

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO.63 OF 2019

SIGNAL POWER AND ENERGY

TANZANIA COMPANY LIMITED PLAINTIFF

VERSUS

EAST AFRICAN CABLES (T) LIMITED DEFENDANT

Date of Last Order: 29/04/2020.

Date of Judgement: 22/05/2020.

JUDGEMENT.

MAGOIGA, J.

The plaintiff, SIGNAL POWER AND ENERGY TANZANIA COMPANY LIMITED by a plaintiff instituted the instant suit against the above named defendant praying for judgement and decree in the following orders, namely:

- i. An order compelling the defendant to pay the plaintiff the sum of Tanzania Shillings One Hundred and Seven Million, One hundred Sixty Seven Thousand and Six Hundred (TZS.107,167,600.) being specific damages,
- ii. An order condemning the defendant to pay general damages as may be assessed by the court,

- iii. Interest at commercial rate of 21% on (i) and (ii) above from the date of filing of this suit to the date of judgement,
- iv. Interest at the court's rate of 12% on (i) and (ii) above from the date of the judgement to the date of full satisfaction of the whole sum,
- v. Costs of this suit,
- vi. And any other relief this honourable court may deem fit to grant.

Upon being served with the plaint, the defendant filed written statement of defence basically disputing the entire claims by the plaintiff and instead calling her to strict proof of the alleged claims. Otherwise, the defendant prayed that this suit be dismissed in its entirety with costs.

The facts of this suit are not complicated. From the plaint it is alleged that on 15th August, 2018, the defendant issued purchase order number BO6235-2 to the plaintiff requesting the plaintiff to supply 380 of 240 sq.MM 4 CORE ARMoured COPPER CABLE TRADED worth TZS.90,820,000.00. In response to that purchase order, on 22nd October, 2018 the plaintiff issued invoice number 01297 for supply of the order worth TZS.90,820,000 plus TZS.16,347,600 being 18% VAT hence the grand total was TZS.107,167,600.00 and delivery notice number 0001392 accompanied with

Electronic Fiscal Receipt No. 03TZ842002211 evidencing the supply and delivery of the order.

Further facts were that by 17th January 2019, the defendant had not paid the money for the wire supplied and delivered, which state of affairs forced the plaintiff to engage lawyers in her pursuits to recover the money and several communications were exchanged but still no money was paid. It is against this background, the plaintiff instituted the instant suit for orders as prayed in the plaint, hence this judgement.

The plaintiff at all material time has been enjoying the legal services of Mr. Ashiru Hussein Lugwisa, learned advocate from Dar es Salaam based legal clinic of YAKUBU & ASSOCIATES CHAMBERS. On the other hand, the defendant has been enjoying the legal services of Ms. Inviolata Wangoma and Mr. Bunera Magambo, learned advocates from Dar es Salaam based legal clinic of SAFARI AFRICA ARBITRATION & LEGAL.

Before hearing started, the following issues were proposed by the learned counsel for parties for the determination of this suit, which same were adopted and recorded by this court, namely:

1. Whether the plaintiff supplied electrical materials to the defendant to the tune of TZS.107,167,600.00

2. Whether the defendant received the said goods worth TZS.107,167,600.00
3. If the second issue is answered in the affirmative, whether the defendant paid the price of the goods as supplied.
4. What relief(s) parties are entitled to.

The plaintiff in proof of her case called only one witness, Mr. ISMAIL KAZDAGLI- who was for the purposes of these proceedings will be referred as PW1. Under oath, PW1 prayed that his witness statement be adopted to be his testimony in chief in this suit. The prayer was not objected and as such his witness statement was so adopted as per the Rules of this court. Through his witness statement, PW1 told the court that he is the Manager Director of the plaintiff, a post he holds since 2015. PW1 went on to tell the court that his company deals with supply of electrical materials to various companies within and outside the United Republic of Tanzania, including the government.

According to PW1, on 15th August 2018, the defendant ordered to be supplied with Copper Cable Traded material (i.e 380 of 240 sq.MM 4 core armoured copper cable traded) worth TZS.90,820,000. In proof of the above facts, PW1 tendered in evidence a purchase order from the defendant dated 15th August 2018, which was admitted and marked as exhibit P1. PW1 went on to tell the

court that pursuant to that order, the plaintiff supplied and delivered the said order on 22nd October, 2018. In proof of the above facts, PW1 tendered in evidence invoice, EFD receipt and delivery note all dated 22/10/2018, which were all collectively admitted and marked as exhibits P2a-c.

