets until the outstanding payment accrued to TZS 123, 137, i 1 629.02. The plaintiff made some strides to have the debt settled amicably but to no avail. As such, the plaintiff was left with no option than a resort to legal measures. Consequently, on 8th day of April, 2022, the plaintiff, by way of plaint, instituted the present suit against the defendant praying for judgment and decree in the following orders;

- (a) Payment of TZS 123, 137, 629. 02 being outstanding purchase price for supplied goods.
- (b) Interest of the said sum i.e., TZS 123, 137,629.02 at commercial rate from the date of default to the date of judgment.
- (c) Interest on the decretal amount at the court's rate from the date of judgment till the date of payment in full.
- (d) Costs of this suit.

- (e) Interest on the costs at the rate of 7% per annum from the date of award thereof till full and final payment of the same.
- (f) Further or other relief this Honourable Court may deem appropriate and fit to grant. Upon service, the defendant filed a written statement of defence disputing the plaintiff's claims. The defendant stated that the amount due to the plaintiff was less than the claimed one. As such, the defendant prayed for dismissal of the suit with costs. 2 Upon completion of pleadings, this Court framed and recorded the following three issues which were agreed upon by the parties;
1. Whether the defendant was buying the plaintiff's products (roofing sheets) from the plaintiff on credit.
 2. Whether the defendant is indebted to the plaintiff in the sum of TZS 123, 137, 629.02 being the outstanding amount of roofing sheets supplied on credit
 3. To what reliefs are the parties entitled. During hearing, the plaintiff was represented by Ms Hamida Sheikh, learned counsel whereas the defendant had the services of Mr. Silayo Eben Elias, learned counsel as well. In a bid to establish its case, the plaintiff paraded three witnesses namely, Adrian George Sigalla (PW1), Nelson Kassanga (PW2) and Violeth Tesha (PW3). In addition, the plaintiff side produced documents which were admitted in evidence and marked exhibit P1 and P2. On the adversary, the defendant, Goodluck Charles Werema (DW1) stood a solo witness and produced two documents which were admitted in evidence and marked exhibit DI collectively. In brief, it was the plaintiff's account that between 22nd January, 2018 to 31st May, 2019, the plaintiff supplied and delivered to the defendant 3 roofing sheets on credit but the defendant failed to fully pay the purchase price which stood at TZS 123, 137, 629.02 as of 21st May, 2019 according to the customer ledger account (exhibit P2). PW1 Adrian George Sigalla and PW2 Nelson Kassanga testified that as the debt intensified, they tried to discuss with the defendant on the best way to settle the debt but the defendant failed to comply with agreed mode of settlement. To bolster their contention, PW2 Nelson Kassanga tendered five correspondence letters between the plaintiff and defendant which were admitted and marked exhibit P1. Further, PW3 Violeth Tesha told the Court that at the time of instituting this suit, the defendant was indebted to the sum of TZS 123, 137, 629.02 but during pendency of the suit, in the attempt to settle the matter, the defendant deposited into the plaintiff's account a total sum of TZS 8, 200,000/= thereby reducing the outstanding amount to TZS 114, 537, 629.02. PW3 tendered the customer statement ledger account along with affidavit as to its authenticity and the same were admitted and marked exhibit P2 collectively. PW3 clarified that the ledger statement was retrieved from the company's system and subsequently printed by her. She further stated that the ledger account contains all the necessary information from the time the defendant pressed the order up to the point of delivery. In the end, PW3 prayed the Court to grant the 4 reliefs as indicated in the plaint but with adjustment as to the outstanding amount as hinted above. In defence, the defendant disputed the plaintiff's claims. DW1 admitted to have been purchasing the plaintiff's products on credit. He, however, contested the alleged outstanding

