IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO. 68 OF 2022

HASS PETROLEUM (T) LIMITED..... PLAINTIFF

VERSUS

UKOD INTERNATIONAL
COMPANY LIMITED.....DEFENDANT

JUDGMENT

Last order: 07th day of August 2023
Judgment: 22ndof September 2023

NANGELA, J.

The Plaintiff herein sued the Defendant for payment of a sum of 698,044,603.84 which remains outstanding to date. For better appreciation of how the claims came about I will set out the brief facts constituting this matter.

It is alleged that on diverse date between 2nd April 2015 and 23rd August 2020, the Plaintiff supplied and delivered petroleum products to the Defendant on credit basis, such goods being of varied values and volumes. Initially, however, the parties used to transact based on purchase order, delivery

notes and/or receipts whereby the Defendant would acknowledge receipts upon delivery/collection.

On the 11th day of December 2018, the parties concluded a formal supply agreement, referred to as the *Petroleum and Petroleum Products Supply Agreement* for credit supply of petroleum goods to the Defendant. On 30th April 2020 the supply had an accumulated outstanding balance amount equal to TZS 689,044,603.84 due and payable to Plaintiff. Despite being served with a demand notice, the Plaintiff alleges that the Defendant has refused, failed, and/or neglected to pay the outstanding balance, and, hence, this suit was filed and prying for Judgement and Decree against the Defendant as follows:

1. Immediate Payment of TZS 689,044,603.84.
2. Payment of interest on the outstanding balance at the commercial rate of 25% from 1st of May 2021 to the date of Judgement.
3. Payment of further interest at Court's rate of 12% from the date of

Judgement to the date of payment in full.

4. Payment of costs of this suit; and,
5. Any other relief the court deems fit to grant.

On the 15th of August 2022 the Defendant herein filed her written statement of defence and raised two preliminary points of law in objection to the hearing and determination of this suit. However, on the 23rd of February 2023 this court overruled the Defendant's objections and the suit proceeded to its preliminary hearing stages.

When the parties convened for a final pre-trial hearing on the 27th of March 2023, Ms Shiza Ahmad, learned advocate appeared for the Plaintiff while Mr. Osacar Milanzi appeared for the Defendant. The following issues were framed, agreed upon and recorded by the court as issues which will guide it while determining this suit:

1. Whether there was a binding contract as between the parties.
2. If the first issue is in the affirmative, whether there was breach thereof.

3. What is the actual amount which the Defendant is indebted to the Plaintiff if any.
4. To what relief(s) are the parties entitled.

In the attempt to address those issues, the Plaintiff called one witness, Mr. Abdulrahim Mohamed Ahamed who testified as Pw-1. The Defendant called one witness as well named Mr. KamuhuzaByabusha, who testified as Dw-1. In terms of representation, at the hearing stage, the Plaintiff enjoyed the services of Mr. Adronicus Byamungu, learned counsel, while Ms. GemaMrina, learned counsel appeared for the Defendant.

In his testimony, Pw-1 told this court that currently he works with Lake Oil Company Ltd as Managing Director, but he used to work for the Plaintiff previously from the year 2013 to the year 2022 where he was the operations manager. He testified that, from the year 2013 the Defendant used to transact various petroleum products with the Plaintiff. However, on or about the month of December 2018 the parties signed an agreement for supply of such products since the Defendant needed a reliable/dependable supplier. The agreement was tendered and admitted as **Exh.P-1**.

According to Pw-1 **Exh.P-1** was to commence of the 5th of January 2019 and its life span was unspecified. Under it, Pw-1 told this court that the Plaintiff was to supply petroleum products to the Defendant on credit basis payable within a specified period of 15days from the day of supply. He told the court that on the 5th day of January 2019, the opening balance of the said supply was TZS 66, 240,000 and all transactions, transaction numbers, purchase orders, delivery notes, invoices and value, credit amount and amount paid were all entered and recorded in a single account statement maintained by the Plaintiff for the Defendant.

