

TANZANIA / JUDGMENT

HHHHHIGHLAND ESTATES

COURT
TANZLIIDECIDED
30 September 2020

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA COMMERCIAL DIVISION AT
DAR ES SALAAM COMMERCIAL CASE NO. 136 OF 2023 HIGHLAND ESTATES LIMITED.....
PLAINTIFF VERSUS PETROBENA E.A LIMITED.....
1stDEFENDANT SABENA VICTOR KUBINI..... 2ndDEFENDANT
PETER ANDREW KUMALILWA..... 3rdDEFENDANT

JUDGMENT

Date of Last Order: 27/08/2024 Date of Judgment: 11/10/2024 MKEHA, J: The plaintiff is a limited liability company duly registered under the Companies Act carrying out business relating to crop production, wholesale of agro chemicals and agricultural inputs. On the other hand, the first defendant is a private company limited by shares whose main business activity is to support activities for crop production and supplying agricultural inputs. The second and third defendants are the shareholders and directors of the first defendant. 1 | Page In terms of the plaint, the plaintiff's claim against the defendants jointly and severally is for payment of TZS. 642,547,990.00 being the principal amount owed out of pesticides business, general damages, interest and costs of the suit. According to the plaintiff's case, the plaintiff and the first defendant had entered into a contract for sale of cotton chemicals. Under the agreement dated 18/02/2020, the plaintiff sold 403,200-acre packs (pesticides) for a price of USD 597,151.30 equivalent to TZS 1,373,447,990.00. The plaintiff alleged that, whereas all the contracted amount ought to have been paid by the defendants on or before 30/09/2020, by August 2022, the defendants had managed to pay TZS 730,900,000/=only leaving an outstanding debt of TZS 642,547,990.00/=. Because of the alleged default on part of the defendants, the plaintiff instituted this suit in court claiming the following reliefs:

- (a) Payment of the outstanding amount of TZS 642,547,990.00/=.
- (b) Interest on (a) above at commercial rate of 25% per annum from 15/10/2020 to the date of judgment.
- (c) Interest on the decretal sum at court's rate from the date of judgment until full settlement.
- (d) General damages at a rate to be assessed by the court. 2 | Page
- (e) Costs be provided for.

- (f) Any other relief as the Honourable Court may deem just and fit to grant. The defendants' joint written statement of defence was to the effect that, there was neither agreement nor arrangement made for the first defendant to purchase agro chemicals from the plaintiff. According to the defendants' position, the agreement between the plaintiff and the first defendant was for the two companies to jointly purchase the agro chemicals, sale and distribute the profit at a ratio of 60% to the plaintiff and 40% to the first defendant and not otherwise. Before commencement of hearing of the suit, the following issues were framed for determination:
- (i) Whether there was a contract between the plaintiff and the defendant for supply of pesticides. (ii) If issue No. (i) is answered in the affirmative, whether the said contract was a partnership. (iii) If issue No. (ii) is answered in the negative, whether the defendant breached the contract in (i) above. (iv) If issue NO. (iii) is answered in the affirmative, whether the plaintiff is entitled to TZS 642,547,990/= 3 | Page
- (v) To what reliefs are the parties entitled. Mr. Abdulhamid Haroon Pirimohamed (PW1) appeared as the sole witness for the plaintiff's side. His witness statement was admitted in court as his evidence in chief without objection. The witness statement indicates that, on 18/02/2020, the plaintiff and the first defendant entered into a contract for sale of cotton chemicals. The statement indicates that, whereas PW1 had signed the contract on behalf of the plaintiff, the third defendant had signed the contract on behalf of the first defendant. The said agreement was admitted into evidence without objection as Exhibit P1. Exhibit P1 describes the first defendant as a buyer who bought cotton chemicals totalling 403,200-acre packs for a price of USD 1.481 per each acre pack. The agreement indicates that, the contractual amount had to be paid latest by 30th September 2020. In terms of PW1's witness statement, as on contractual date the contracted amount was USD 597,151.30 equivalent to TZS 1,373,447,990.00. The witness statement indicates further that, out of the contracted amount, by August 2022, the defendants had managed to settle TZS 730,900,000/= leaving an outstanding balance of TZS 642,547,990/=. The witness statement indicates further that, in compliance with Clause 2
- (b) of Exhibit P1, on 18/02/2020, the first defendant issued to the plaintiff, 4 | Page local purchase order No. LPO NO. PB/LPO/189/2020-2021 ordering 403,200-acre packs valued at USD 597,151.30. The said local purchase order was admitted into evidence as Exhibit P2 without objection. PW1 stated that, following receipt of the LPO referred to hereinabove, the plaintiff issued Tax Invoice No. 243/20 dated 15/10/2020 in the sum of the contractual amount of USD 597,151.30 which was the agreed price between the parties. The said Tax Invoice was admitted into evidence as Exhibit P3 without objection. PW1 stated further that, at different times, the defendants issued some cheques in view of settling the debt. However, some of the cheques were returned to the drawer for reasons of insufficiency of funds in the drawer's account. Bounced cheques were admitted into evidence as Exhibits P4 and P6. PW1 stated also that, on 10th March 2022, the 2nd defendant wrote an acknowledgement of debt in which he admitted that, the first defendant was by then indebted to the plaintiff to the extent

