

TANZANIA / JUDGMENT

john jacob construction ltd vs aduco international bv 2002 tzhc 2011 8 february 2002

COURT
TZHCDECIDED
8 February 2002

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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 payment was to be made in fourparts advance payment, then w ! f f aftSr tW° WeekS' then the Second 3 taSe Payment as to be made m the 4th week and final payment in the M relentl°n free “ relation to payments

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

- 2: - 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 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 claimed 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 vai ,

That- m a t as no co mpr o m i s e was reached the plaintiff decided to file the suit in court t ^
 ThS plaitntlff aclded that soon after they sat with the defendant and ended up in signing of
 the agreement IDI where the due balance was TSh. 36,676,307/30 inclusive of VAT. / - Th® P o
 n t i f f testified that on the Defendant had ot paid m m on the due date of I/I/9 9 , then he is
 now ° aiming interest for the delay. He stated that Exh. PI which he signed on 1/j/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, and that it
 hed nothing t. do with claim on in'tppp^f" <-*+-.-*4- ■* o-i interest. He stated that he
 wasclaiming interest at 31% over the amount and costs. After the plaintiff closed his
 evidence Nr, Mafuru advocating for the defendants prayed to the court to adjourn the matter
 so that he contacts his client before Z Z : " l0n °f ^ Court obriged and fisdd the matter on ai/11/
 0 1 at 2 p m . Come ^ ^ ^ . Mafuru was not where to be see. Mr. Ukwonga for the Plaintiff
 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 entitled to recover interest on the delayed amount
 he finally received from the Defendant. received Cont . . . , / 3

- 3 - Unfrtunately the Court was Claimed from hearing e Defendants case. According to the
 evidence adduced the 2 7 / R A Q « r en^ (annexture A te the Pla“ t) entered into on he stated
 in evidence that the e endant failed t. pay them on time because the Ministry of works was
 not paying the Defendant on time. If this f-n oan the plaintiff really blame the Defendant for
 the delay? I think not. Further, it is clear from the dence „nat settlement on the payment
 could not be made ao the paities could not agree on what amount was due. There were a
 series of calculations „f the amounts claimed and a T f i f 1T ^ th£‘ DBfendant- In 5h0rt °o
 agreed the X T n t H H “ 9i 22/1/2000 ’ In 0^ this how can , ° aira interest on an unasentained
 amount? Further ever If thp of , w , , i . alm f0r lnte™st was granted. the rate Of 31A certainly
 on the high side, think this rat- would apply where the plaintiff claims to have borrowed the
 sum ® llnanolne institute and where therefore he Plaintiff was also paying interest. ^ In sum
 therefore I am not inclined to grant interest as claimed by the BlMnti-f-f -i^ Plaintiff. tut
 would award costs to the M ' ! A f) At' / JS") !, [L, r, [/ A . G. Bubeshi, JUDGE 8 / 2 / 0 2 .
 Delivered before Parties.

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