According to Pw-1 such statements represented the true record and account of each transaction during the period under which the Defendant transacted with the Plaintiff. He tendered the customer's account statement in court and the same were collectively admitted as **Exh.P.2**. He told this court that ordinarily, the Defendant used to place orders for a desired quantity by way of purchase order and upon conformation the Plaintiff would arrange for the delivery and upon such delivery the Defendant would sign a delivery note.

It was a further testimony of Pw-1 that, later the Plaintiff will issue an invoice for payment in the Defendant's transaction account statement and any payment received was to be credited into that account and applied to reduce the running balance exhibited and issued with a receipt of payment.

He told the court that the Defendant had gained trust with the Plaintiff to the extent that at times the running balance could rise to two (2) billion Tanzanian Shillings and the Defendant was allowed to service it at an allowable reasonable period. He stated, however, that, as time went by the Defendant trust started to decline and later stopped servicing the running balance completely after receipt of a last supply on the 23rd of August 2020 when the running balance stood at TZS 715,858,930.80.

According to Pw-1, after a long period on the 30th of April 2021, after applying a credit Memo of TZS 62,814,326.96, the outstanding balance stood at TZS 689,044, 603.84, an amount which the Defendant never disputed at any given time but kept on promising to settle the amount. Pw-1 told the court that he personally made efforts to contact the Defendant's chairman and Managing Director, one Ronald D. Jumbalekitti

and in August 2020 the credit supply facility was suspended due to the Defendant's default.

It was Pw-1's testimony on 12th of May 2021 Mr. Ronald sent him an email referring to a meeting they had held on the 29th of April 2021 where he confirmed the outstanding balance of TZS 689,044,603.84 and promised to pay 50% by Mid-May 2021. Pw-1 tendered the emails and the same were collectively admitted as **Exh.P3**. Pw-1 told this court that the continued failure to make good the debt, forced the Plaintiff to send a formal demand letter to the Defendant. The said demand letter was admitted in court as **Exh.P4.**

During cross-examination, Pw-1 told this court that the documents submitted as Exhibits to the court do prove that there was delivery of the goods supplied to the Defendant. He told the court that, the invoices were being emailed to the Defendant as well. He told the court that the EFD figures and those in the invoices should be matching. He told the court that the parties tried to carry out reconciliation and admitted that clause 8 of the **Exh.P-1** was about dispute resolution, and the same had been exhausted.

Upon being re-examined, Pw-1 told this court that, there are client orders and invoices as well as delivery notes which together prove that there was a credit supply of goods as between the Plaintiff and the Defendant. He told the court that the client used to send trucks to the Plaintiff's depot and the Plaintiff executed the orders. He told the court that the staff from the Defendant used to countersign the delivery notes. The Plaintiff's case came to a closure giving room to the Defendant's case.

As I stated earlier, when the Defence case opened the Defendant called one witness only. The witness testified as Dw-1. In his testimony in chief, he told this court that he works as the General Manager of the Defendant and has been working for the Defendant for several years. He admitted that the Plaintiff ad the Defendant did enter into an agreement for the supply of petroleum products (**Exh.P-1**) and that the arrangement was based on credit mode of supply.

Dw-1 told this court that, **Exh.P-1** was later frustrated by the Plaintiff who failed to supply as agreed, failed to keep proper records of the accounts, and consequently demanding

double payments as well as refusing to participate in reconciliation meetings to establish the actual liability.

Dw-1 told this court that as per **Exh.P-1**, the parties had agreed to the modality of dispute resolution and the matter ought to be to have been arbitrated. He told the court that in their reviews they discovered anomalies in the invoices and consequently, the Defendant should not be asked to pay the amount claimed.

During cross-examination Dw-1 admitted that Mr. Ronald Njambalekitti was his predecessor and does appear on the **Exh.P-3** (the emails) dated 19th May 2021 which was about settlement of the claims made by the Plaintiff. He admitted that Mr. Njambalekitti has promised to pay in a short period of time, but the promise was never fulfilled.