amount of TZS 123, 137, 629.02. The defendant contended that his credit limit was TZS 75,000,000/= as such, he could not be supplied goods with the value of TZS 123, 137, 629.02. DW1 stated further that he owed the plaintiff TZS 63,000,000/=, and at the time of instituting the case he had paid TZS 54,800,000/=. He proceeded that during pendency of the case, he deposited into the plaintiff's bank account a sum of TZS 8,200,000 in two instalments that is to say on 12th December, 2022 and 25th December, 2022 he deposited TZS 2,200,000/= and TZS 6,000,000/= respectively. He told the Court that with the two deposits above, the outstanding debt was fully liquidated. Finally, the defendant beseeched the Court to dismiss the suit with costs. Upon conclusion of hearing, this Court allowed the parties to file written submissions. At the outset, I am grateful to both counsel for their tailored submissions. I have carefully gone through and considered them in my decision. 5 7 Now, having summarized the evidence adduced, it is the turn to determine the issues; The 1st issue is whether the defendant was buying the plaintiff's products (roofing sheets) from the plaintiff on credit. All the plaintiff's witnesses testified that the defendant was buying the products (roofing sheets) on credit. This fact was admitted by the defendant both in his witness statement and during cross examination. From the evidence of both parties, I am convinced to answer the 1st issue in affirmative. The 2nd issue is whether the defendant is indebted to the plaintiff in the sum of TZS 123, 137, 629.02 being the outstanding amount of roofing sheets supplied on credit. The plaintiff's evidence in particular of Violeth Tesha (PW3) was to the effect that at the time of instituting the case the defendant was indebted to the sum of TZS 123, 137, 629.02. PW3 went on telling the Court that during pendency of the case, there were initiatives to settle the matter amicably. That the parties agreed on the amount which the defendant could be paying in instalments but the defendant failed to pay the agreed instalment amount. PW3 elaborated that the defendant paid only TZS 8, 200,000/= contrary to their agreement hence the plaintiff decided to proceed with the case. PW3 expounded that after deposit of TZS 8, 200,000/=: the outstanding debt was reduced to TZS 114, 537, 629.02. PW2 on his part, tendered various correspondences (exhibit P1 collectively) in which the defendant admitted the outstanding payment of TZS 123, 137, 629.02 and was appealing for more time within which to pay. For example, in a letter dated 15th January, 2023, the defendant proposed monthly instalment of TZS 10,000,000/= which would have fully liquidated the debt in one year period. In rebuttal, the defendant said that he had already paid the full amount hence he was no longer indebted to the plaintiff, the defendant contended that the due debt was TZS 63,000,000/= but before institution of the case he had paid TZS 54,800,000/=. He continued that after filing the case, he paid the remaining balance of TZS 8,200,000/= as such, the whole debt was completely settled. During cross examination, the defendant said that he was indebted to the sum of TZS 75,000,000/= and that after payment of TZS 8,200,000/= he did not know how much he remained owing the plaintiff. However, in re-examination, he said that TZS 75,000,000/= was the credit limit and not the amount of debt. I have keenly appraised the evidence of both parties. It is a principle of law that evidence should be assessed holistically and not on piece meal basis. There is evidence of the defendant's ledger account (exhibit P1) and correspondences between the parties (exhibit P1). These two pieces of evidence clearly tell that the debt was TZS 123, 137,

629.02. For example, in the letter dated 18th February, 7 ir 2022 in which the defendant was responding to the plaintiff's reminder, the defendant admits the debt of TZS 122,737,629.02. Further, in the letter dated 15/01/2023 (part of exhibit Pl), the defendant admitted the debt and committed himself to clear the outstanding balance by equal monthly instalments of TZS 10,000,000/=. This piece of evidence tallies with the testimony of Violeth Tesha who testified that after institution of this suit, parties were engaged in settlement and agreement on payment modality but the defendant failed deposit the agreed amount. Moreso, the defendant claimed that he paid TZS 54,800,000/= before filing the suit but he could not produce any evidence apart from his verbal. DW1 only produced deposit slips (exhibit DI) in respect of TZS 8,200,000/= which he paid after the institution of the suit and during the negotiations for settlement. PW3, while under cross examination, clarified to the Court that after deposit of TZS 8, 200,000/=: the outstanding debt was reduced to TZS 114, 537, 629.02. In his final submissions, the defendant's counsel urged this Court not to rely on exhibit Pl (correspondences) on the ground that they are secondary evidence. However, with due respect to the learned counsel, his argument is untenable. This is because the documents were admitted according to the law after the Court was satisfied that the prevailing circumstances justified their admission. The defendant did not deny authorship of the said letters (exhibit Pl) rather 8 he only challenged them on being secondary evidence. The question to ponder is, if the defendant did not owe the plaintiff a sum of TZS 123, 137, 629.02 why was he proposing equal monthly instalment of TZS 10,000,000/= say Tanzania Shillings Ten Million for a period of one year? The answer to this question augments the plaintiff's account that he owed the plaintiff TZS 123, 137,629.02 before institution of the suit. Thus, upon a careful consideration of the evidence in whole, I am satisfied that the defendant owes the plaintiff a sum of TZS 114, 537, 629.02. As to what reliefs are the parties entitled, it is a common principle in contract law that a party who fails to perform its contractual obligations breaches the contract and upon being sued, the defaulting party is obliged to compensate the other. See Section 73 of the Law of Contract Act and the case of Simba Motors Limited vs John Achelis & Sohne GMBH and Another, Civil Appeal No. 72 of 2020, CAT at Dar es Salaam. In this case, it is obvious that the defendant failed to perform his contractual obligation to wit, payment of the purchase price to a tune of TZS 114,537,629.02. Consequently, the defendant breached the contract and for that reason he is answerable to compensate the plaintiff. 9 7 On all the above account, I am satisfied that the plaintiff has established its case on the balance of probabilities. I therefore enter judgment and decree in favour of the plaintiff in the following orders;

1. The defendant is hereby ordered to pay the plaintiff a sum of TZS 114, 537, 629.02 being the outstanding purchase price for the supplied roofing sheets.
2. The defendant is hereby ordered to pay to the plaintiff the interest at the court's rate of 7% on the decretal sum as indicated under paragraph (1) above from the date of judgment till full and final payment.

3. Costs of the case be borne by the defendant. It is so ordered. The right of appeal is fully explained. io

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