Further testimony of PW1 was that ever since the goods were delivered to the defendant and invoice, the defendant has never paid for the goods despite constant reminders through phone calls and meetings. PW1 went on to tell the court that later he decided to engage lawyers who sent a demand notice on 17th January 2019. The said demand notice was tendered in evidence and marked as exhibit P3.

According to PW1, the defendant replied to the demand notice on 22nd January 2019 admitting the debt and promised to settle the debt but in vain to the date he is testifying. In the circumstances, PW1 instructed his lawyers to institute this suit praying for judgement and decree as requested in the plaint.

Under cross examination by Mr. Magambo, learned advocate, PW1 told the court that it is true they sold and delivered the ordered material to the defendant. PW1 pressed with question if he had any evidence of delivery he stated that yes delivery note dated 22/10/2018 is clear on this point. PW1

said the defendant were to pay within one month from the date of delivery but said no payment was done to the plaintiff. PW1 further told the court that corporate entity operates a bit different in that when you supply and deliver any material same has to be accompanied with EFD receipt.

Under re-examination, PW1 told the court that when they sent them demand notice, defendant did not reply that have paid. The issue of issuing tax invoice or receipt in corporate transactions before payment is to minimize tax evasion, which is a normal practice.

This marked the end of the testimony of PW1. The plaintiff closed her case to allow the defence case to start.

The defendant testified through Mr. GEOFREY ODHIAMBO, who for purposes of these proceedings was christened as DW1. Under oath, DW1 prayed that his witness statement filed in this court be adopted to be his testimony in chief, which prayer was not objected and it was so adopted as prayed. DW1 told the court that he is the Managing Director of the defendant company and that his company engages in manufacturing of electricity cables and conductors. DW1 went on to tell the court that his major roles includes but not limited to creating and reporting on business plans, monitoring it efficacy and progress and manage and maintain market relevance and promote

products and services to increase sales. DW1 admitted that on 15th August 2018 his company issued a purchase order number BO6235-2 requesting the plaintiff to supply 380 of 240 sq. MM 4 CORE ARMoured COPPER CABLE TRADED worth TZS.90,820,000.00. However, DW1 pointed out that there is no delivery note in relation to the purchase order number BO6235-2 claimed to have been made by the plaintiff to the defendant herein. DW1 went on to tell the court that even the EFD receipt marked in PW1 witness statement is a proof of payment that has been adduced in court by the plaintiff.

DW1 further told the court that even the correspondences between the parties prior the institution of this suit are mere words made WITHOUT PREJUDICE and as such cannot be used as evidence in court of law against either party as proof of defendant being indebted or acknowledgement of debt in that matter and prayed that the instant suit be dismissed with costs.

Under cross examination by Mr. Lugwisa, learned advocate, DW1 told the court that in his company there are people who handle procurement but are under him. DW1 went on to tell the court that procurement is under financial department, which is headed by Mr. Stephano. Pressed with questions, DW1 admitted that it true they ordered the armoured cable as evidenced in exhibit P1, but pointed out that the wire was not supplied. DW1 insisted that they

were never supplied with the order and that the procurement officer is in better position to know than DW1. DW1 told the court that since he has never received any wire no way he could allow payment.

DW1 when shown exhibit P2c he replied that he cannot say that this is a proof of delivery to them because what is written therein. Pressed further with questions, DW1 said that in his company, the procedure is that officer receiving the delivery must put his name, signature and stamp. According to DW1, the delivery note in dispute has no stamp and DW1 recognizes not the signature thereon. DW1 asked if he knows all signatures of his employee, he said he does not know all signatures of his employees.

Ms. Wangoma has nothing to re-examine DW1. This marked the end of the hearing of defence. The case for defence was closed too.

The learned counsel for parties under Rule 66(1) prayed for leave to file final closing submissions to support their respective stances on this suit. I granted the prayer and ordered same to be filed within seven days. The learned counsel complied with the order and I commend them for their input in this suit. Their respective final written arguments are accorded the weighty they deserve in the course of composing this judgement.