Dw-1 told the court further, that, the Defendant was ready to pay after the reconciliation was done. According to him, the Defendant do also have her own records though he never produced such in court. He admitted, however, that the claimed amount has never been paid to the Plaintiff and it is the same amount. He told this court that the Defendant is not

challenging Mr, Ronald's email but maintained that the claims were erroneous.

During re-examination he maintained that what was being claimed was less though he does not remember the actual figures. The defence case came to a closure and the learned counsel for the parties prayed to file closing submissions. Theydid duly file such submissions and, together with the testimonies, the pleadings and documents submitted to the court, will form material information which I will refer to as I respond to the issues which earlier hereinthis court framed and recorded.

However, let it be made clear that I will not address every fact and matter arising from the testimonies and evidence offered. Instead, I will only concentrate on facts and evidence which I consider important for the purposes of my judgment. The fact that matters may not be referred to does not mean they have not been considered and borne in mind.

Before I address the issues raised andagreed upon by the parties herein, let me state that, in law the Plaintiff bears the primary duty of proving her case. This is legally referred to as the legal burden of proof. It is provided in sections 110 to

112 of the Evidence Act, Cap.6 R.E 2019, therefore, that, he who alleges must prove.

See, for instance, the cases of **The Registered Trustees of Joy in the Harvest vs. Hamza K. Kasungura**, Civil Appeal No.149 of 2017 as well as various case laws such as the cases of **Jasson Samson Rweikiza vs. NovatusRwechunguraNkwama**, Civil Appeal No.305 of 2020 (unreported), **Paulina Samson Ndawavya vs. Theresia Thomasi Madaha**, Civil Appeal No. 45 of 2017 (unreported) and **BereliaKarangirangi vs.Asteria Nyalavambwa**, Civil Appeal No.237 of 2007 (unreported) are all relevant and confirm that principle.

Turning back to the issues, the first issue which was agreed upon was:

> Whether there was a binding contract as between the parties the parties.

In the case of **LouisDreyfuls Commodities Tanzania Ltd vs. Roko Investment Tanzania Ltd,** Civil Appeal No.4 of 2013 (unreported), the Court of Appeal re-stated the general principle about contract to the effect that, a contract

would arisebecause one party makes an offer or proposal, and the other party accepts it to procure what in law is referred to as *consensus ad idem*.

Clarity on that principle may also be obtained from the Law of Contract Act, Cap.345 R.E 2019 where all agreements are contracts if they are made by free consent of the parties who are competent to contract, for a lawful consideration and with a lawful object and are not on the verge of being declared void. Section 10 of the Law of Contract Act, Cap.345 R.E, 2019is in essence to that effect.

Under section3 (1) of the Sale of Goods Act, Cap.214 R.E 2002, provides for a contract for a contract of salle and an agreement to sell. The Act provides that:

> "A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called price, and there may be a contract of sale between one part owner and another."

In the suit before this court, there is no dispute that on the 3rd of December 2018 the Plaintiff and the Defendant

signed a supply agreement (**Exh.P-1**) whereby the Plaintiff agreed to supply petroleum products to the Defendant at a competitive price and on credit line of TZS 30,000,000,000/- and the Defendant agreed to pay for such supplies within 15 days from the date of supply.

By looking at **Exh.P-1** and the testimony of Pw-1 and Dw-1 who do not dispute the fact that parties did enter into an agreement of that nature, I do not have any hesitation that the parties had a valid agreement which is legally enforceable. It is also clear that, **Exh.P-1** was duly signed by representatives of both parties on the 11th of December 2018.

From a legal point of view, a signature, when included in written agreement as **Exh.P-1,** signifies the willingness of the parties to be bound by the terms of a contract. It is an indication that the parties did read, understand, and agree to the terms and conditions of the agreement. From that position, it follows that, since both the Plaintiff and the Defendant herein expressed their willingness to be bound by **Exh.P-1** and given that **Exh.P-1** has all necessary ingredients of a binding and legally enforceable agreement, the first issue herein is responded to in the affirmative.

