

TANZANIA / JUDGMENT

john jacob construction ltd vs aduco international 2002 tzhc 2031 8 february 2002

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TZHCDECIDED
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IN THE HIGH COURT OF TANZANIA AT P A R B S S ALAAM CIVIL CASE NO. 412 OF 2000 JOHN JACOB CONSTRUCTION LTD- - - APPLICANT Versus ADUCO INTERNATTOMAT ^xr ^Axj jjV"
-----DEFENDANT

JUDGMENT

The issue before this court is that of payment to the plaintiff of interest and costs as the principal sum. has been settled by the defendant as parties failed to agree under The mediation process on whether the defendant ought to pay interest and costs to the plaintiff it was agreed 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 u n a l and conclusive including the claim on interest and costs. If the above is answered in the negative, what reliefs are the parties entitled to* The plaintiff Jacob Kalifedha Mchenya testified that he owns a construction company called John Jacobs Construction Company Limited. He stated that the defendant who were partSof *h the K°ng0We ' Kl™ k0n± POad Co n t r a c t e d part of he work to them. That they signed agreement to do . ® & i , & r k E - The signed agreement was admitted for identification only a.s *IDI* Die plaintiff added that according to that agreement paymen was to be made in fourparts advance payment, then w ! f f aftSr tW° WeekS' then the Second 3taSe Payment as to bemade m the 4th week and final payment in the M relentl°n free " relation to payments

(2) (3) and 4 above. Cont....#/2

- 2: - r.e stated in evidence that they performed their par of tne contract but payments were net made as per the schedule. He stated that the defendant did not m y em on time as the Ministry of works did not pay the defendant on time that payment to them was not subject o the Ministry of works paying the Defendant. lie addea that at first the Defendant c l a w e d f have overpaid him by TShs five million but upon further reconciliation of figures the Defendant acknowledged that ey were supposed to pay the plaintiff TSh 12 million. He StatSd that ^cording to him the correct amount- was* TSh. 76,412,225 inclusive of VAT That-

* ■ x v a i , m a t a s n o c o m p r o m i s e w a s r e a c h e d t h e p l a i n t i f f d e c i d e d t o f i l e t h e s u i t i n c o u r t t ^ T h S p l a i n t i f f a c t e d t h a t s o o n a f t e r t h e y s a t w i t h t h e d e f e n d a n t a n d e n d e d u p i n s i g n i n g o f t h e a g r e e m e n t I D I w h e r e t h e d u e b a l a n c e w a s T S h . 3 6 , 6 7 6 , 3 0 7 / 3 0 i n c l u s i v e o f V A T . " T h ^ P o n t i f f t e s t i f i e d t h a t o n t h e D e f e n d a n t h a d n o t p a i d m m o n t h e d u e d a t e o f I / I / 9 9 , t h e n h e i s n o w ^ o a i m i n g i n t e r e s t f o r t h e d e l a y . H e s t a t e d t h a t E x h . P I w h i c h h e s i g n e d o n 1 / j / 2 0 0 0 c o v e r e d t h e f i n a l m e a s u r e m e n t a s a g r e e d a s a g r e e d b y t h e M i n i s t r y o f w o r k s ; t h a t w a s p u r e l y t o d e t e r m i n e t h e q u a n t i t i e s o f t h e w o r k s e x e c u t e d t o e n a b l e p a y m e n t t o b e m a d e , a n d t h a t i t h e d n o t h i n g t . d o w i t h c l a i m o n i n ' t p p p ^ f " < - * - + - . - * 4 - ■ * o - i l ? i n t e r e s t . H e s t a t e d t h a t h e w a s c l a i m i n g i n t e r e s t a t 3 1 % o v e r t h e a m o u n t a n d c o s t s . A f t e r t h e p l a i n t i f f c l o s e d h i s e v i d e n c e N r , M a f u r u a d v o c a t i n g f o r t h e d e f e n d a n t s p r a y e d t o t h e c o u r t t o a d j o u r n t h e m a t t e r s o t h a t h e c o n t a c t s h i s c l i e n t b e f o r e Z Z : " l o n ^ o f ^ C o u r t o b r i g e d a n d f i s d d t h e m a t t e r o n a i / l l / 0 1 a t 2 p m . C o m e ^ ^ ^ . M a f u r u w a s n o t w h e r e t o b e s e e . M r . U k w o n g a f o r t h e P l i m t i f f p r a y e d t o t h e C o u r t t o e n t e r j u d g m e n t o n t h e e v i d e n c e g i v e n a s h e h a d n o o t h e r w h t n e s s t o c a l l . T h e i s s u e i s w h e t h e r t h e p l a i n t i f f i s e n t i t l e d t o r e c o v e r i n t e r e s t o n t h e d e l a y e d a m o u n t h e f i n a l l y r e c e i v e d f r o m t h e D e f e n d a n t . r e c e i v e d C o n t . . . , / 3

- 3 - Unfortunately the Court was claimed from hearing e Defendants case. According to the evidence adduced the 2 7 / R A Q « r e n ^ (a n n e x t u r e A t e t h e P l a " t) e n t e r e d i n t o o n " h e P l a i n t i f f s t a t e d i n e v i d e n c e t h a t t h e e n d a n t f a i l e d t . p a y t h e m o n t i m e b e c a u s e t h e M i n i s t r y o f w o r k s w a s n o t p a y i n g t h e D e f e n d a n t o n t i m e . I f t h i s f - n o a n t h e p l a i n t i f f r e a l l y b l a m e t h e D e f e n d a n t f o r t h e d e l a y ? I t h i n k n o t . F u r t h e r , i t i s c l e a r f r o m t h e d e n c e „ n a t s e t t l e m e n t o n t h e p a y m e n t c o u l d n o t b e m a d e a o t h e p a i t i e s c o u l d n o t a g r e e o n w h a t a m o u n t w a s d u e . T h e r e w e r e a s e r i e s o f c a l c u l a t i o n s „ f t h e a K o u n t s c l a l l K d a n d a T f i f 1 T ^ t h e ' D B f e n d a n t - I n 5 h 0 r t ^ o a g r e e d t h e X T n t H H " 9 i 2 2 / 1 / 2 0 0 0 ' I n 0 ^ t h i s h o w c a n , ^ o a i r a i n t e r e s t o n a n u n a s e n t a i n e d a m o u n t ? F u r t h e r e v e r I f t h p n i a - i m o f , w , , i . a l m f o r I n t e r ^ t w a s g r a n t e d . t h e r a t e o f 3 1 A c e r t a i n l y o n t h e h i g h s i d e , t h i n k t h i s r a t - w o u l d a p p l y w h e r e t h e p l a i n t i f f c l a i m s t o h a v e b o r r o w e d t h e s u m ^ I l n a n o l n e I n s t i t u t e a n d w h e r e t h e r e f o r e h e P l a i n t i f f w a s a l s o p a y i n g i n t e r e s t . ^ I n s u m t h e r e f o r e I a m n o t i n c l i n e d t o g r a n t i n t e r e s t a s c l a i m e d b y t h e B l M n t i - f - f - i ^ P l a i n t i f f . P o n t i f f t u t w o u l d a w a r d c o s t s t o t h e M :) . ■ o A | / } / " \ ! , [L , r , [/ A . G . B u b e s h i , J U D G E 8 / 2 / 0 2 . D e l i v e r e d b e f o r e P a r t i e s .

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