

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[COMMERCIAL DIVISION]

AT DAR ES SALAAM

COMMERCIAL CASE NO. 55 OF 2020

YAMUNA PETROLEUM LIMITED PLAINTIFF

VERSUS

NAS HAULIERS LIMITED DEFENDANT

JUDGMENT

8th and 18th October, 2021

KISANYA, J.:

The plaintiff, Yamuna Petroleum Limited lodged a suit against Nas Hauliers Limited claiming for a declaration that the defendant is in a breach of contract to supply petroleum products. The plaintiff is also claiming for payment of Tanzania Shillings (TZS) 130,657,104.00 being the outstanding amount of petroleum products supplied to the defendant, interest on the outstanding amount at the commercial rate from the date when the claimed amount became due to the date of settlement of the entire debt, interest on decretal sum at the court rate from the date of judgment to the date of payment, general damages, costs and any other relief as this Court may deem fit and just to grant.

Before I go further, I think it is important to first narrate the background of facts which have resulted in the filing of this case. These facts are deduced from the pleadings as follows: It was pleaded in the plaint that, on diverse dates

between the 1st day of January, 2018 and the 23rd day of April, 2020, the plaintiff, at the request of the defendant, supplied to the latter, petroleum products worth TZS. 130,657,140.00. The plaintiff contended further that the defendant refused, ignored or failed to pay the outstanding amount. It is also the plaintiff's case that, the defendant issued cheques which were dishonoured due to insufficient funds in her account. In view thereof, the plaintiff was forced to institute this suit.

In her amended written statement of defence, the defendant did not dispute to have been supplied with petroleum products. However, she contended that the amount claimed by the plaintiff had been exaggerated and that the same was fictitious and unfounded. The defendant alleged further that parties had agreed to reconcile the plaintiff's claim and to compensate the defendant for the damage arising from substandard oil supplied to her by the plaintiff. Regarding the dishonoured cheques, the defendant averred that the same were issued in good faith while under expectation to receive payments from her clients.

At the final scheduling conference, the following issues were framed for determination of this case:

1. Whether there was a breach of contract by the defendant.
2. What reliefs are parties entitled to?

During the hearing of this matter, the plaintiff was represented by Mr. John Mfangabo, learned advocate, while Mr. Titus Aron, learned advocate appeared for the defendant.

In a bid to prove her case, the plaintiff filed one witness statement of Pratik Masrani (PW1). The said witness statement was admitted by this Court on the 4th day of October, 2021 to form part of PW1's evidence in chief. PW1 introduced himself as Managing Director of the plaintiff. He adduced that, on diverse dates between the 1st day of January, 2018 and the 23rd day of April, 2020, the plaintiff supplied petroleum products to the defendant. It was also PW1's evidence that the defendant issued a non-payment ledger requesting the Defendant to pay the outstanding amount for the supplied petroleum product worth TZS 130,657,104.00. To supplement his testimony, PW1 tendered a ledger account which was admitted in evidence as Exhibit P1.

PW1 went on to adduce that out of malice and intention of not paying the outstanding amount, the defendant issued post-dated cheques which were dishonored on the due date by the banks for insufficient funds in her account. He tendered seven (7) bounced cheques, which were admitted in evidence as Exhibit P2 collectively. PW1 adduced further that, despite the plaintiff's several demands including the demand letter issued by her (plaintiff) counsel on the 11th day of May, 2020 (Exhibit P3), the defendant had ignored, neglected and

failed to respond. He averred further that reconciliation for the payment of outstanding amount was not conducted.

On being cross-examined by the defendant's counsel, PW1 stated that the defendant has no intention of paying the debt. He admitted that the defendant had paid part of the debt. However, he clarified that the payment was made before filing of this case. PW1 stated further that the plaintiff did not supply substandard products to the defendant and that he was not aware whether the oil supplied by the plaintiff caused damage to the engines of the defendant's vehicles.

When re-examined, PW1 adduced that the plaintiff did not receive any complaint about the oil supplied to the defendant. He testified that the oil supplied by the plaintiff were in accordance with the standards set by the Government. PW1 adduced further that the amount paid by the defendant is three million shillings as reflected in his witness statement.