The above noted conclusion regarding the first issue, allows me to turn my attention to the second issue which was/is crafted as follows:

> If the first issue is in the affirmative,
>
> whether there was breach thereof.

Generally, a breach of contract may be defined as a material non-compliance with the terms of a legally binding contract. This means that, where a party to a contract fails or refuse to discharge her/his obligations the party who fails to perform such obligations to the detriment of the other party is said to have breached that agreement.

In this suit before me as I look at **Exh.P-1**, the parties had agreed to clear terms under it. Clause 3 of the **Exh.P-1** provided, for instance that:

> "The price of Petroleum and Petroleum Products shall be calculated by the Seller in their proforma invoice and acknowledged by the Buyer vide Local Purchase Order, LPO."

It was also a term under **Exh.P-1** that, the Seller (Plaintiff) was to:

"bill the Buyer at the agreed price (as per the Seller's invoice) for all Petroleum and Petroleum Products purchased and collected in the preceding calendar month. Invoices shall be in a form satisfactory to the Buyer and be of sufficient detail to provide Buyer all reasonable information necessary to conform their accuracy. Payment shall be made via wire transfer (RGS) payable or cheque to Seller."

Clause 5.0and 5.1 of **Exh.P-1**are also worth reproducing here. Those clauses provide as follows:

5.0 The Seller shall offer the Buyer a credit period of 15 (fifteen) days from beginning of the month.

5.1 Seller has offered and Buyer has accepted a credit line of TZS30,000,000.00(Tanzanian Shillings Thirty Million Only."

As I look at the testimony of Pw-1 and the contents of **Exh.P-1,Exh.P-2** and **Exh.P-3** there can be no doubt, that, the Plaintiff supplied to the Defendant petroleum products

worth TZS 689,044,603.84. In his testimony, for instance, Pw-1's testified that on the 29th of April 2021 he had a meeting with Mr. Ronald Jumbalekitti who was managing the affairs of the Defendant and that, on the material date Mr. Ronald confirmed the correctness of the outstanding balance of and promised to pay 50% by Mid-May 2021on 12th of May 2021.

Pw-1'stestimony of is clearly corroborated by **Exh.P-3,** the email sent by him to Mr. Ronald regarding the outstanding amount and reference to the 29th of April commitment made by Mr. Roland. The emails read as follows:

> "From: Abdirahman Ahmed [mail:abdrahman.ahmed@HASSPETROLEUM.COM]
> Sent : Wednesday, May 12, 2021 3:10 PM
> To: rjumbalekitti@ukodoil.com; jama@ukodoil.com
> CC: Abdulsalam Salim Mohamed <Abdulsalam. Salim@HASSPETROLEUM.COM>, Mohamud Salat Mohamed <Mohamud. Salat @ HASSPETROLEUM. COM>; Solomon Osundwa<Solomon.Osundwa@ HASSPETROLEUM.COM>; Abdulkadir Ahmed Hussen<Abdulkadir@HASSPETROLEUM.COM
>
> SUBJECT: SETTLEMENT OF LONG OUTSTANDING PAYMENT
>
> Dear Chairman, MD
> Kindly refer to our meeting on 29thApril at Serena with the presence of HASS Group CEO in which you committed to clear 50% of the outstanding by mid-

May. As you are aware, the total outstanding amount is 689,044,604. Therefore, 50% of which will be due as per commitment is TZS 344,522,304.

Kindly share proof of payment once the transaction is done.

Regards.

Country Manager

HASS Petroleum (T) Ltd."

