TANZANIA / JUDGMENT

20020208 TZHC Dar es Salaam

COURT	DECIDED
TZHC	8 February 2002

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' ,. IN THE HIGH.COURT OF TANZANIA &]_ IJ!'!...fi.• ES__..:_S._61,!-iAM CIVIL CASE NO. 412 OF 2000 JOHN JACOB CONSTRUCTION . t LTD- •

- APPLICANT Versus ADUCO INTERNATIONAL J3v... - - - - - - DEFENDANT I / I

JUDGMENT

The issue before this court is that of payment to the pl~intiff of interest and costs as the principal sum has been settled by the defendant as parties fc:1.iled to agree under the mediation process on whether the defendant ought ... to pay interest and CO§.ts to the plaintiff it was a.greed that the matter go for trial. The following issues were framed for _the courts determination:- Whether the settlement entered on 1/3/2001 between the plaintiff and the defendant was final and conclusive including the claim on interest and costsG If the above is answered in the negative; what reliefs are the parties entitled to~ The plaintiff Jacob Malifedha Mchenya testified that he owns a construction company called John Jacobs Construction Company Limited. He stated that the defendant who were engaged to construct the Kongowe - Kivukoni road subcontracted part of the work to them4 That they signed agreem~nt to do the earthworks .. The signed agreement was admitted for identification only as 'IDI' The plaintiff added tha-t according to that agreement payment was to be made in four parts advance paymentj then _further payment after two weeks, then the second stRge payment was to be made in the 4th week and final payment in the 7th week. Some relention free of 5% in relation to payments

(2) (3) and 4 above. Cont ••••• /2 2.- - He stated in evidence-that they performed their part of the contract but payments were not made as per the schedule. He stated that the defendant did not pay them on time as the Ministry of works did not pay the defendant on time that payment to them was not subject to the Ministry of works paying the Defendant. He added that at first the Defendant claimed t• have overpaid him by TShs five million but upon further reconciliation of figures the Defendant acknowledged that they were supposed to pay the pl-aintiff TSh 12 million. He stated that according to him the correct amount ·was TSh. 76,412 1 225 inclusive of VAT. That as no compromise was reached the plaintiff decided to file the suit in Court on 15/11/2000. The plaintiff added that soon after they sat with the defendant and ended up in signing of the agreement" !Pl.. where the due balance was TSh. 36,676,307 /30 inclusive of VAT. The plaintiff testified that on the Defendant had not paid him on the due date of 1/1/99, then he is now claiming interest for the delay. He stated that Exh.

Pl which he signed on 1/3/2000 covered the final measurement as agreed as agreed by the Ministry of works; that was purely to determine the quantities of the works executed to enable payment to be made 7 and that it hed nothing t.• do with claim on interest. He stated that he was claiming interest at 31% over the amount and costs. After the plaintiff closed his evidence Mr. Mafuru advocating for the defendants prayed to the court to adjourn the matter so that he contacts his client before cross examination of the plaintiff. This Court obriged and fiRed the matter on 21/11/01 at 2 pm. Come the set date, Mr. Mafuru was not ,/ There to be see. Mr. Ukwonga for the flaintiff prayed to the Court to enter judgment on the evidence given as he had no other whtness to call. The issue is whether the plaintiff is entilled to recover interest on the delayed amount he finally received from the Defendant. Cont •••• /3 ,. ._., L . ,~,.,..~, J 3 Ur1fortunately the Court was claimed from hearing the Defendants. case. According to the evidence adduced the the agrePrnent (annexture Ate the Plaint) entered into on 27/8/19980 The Plaintiff stated in evidence that the Defendant failed to pay them on time because the Ministry of works was not paying the Defendant on time. If this be the case, can the plaintiff really blame the Defendant for the delay? I think not. Further, it is clear from the evidence that settlement on the payment could not be made .... as the parties could not agree on what amount was due. There ·~were a series of calculations of the amounts claimed and these offered by the Defendant. In short there was no agreed and final figure as e,f 22/1/2000. In view of this how can ~; the plaintiff claim interest on an unasentained amount? Further ever if the claim for interest was granted!' the rate of 31¾ is certainly on the high side. think this rate would apply where the plaintiff claims to have borrowed the sum from a financing institute and where therefore he Plaintiff was also paying interest. In sum therefore I am, not inclinc?d to grant interest as claimed by the flai.intiff \tit would award costs to the Plaintiff. A.G. Bubeshi, JUDGE 8/2/02. Delivered before Parties. 2

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