The defendant had filed the witness statement of Bahman Said. However, when the case was called on for hearing, the defendant's sole witness failed to appear for cross-examination. The learned counsel for the defendant told the Court that he had failed to locate his witness. The Court held the view that there was no good cause for adjournment of the case. Consequently, the witness statement filed by the defendant was struck out under rule 56(2) of the High Court (Commercial Division) Procedure Rules, 2012 (as amended). In view

of Order XVII, Rule 3 of the Civil Procedure Code [Cap. 33, R.E. 2019] (the CPC), the Court found it apposite to proceed with the case by making decision basing on the evidence adduced by the plaintiff.

Therefore, having gone through the pleadings and the evidence by the plaintiff, I will proceed to determine the two issues pertaining to this case.

The first issue calls this Court to decide whether there was a breach of contract by the defendant. In terms of the pleadings and the evidence adduced, it was established that on diverse dates, the plaintiff supplied the defendant petroleum products. As stated herein, the defendant did not dispute to have received the same from the defendant. In other words, parties did not dispute to have entered contract for supply of petroleum products on credit.

Now, regarding the issue under consideration, PW1 deposed that the defendant breached the contract by neglecting or failing to pay TZS 130,567,104/= arising from the value of supplied products. Although the defendant's pleaded that the amount claimed by the plaintiff had been exaggerated, she admitted to have issued cheques which were dishonored due to insufficient funds in her account. That fact is reflected in paragraph 5 of the defendant's amended written statement of defence. The defendant also averred in paragraph 4 of the amended written statement of defence, that she had paid "part of the debt" amounting TZS. 3,000,000/= and that they were under reconciliation stage on the outstanding balance.

Therefore, having considered PW1's evidence and the facts deposed in amended the written statement of defence, I am of the considered view that the plaintiff has proved that the defendant defaulted to pay for the petroleum products supplied to her thereby breaching the contract. The defendant's allegation that parties were making reconciliation was not proved. Also, there is no sufficient evidence to prove that the plaintiff supplied substandard petroleum products which caused the defendant to suffer damage. For the foresaid reasons, the first issue is resolved in affirmative.

I now move on to the second issue on reliefs which parties are entitled to. Having decided the first issue in affirmative, I declare that the defendant was in breach of the contract by failing to pay the amount she owes the plaintiff. That being the case, the plaintiff is entitled under section 73 of the Law of Contract Act [Cap. 345, R.E. 2019], to receive from the defendant, compensation for any loss or damage caused to her, and which naturally arose in the usual course of things from the breach.

The plaintiff has prayed for TZS 130,567,104.00, being the outstanding amount of petroleum products supplied to the defendant. In my view, the relief for payment of outstanding amount is special damages. It was therefore required to be proved in evidence. As indicated earlier, the defendant's defence was to the effect that the outstanding amount claimed by the plaintiff had been exaggerated and that it was fictitious and unfounded. Therefore, the plaintiff

was duty bound and expected to strictly prove the same. She tendered the ledger account (Exhibit P1) to prove her claims. In my view, the ledger account is by itself, not sufficient to prove the plaintiff's claims. I say so because the said ledger account is maintained by the plaintiff. She is the one who prepared and printed it. Much as the plaintiff pleaded that all petroleum products were supplied at the request or order made by the defendant, she ought to have tendered in evidence the defendant's request/order for the petroleum product, the consignment note and/ or delivery notes to prove the petroleum products supplied to or received by the defendant, and tax invoices issued against each request or order made by defendant. In absence of the said request/order, consignment notes, delivery notes and tax invoices, the ledger account relied upon by the plaintiff cannot be used to prove that the outstanding sum is TZS 130,567,104.

Apart from the ledger account, the plaintiff tendered seven (7) cheques (Exhibit P2 collectively) issued by the defendant for purposes of payment of petroleum product supplied to the defendant. These were cheques worth TZS. 10,000,000/= (Exhibit P2(a)), TZS 10,000,000/= (Exhibit P2(b)), TZS. 5,000,000/= (Exhibit P2(c)), TZS 10,000,000/= (Exhibit P2(d)), TZS. 10,000,000/= (Exhibit P2(e)), USD 10,000 (Exhibit P2 (f)) and TZS. 11,020,020/= (Exhibit P2(g)). PW1 testified on oath that the said cheques were dishonored due to insufficient funds in the defendant's account.