The above noted e-mail from Hass Petroleum (T) Ltd dated 12th of May 2021, was responded by the Defendant's Managing Director Mr. Ronald Jumbalekitti though his email dated 19th of May 2021 at 10:05 AM. His email was as follows:

"**From**: Ronald D Jumbalekitti[mail to: rjumbalekitti@ukodoil.com].**Sent** : Wednesday, May 19, 2021 10:05AM

To: Abdirahman Ahmed [mail:abdrahman.ahmed@HASSPETROLEUM.COM] ; jama@ukodoil.com

CC: Abdulsalam Salim Mohamed <Abdulsalam. Salim@HASSPETROLEUM.COM>, Mohamud Salat Mohamed <Mohamud. Salat @ HASSPETROLEUM. COM>; Solomon Osundwa<Solomon.Osundwa@ HASSPETROLEUM.COM>; Abdulkadir Ahmed Hussen<Abdulkadir@HASSPETROLEUM.COM

Subject: SETTLEMENT OF LONG OUTSTANDING PAYMENT

Abdirahman,

We **acknowledge** receipt of your email and understand that **we had done (sic) a commitment** but due to unavoidable circumstances beyond our control with out bankers we are not able to fulfil the commitment. However, we are resuming depositing

> some funds towards **reduction of the amount with a view to clear it** within shortest time possible. Meanwhile we request of you have transit load you give our rucks (sic) an opportunity to load." (Emphasis added)

As the above emails indicate, the Defendant's Managing Director, by then Mr. Jumbalekitti, admitted that he made a commitment to pay and the amount referred to and for which a commitment to pay was made, and a promise to "reduce it" with a view to "clear it", was no other amount than the one which was referred to in the email sent by Pw-1 on the 12th of May 2021, i.e., the **TZS 689,044,604**.

I do take note that **Exh.P-4** shows a demand for payment of TZS 689,044,063.84 which amount also appears in the Plaint. However, the difference between what is shown in the **Exh.P-3** and in **Exh.P-4** is too trivial to make any sense. Considering what the Latin Maxim *de minimis non curat lex* holds, this court will not be taken for a ride by such a negligible difference.

Since **Exh.P-2** and **Exh.P-3** shows that the Defendant has never paid the amount claimed despite all the proof that she received a supply of petrol products from the Plaintiff on diverse dates and time, as per **Exh.P-2**, my

response to the third issue is in the affirmative, i.e., the Defendant is in breach of the supply agreement (**Exh.P-1**) for failure to pay the agreed price for the supplies made by the Plaintiff.

Having so stated, the fourth issue to consider is:

> What is the actual amount which the Defendant is indebted to the Plaintiff if any.

This fourth issue has been responded to in the third issue considered hereabove. In short, **Exh.P-1** and **Exh.P-4**, taken together with the testimony of Pw-1, indicate that the amount claimed is **TZS 689,044,603.84** this being the amount claimed in the Pleadings.

The final issue to dispose of is the fifth one which was/is

> To what relief(s) are the parties entitled.

In essence, a contract is a fountainhead of concurrent set of rights and duties assumed by each of the parties to it. In the case of **Fabec Investment Ltd vs.MES International Financial Services (PTY) Ltd & Another**, Commercial Case

No.07 of 2022 (unreported), this court had the following to say:

> "when parties decide to mutually ink an agreement, their mutual conduct does signify as well, a sense of their readiness and acceptance to be bound by the agreement and, therefore, each party is expected, to honour the promises or obligations that go with that agreement to the letter. In that regard, each party has an entitlement under that agreement arising from the other party's undertakings and, it is for that matter, the reason why the law of contract gets concerned itself with enforcement of the obligations arising out of such valid transfer of entitlements which are already vested in each of the parties. All that signifies why it is vital to honour what parties agree upon in their contract, that being a fundamental or

> cardinal principle in the law of contract."

The importance of honoring contractual commitments to their letter was also emphatically echoed by the Court of Appeal in the case of **Simon Kichele Chacha vs. Aveline M. Kilawe**, Civil Appeal No.160 of 2018 (unreported). In that case, the Court of Appeal of Tanzania held a view that:

> "Parties are bound by the agreements they freely entered into and this is the cardinal principle of the law of contract. That is, there should be a sanctity of the contract as lucidly stated in *Abualy Alibhai Azizi v. Bhatia Brothers Ltd* [2000] T.L.R 288 at page 289 thus: - 'The principle of sanctity of contract is consistently reluctant to admit excuses for non-performance where there is no incapacity, no fraud (actual or constructive) or misrepresentation, and no principle of public policy prohibiting enforcement."