of TZS 757, 547,990 /=. In the said document, the 2nd defendant, in his capacity as one of the Directors of the 1st defendant, made an undertaking that the said debt would be paid in whole by December 2022. The said acknowledgement of debt was admitted into evidence as Exhibit P5 without objection. 5 | Page According to PW1, out of the acknowledged debt, by December 2022, the defendants paid TZS 115,000,000/= only. The defendants' defence is contained in the witness statement of Mr. Peter Andrew Kumalila (DW1). The said witness statement was admitted into evidence without objection as the evidence in chief of the said witness. When he appeared for cross examination, the witness did not produce any documentary evidence in support of the defendants' position. In terms of paragraphs 5 and 6 of the witness statement, the agreement between the plaintiff and the first defendant was that of partnership in which an agreement was reached to the effect that, there would be sharing of profit at an agreed ratio of 60% to the plaintiff and 40% to the first defendant. The witness produced no agreement evidencing the said terms. The first issue is whether there is evidence on record proving that there was a contract between the plaintiff and the defendant for supply of pesticides. This issue receives an answer in the affirmative from the testimony of PW1 and Exhibit P1 in particular. The said Exhibit which was signed by PW1 on behalf of the plaintiff and DW1 on behalf of the first defendant indicates that, the plaintiff was the seller and that, the first defendant was the buyer of cotton chemicals namely, 403,200-acre packs. 6 | Page The agreed selling price for the cotton packs was USD 1.481 per each acre pack making a total amount of USD 597,151.30 as the contractual amount which according to the witness statement of PW1, was equivalent to TZS 1,373,447,990/= on the contractual date. Exhibit P1 which was admitted without objection refers to the first defendant as the buyer and not as the partner in business as earlier pleaded by the defendants. The defendants did not produce in court any agreement to the effect that the relationship between the 1st defendant and the plaintiff was that of partners in business. Therefore, the second issue is answered in the negative. The third issue is whether there was breach of contract on part of the defendants. PW1's witness statement was to the effect that, by December 2022, out of the outstanding balance of TZS 757,547,990/= acknowledged by the 1st defendant's Director via Exhibit P5 dated 10th March 2022, only TZS 115,000,000/= had been paid leaving a debt of TZS 642,547,990/=. In terms of Exhibit P1 the contractual amount was to be paid latest by 30th September 2020. The outstanding amount by December 2022 is part of the invoiced amount in Exhibit P3. Therefore, the 3rd issue is answered in the affirmative that, the defendants breached the contract by failing to pay the whole of the contractual amount by 30th 7 | Page September 2020. Consequently, the 4th issue should as well receive an answer in the affirmative, that, the plaintiff is entitled to TZS 642,547,990/= as the remaining unsettled amount. For the foregoing reasoning and findings, it is decreed in favour of the plaintiff as hereunder:

1. All the defendants are jointly and severally ordered to pay TZS 642,547,990/= to the plaintiff.
2. The defendants are ordered to pay commercial rate interest of 10% per annum on (1) above from 30th September 2020 to the date of

judgment.

3. The defendants are ordered to pay to the plaintiff TZS 10,000,000/ as general damages.
4. The defendants are ordered to pay to the plaintiff court rate interest of 7% per annum on the decretal amount from the date of judgment to payment in full.
5. The defendants are condemned to bear costs spent by the plaintiff to prosecute the suit.
DATED at DAR ES SALAAM this 11th day of OCTOBER 2024. 8 | Page C. P. MKEHA JUDGE
11/10/2024 COURT: Judgement is delivered in Chambers this 11th day of October 2024 in the presence of Mr. Wilson Ogunde learned advocate for the plaintiff and Mr. Isack Mutashobya learned advocate for the defendants. C. P. MKEHA JUDGE 11/10/2024 COURT: Right of appeal explained. 9 | Page

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/321169/source_file/6e10ec06a503cd4e/HHHHHIGHLAND_ESTATES.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/highland-estates-limited-breachofcontract-tanzlii-2020--6a3ea5243b1caa9129819f1a>

Prepared on 14 October 2026 · Esheria