The task of this court now is to determine the merits or otherwise of this suit. In so doing I will determine each issue as raised seriatim. The first issue am obliged to answer is whether the plaintiff supplied electrical materials to the defendant worth TZS.107,167,600. The plaintiff in proof of this issue apart from his testimony through witness statement tendered exhibit P1, which is a purchase order and not disputed by the defendant at all, delivery notice exhibit P2c together with invoice and EFD receipt to prove this issue.

On the other hand, the defendant disputed supply and delivery of the wire on reason that the contents of exhibit P2c do not have stamp and DW1 do not recognize the signature of the person who is alleged to have received the goods and in the written submission it was added that the signature in exhibit P1 differs that of exhibit P2c.

Having critically considered this issue and guided by the pleadings, the evidence on record, final written submission of the parties, I am of the considered opinion that this issue has to be answered in the positive that the plaintiff supplied the wire as ordered worth TZS.107,167,600.00. I will try to explain. **One**, the content of exhibit P2c are clear and loud that even the purchase order which they don't dispute has no stamp duty of the defendant if that is their mode of operandi. **Two**, the name of the receiving officer on

the part of the defendant is clear is MFAUME and DW1 did not dispute that they have no such person in their company. **Three**, DW1 admitted do not know all signatures of all his employees, therefore, he cannot blatantly deny the contents of exhibit P2c with mere words with no any other evidence to disprove it otherwise. **Four**, the defendant if wanted this court to believe his story, he would have brought contradictory evidence against that of the plaintiff on this issue, but which he failed to do. The defendant failed even to call the alleged STEPHANO, the head of finance to deny that he has no MFAUME in his department. Failure to call STEPHANO an adverse inference is drawn against the defendant and anything that DW1 was testifying in respect of the finance department was hearsay which is inadmissible in evidence or with no evidential value.

Therefore, for the above reasons, this court hereby find the arguments and reason advanced by the defendant are devoid of any useful merits in this suit. In that vein I hereby finds and holds that the plaintiff has proved that indeed he supplied and delivered to the plaintiff as per his order worth TZS. 107.167,600.00.

This take this court to the second issue whether the defendant received the said goods worth TZS.107,167,600.00. This issue will not detain this court

because given the reasons given in the first issue, equally answers this issue in the positive. The contents of exhibit P2c is loud and clear that the defendant received the goods as ordered. In the circumstances and without much ado issue number two is hereby answered in the affirmative that the defendant received the goods supplied.

This trickles this court to issue number three that if the second issue is answered in the affirmative, whether the defendant paid the price of goods as supplied. This issue will equally not detain this court much. No evidence was put forward by the defendant that they paid for the goods. The only defence raised was that of non supply and deliverance, which evidence is wanting given the evidence on record. The defendant in his witness statement wanted to mislead this court that once there is an EFD receipt then that payment was done, but when pressed under cross examination he categorically stated that he never paid for the goods because they were never supplied. This brings this court to the firm conclusion that indeed no payments were done to plaintiff despite supplying and delivering the goods to the defendant. This was an obvious and clear breach of contract on the part of the defendant.

The last issue is what reliefs parties are entitled to. The defendant prayed that this suit be dismissed for want of merits. This cannot be granted given what

this court has found in issues number 1 to 3. On the other hand, the plaintiff prayed several reliefs as contained in the plaint. I have considered the conduct of the defendant in this suit, but it is other than clear breach of the terms of the order that she was supposed to fulfill. That considered and guided by the provisions of section 73 of the Law of Contract Act, [Cap 345 R.E. 2002] the plaintiff is entitled to payment of general damages resulting from this breach. All taken into account and given that the plaintiff supplied wire was for business and the time that the defendant decided to withhold that money, this court thus hereby grant the general damages to the tune of TZS.15,000,000.00 as general damages. The defendant will equally be liable to the prayers as contained in prayer clauses (i), (iii) and (iv) in the plaint as prayed. In the end result this suit is hereby allowed with costs to the plaintiff.

It is so ordered.

Dated at Dar es Salaam this 22th day of May 2020.



S. M. MAGOIGA

JUDGE.

22/05/2020.