I have indicated earlier that the defendant admitted to have issued the dishonored cheques pleaded and appended to plaint. Upon going through the record, I have noted that two cheques to wit, Exhibit P2 (a) worth TZS. 10,000,000/= and Exhibit P2 (g) worth TZS. 11,020,020/= were neither appended nor referred to in the plaint and witness statement. In view of the provision of Order XIII, Rule 2 of the CPC, the said two cheques (Exhibit P2(a) and (g)) ought not to have been admitted. Therefore, the defendant cannot be taken to have admitted the amount stated in the said cheques. For the foresaid reasons, I will not consider Exhibit P2 (a) and (g)).

As a result, the Court finds that the defendant admitted TZS 35,000,000/= and USD 10,000 appearing in the cheques (Exhibit P2 (b), (c), (d), (e) and (f)) pleaded in the plaint and referred to in the witness statement of PW1. The Court decrees therefore, that the amount due and payable to the plaintiff is TZS 35,000,000/= and USD 10,000.

Regarding general damages, it is trite law that such damages are normally awarded under the discretion of the court in question. The general damages are also premised on what the law assumes to be the likely and probable result of the defendant's wrongful act or omission. The purpose of general damages is to put the plaintiff, who suffers damage due to the wrongful act caused by the defendant, in a position he was, before the occurrence of the

said wrongful act. Generally, special damages includes damages for pain, suffering, inconvenience and anticipated future loss, to mention but a few.

In the instant case, PW1 testified how the plaintiff made follow up of the matter with the defendant and how the cheques issued were dishonoured by the banks. It is also evident that the plaintiff was deprived the use of her money. Therefore, having considered the circumstances of this case, I hereby grant TZS 4,000,000 as general damages for the plaintiff.

The other relief is interest at commercial rate per annum on the outstanding amount from the date when the claimed amount became due to the date of settlement of the entire claim. At any rate, this relief has no legs to stand, for, **first**, the fact that the plaintiff did not prove that her contract with the defendant attracted Interest. **Second**, it was the plaintiff's case that the petroleum products were supplied to the defendant on diverse dates. This implies that, the amount claimed by the plaintiff became due on diverse dates. However, nothing was stated by the plaintiff to prove the due dates of the amount claimed. In that regard, the Court finds no basis of awarding the claimed Interest.

About the relief of interest on the decretal sum at the court rate, the Court is guided by the provision of Order XX, Rule 21(1) of the CPC, which empowers the courts to award interest at the rate of 7% per annum from the

date of judgment until satisfaction of the decree. And therefore, I hold so in this regard.

Another relief prayed is costs of the suit. Basing on the foregoing findings and the provision of section 30 of the CPC, I hold that the plaintiff is entitled to costs of this suit.

In fine therefore, judgment is hereby entered for the plaintiff in the following terms:-

1. The defendant is in breach of the contract to supply petroleum products;
2. The defendant shall pay the plaintiff TZS 35,000,000/= and USD 10,000 as outstanding amount for the supplied petroleum product;
3. The defendant shall pay the plaintiff TZS 4,000,000/= being general damages;
4. The defendant shall pay the plaintiff interest on decretal sum at the court's rate of 7% per annum from the date of judgment up to the date of payment; and
5. The defendant shall pay the plaintiff costs of this case.

Order accordingly.

DATED at DAR ES SALAAM this 18th day of October, 2021.

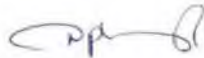

E. S. Kisanya
JUDGE

COURT: Judgment delivered this 18th day of October, 2021 in the presence of Mr. John Mfangabo, learned advocate for the plaintiff and Mr. Titus Aron, learned advocate for the defendant. B/C Ms. Sania present.



E. S. Kisanya
JUDGE
18/10/2021

COURT: Right of appeal is explained to the parties.



E. S. Kisanya
JUDGE
18/10/2021