The above noteworthy observationsare the basic tenets of all what brings comfort to contracting parties. It gives credibility to the law of contract and, together with effective enforcement mechanism including through courts of law, serves to alleviate mistrust in the present world of uncertainty.

It has therefore been said through the Latin maxim"*ubi jus, ibiremedium'* meaning that where there is a right, there is a remedy. An innocent party to a contract, like the Plaintiff herein, whose rights under it has been infringed because of the breach committed by the Defendant is entitled to remedy. Remedy for breach of contract may vary depending on the circumstances leading to that breach.

Under section 50(1) of the Sale of Goods Act, Cap.214 R.E 2019, for instance, law provides that:

> "Where, under a contract of sale, the property on the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of goods."

The suit at hand is indeed an action maintained by the Plaintiff in line with what section 50(1) of the Sale of Goods Act, Cap.214 R.E 2019. In the suit at hand, there is no doubt that the breach committed by the Defendant resulted into damages which attracts a remedy.

It is also worth noting, a breach of contract does out an aggrieved innocent party to some disadvantage or inconveniences or may cause loss to him or her. As such, the injured party must be adequately compensated. The quantum of damages is ordinarily determined considering the magnitude of the loss resulting from the breach.

In view of that, and in line with the provisions of sections 73 (1) of the Law of Contract Act, Cap. 345 R.E 2019, damages resulting from breach of contract are awarded to an innocent injured party as an entitlement. That particular provision states as follows:

> "73.-(1) Where a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby,

> which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it."

Essentially, damages are of compensatory in nature and more often they fall in two limbs: special (consequential damages) and general damages. The law is that, where special damages are claimed, (and these cover any actual loss suffered by the innocent party) such kind of damages must not only be **pleaded** but also **particularised** and strictly **proved**. The cases of **Stanbic Bank Tanzania Ltd vs. Abercrombie & Kente (T) Limited**, Civil Appeal No.21 of 2001 (CAT) (unreported) and**Cooper Motors Corporation (T) Ltd vs. Arusha International Conference Centre** [1991] TLR 165 (CAT)do support that settled legal position.

As for general damages, these are of ordinary nature and arises naturally and directly out of the breach in the usual course of things. It follows, therefore, that an aggrieved person's right to damages applies most naturally for the direct or general losses suffered. In the case at hand, the Plaintiff's prayer is for specific damages in the form of payment of TZS

689,044,603.84 and interest thereon. The Plaintiff has not asked for general damages and a court of law does not give that which has not been prayed for and a relief not founded on the pleadings cannot be granted. See the Court of Appeal decision in the case of **Kombo Hamis Hassan v. Paraskeyoulous Angelo,** Court of Appeal No. 14 of 2008 (unreported).

Since the specific damages claimed by the Plaintiff have been pleaded and particularized in paragraphs 3, 6, and 11 of the Plaint, and given that the same has been strictly proved by the Plaintiff as demonstrated hereabove, it is my finding that the Plaintiff is entitled to be paid as prayed. That is particularly so on the ground, as well, that, she has managed to establish her case to the required standards of proof on the preponderances of probability.

In the upshot of the above considerations, this court grants Judgement and Decree in favour of the Plaintiff and settles for the following orders:

1. That, the Defendant is hereby ordered to pay to the Plaintiff the outstanding sum amounting

to TZS 689,044,603.84 being part of the price for the petroleum products supplied to the Defendant by of the Plaintiff.

2. That, the Defendant is to pay interest on the outstanding balance at the commercial rate of 25% from 1st of May 2021 to the date of Judgement.
3. That, the Defendant shall pay a further interest at Court's rate of 7% on the decretal amount from the date of this Judgement to the date of payment in full.
4. That, the Defendant is hereby ordered to pay costs of this suit.

It is so ordered.

DATED AT DAR-ES-SALAAM ON THIS 22ND DAY OF SEPTEMBER 2023

HON. DEO JOHN NANGELA
JUDGE

Right of Appeal Explained