

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT MWANZA
COMMERCIAL CASE NO. 11 OF 2016
FARM EQUIP (TANZANIA) CO. LTD.PLAINTIFF
VERSUS
DAHECO CO. LTD. DEFENDANT

JUDGMENT (EXPARTE)

MRUMA, J.

The Plaintiff Farm Equip (T) Company Limited instituted a suit against the Defendant DAHECO Company Limited praying for the following orders:

- (a) A declaration that the Defendant is in breach of a contract for Sale of Agricultural machinery.
- (b) Payment of the outstanding amount of T.shs. 85,770,856.00
- (c) Interest on (b) above at the rate of 30% from the Date of filing the suit till judgment.
- (d) Interest on the decretal sum at court's rate from the date of judgment till payment in full.
- (e) General damages to be assessed by the court.
- (f) Costs of the suit and

(g) Any other reliefs this court may deem fit and just to grant.

The plaintiff's case was presented for filing on 25th November, 2016. The defendant was duly served and on 26th January, it filed its written statement of defence denying each and every allegation raised against it. At paragraph 3 of its written statement of defence the defendant stated that the Plaintiff's failure to supply the equipment as per its order had caused the Defendant to suffer loss of clients and business, however it did not set up any counter-claim against the Plaintiff.

After the pleadings were completed, for First Pre Trial Conference was duly conducted on 2nd May, 2017 and the matter was adjourned for mediation on 25/05/2017. The Defendant and her client did not attend the first mediation session on 29th May, 2017 and again on 31st May 2017 and on 06th June, 2017 when the court directed mediation to be adjourned to another date and ordered the matter to be called before the Deputy Registrar on 22.06.2017.

This was followed by several other adjournments up till 22nd June, 2017 when an order was made for the case to proceed ex-parte against the Defendant. A final pre trial conference was held on 5th June, 2018 and trial (ex-parte) commenced on the same day.

The Plaintiff called one witness, Mr. Mathew Chacha Sabure (PWI) who had earlier on file a witness statement filed on 17th November, 2017.

In his evidence PWI stated that on or about 1st April, 2014, his company entered into a dealership agreement with the Defendant under which it was agreed that the Plaintiff will supply to the Defendant Agricultural Machinery and the Defendant will Sale the same to its customers and deposit the agreed sale prices into the Plaintiff's account. The dealership agreement was tendered in evidence and it was received as exhibit P I to the Plaintiff's case.

It is the evidence of this witness that the Plaintiff performed its obligations under the agreement by supplying Agricultural equipment to the Defendant and raising corresponding invoices to the extent that by 21st September , 2016 the outstanding amount in the Defendant's account was T.shs. 85, 770,856.25.

The Plaintiff's witness tendered in evidence proforma invoices (exhibit P 5), delivery notices (exhibit P 4), Tax invoices (exhibit P 3), Bill wise details (exhibit P 6), ledger Account of the Defendant(exhibit P 2) and Final Demand Notice (exhibit P 7).

Four issues were framed for determination by this court. The first issue is whether the Plaintiff had any contract with the Defendant. To prove this issue on top of oral testimony of PWI to that effect, the Plaintiff tendered in evidence a

dealership agreement (exhibit P 1) in which Farm Equip (T) Ltd. signed a dealership agreement with DAHECO Co. Ltd. the agreement was signed on 1st April, 2014 and it was to expire on 1st April 2017. The Defendant signed the agreement through its Director General one David Peter Rwamugura and stamped it by its official stamp. This same person Davit Peter Rwamugurwa signed the Defendant's written statement of defence as the principal officer of the Defendant. In view of this undisputed evidence I resolve the first issue in the affirmative. That is to say there was a dealership agreement between the Plaintiff and the Defendant.

The second issue is about the terms of the said dealership agreement. The agreement has several terms but the most relevant to these proceedings is that the Defendant will give purchase orders to the Plaintiff and the Plaintiff would supply to the Defendants its products on credit on terms and condition agreed by the parties.

Apparently from the evidence adduced the Plaintiff discharged its obligations by supplying products to the Defendants upon orders and raised corresponding invoices. The Defendant did not pay for the products supplied and there is evidence in terms of proforma invoices (exhibit P5), delivery notices (exhibit P 4), tax invoices (exhibit P3) and Bill wise details (exhibit P 6) and ledger Account (exhibit P 2) which prove that the Defendant did not discharge

its obligation of paying for all goods supplied and this answers the fourth issue in the affirmative. That is to say the Defendant did not pay for all products supplied to it.

As regards reliefs, the Plaintiff is claiming for payment of T.shs. 85,770,856.00 being the outstanding amount for the products supplied to the Defendant. On the evidence available this claim has been proved. I therefore hold that the Plaintiff is entitled to the amount claimed as special damages.

As regards claim for general damages generally, general damages are not awardable in suits for breach of contract unless it is shown that on top of financial loss which has been proved under the head of special damages, the Plaintiff suffered personal injuries that could not be estimated in monetary terms. Such injury may include bodily harm or lowering of business reputation or anything of the sort. In the case at hand, there is nothing to suggest that the Plaintiff suffered such injuries.

The Plaintiff is also claiming for interest both pre and post judgment. I think this being a business transaction she is entitled to claim interest on her money which has been unjustifiably withheld by the Defendant. However, I find that the 30% interest claimed is unjustifiable and without legal basis.

Taking into account the current economic situation I would allow an interest at the rate of 16% per annum from the date of filing the suit to the date of judgment and further interest at court's rate of 3% per annum from the date of judgment till payment in full of the decretal sum. The Plaintiff will have her costs of the suit.



A.R. Mruma

JUDGE

08/06/2018

