IN THE COURT OF APPEAL OF TANZANIA

AT MOSHI

(CORAM: MWARIJA, J.A., KENTE, J.A And MGONYA, J.A.)

CIVIL APPEAL NO. 19 OF 2021

KAFOI ESTATES LIMITED ..... APPELLANT

VERSUS

ELIA JOHSON KIWIA t/a Kiwia Agrovet ..... RESPONDENT

(Appeal from the Judgment and decree of the High Court of Tanzania at Moshi)

(Mutungi, J.)

dated the 28th day of August, 2020

in

Civil Case No. 6 of 2018

JUDGMENT OF THE COURT

13th & 22nd March, 2024

MWARIJA, J.A.:

The respondent, Elia Johnson Kiwia t/a *Kiwia Agrovet* instituted a suit in the High Court of Tanzania at Moshi against the appellant, KAFOI Estate Limited claiming for the following reliefs:-

(a) Payment of TZS 444,970,512.78 being a principal sum plus interest resulting from breach of the agreement by the appellant to pay an outstanding amount of TZS

41,081,000.00, the value of Agro inputs supplied to it in April 2012 on credit by the respondent.

(b) Payment of interest of 5% per month from the date of judgment until the date of full satisfaction of decree in terms of the parties agreement dated 8th February 2013.

(c) Payment of general damages of TZS 50,000,000.00 for loss of business, breach of trust and mental stress resulting from debt due.

(d) Costs of the suit, and

(e) Any other reliefs which the court would deem fit and just to grant.

The facts giving rise to the suit and later, this appeal, are not complicated. In April 2012, the respondent, who was until the material time, the sole proprietor of the business entity known as *Kiwia Agrovet,* entered into oral agreement with the appellant whereby the latter was to be supplied with Agriculture inputs on credit terms. Payment for the supplied inputs was to be paid within the period not exceeding two weeks from the date of supply. The parties transacted the business as agreed but as from June 2012, the appellant started to default payment of the supplied inputs and at the end of that month, the unpaid amount was TZS

41,081,000.00. On 28th February 2013, the appellant reduced that debt by crediting the respondent's Account No 150234066400 maintained at CRDB Plc, Holand House, with TZS 20,000,000.00, leaving the balance of TZS 21,081,000.00.

The respondent contended that, the payment of TZS 20,000,000.00 was made after the parties had entered into an agreement signed before Mr. Colman Mark Ngalo, advocate on 8th February 2013. The parties agreed on the schedule of payment by the appellant of the amount of TZS 41,081,000.00 which was outstanding. The respondent stated further that, apart from payment of the amount of 20,000,000.00, the appellant failed to honour the agreement for payment of the balance of 21,081,000.00 on or before 30th March 2013. Instead, it paid the amount of TZS 10,000,000.00 on 11th December 2014. He thus instituted the suit after serving the appellant with a demand notice dated 10/11/2016 (exhibit P6). He sought the above stated reliefs.

In its written statement of defence, the appellant did not deny that it owed the respondent the amount of TZS 41,081,000.00, arising out of the oral contract of supply to it of agro inputs by the respondent on credit. It

contended however, that payment of the supplied inputs was to be effected after harvesting of farm produce. According to the appellant, payment of the outstanding amount of TZS 41,081,000.00 could not be made because no harvest was realized as a result of the crop failure. That notwithstanding, it went on to state, it took steps to settle the debt by instalments of TZS 20,000.000.00 and TZS 10,000,000.00 thus remaining with the amount of TZS 11,081,000.00 which was due at the time when the suit was instituted.

The appellant disputed the genuinity of the agreement alleged to have been entered by the parties in the office of Mr. Colman Mark Ngalo, advocate. It contended that, the agreement was signed by one Omari Hussein who did not have the authority to do so. The appellant admitted however, that it owed the respondent TZS 11,081,000.00 but not any interest arising from it.

At the hearing of the suit, the respondent, Elia Johson Kiwia who gave evidence as PW1, was the only witness for the plaintiff's case. On the part of the appellant, Felix Gamaliel Mosha (DW1) the appellant's Director was also the only witness for the defendant's case. In his evidence, PW1

stated that, in execution of oral agreement between him and Anna Felix Mosha, one of the appellant's Directors who negotiated with him on behalf of the appellant company, supplied agro inputs on credit to the appellant between April and June 2012. From the supplied inputs the appellant paid TZS 150,000,000.00 and the amount of TZS 41,081,000.00 remained unpaid. It was the respondent's evidence that, despite the follow-up on the outstanding amount, the appellant could not settle the debt but kept on giving excuses with a view of avoiding to pay it.

It was PW1's further evidence that, after several demands for payment of the outstanding amount, in February 2013, Anna Felix Mosha informed him that DW1 had agreed to pay the amount but proposed to him that they should enter into an agreement prescribing the time frame for payment by instalments. PW1 agreed with the proposal and on 8/2/2013 the agreement was prepared and signed in the office of Mr. Ngalo, Advocate. According to the agreement, which was signed by him and one Hussein Omari, an official of the appellant's company in the presence of DW1, the debt was to be settled in two equal instalments of TZS 20,500,500.00. The first instalment was to be paid on or before 28/2/2013 and the second one by 31/3/2013. It was agreed further that, in the event

the appellant defaults to effect payments in terms of the agreement, interest of 5% would be charged on the outstanding amount until payment of the whole debt. A copy of the agreement, certified by the Registrar of Titles was admitted in evidence as exhibit P2.

Testifying further, PW1 stated that, on the date on which the first instalment was due, that is on 28/2/2013, the appellant paid TZS 20,000,000.00. After that payment however, it defaulted to pay the balance despite several reminders until on 11/12/2014 when, through the assistance of Mr. Ngalo, advocate the appellant paid TZS 10,000.000.00. PW1 went on to state that, as from that date, no more payments were made by the appellant and thus decided to institute the suit the decision of which has given rise to this appeal. That was after his demand notice in which he claimed for TZS 169,000,000.00 from the appellant, yielded no fruits.

On how he arrived at the amount of TZS 444,970,512.78, the principal sum claimed in the plaint, PW1 deponed that, he calculated the interest of the outstanding amount of TZS 11,081,000 plus accrued interest (compound interest) at the rate of 5% per month from 30/3/2013 to the

date of institution of the suit and also 5% per month from the date of the agreement to the date of full payment. As for the damages of TZS 50,000,000.00, he contended that, he claimed the same because, as a result of the default by the appellant to pay the outstanding amount as agreed, his business suffered, occasioning hardship to him and his family and caused him to lose the trust of the companies, including Balton which supplied agro-vet inputs to him on credit.

Testifying for the appellant, DW1 did not dispute that, between April and June his company was supplied by the respondent, agro inputs valued at TZS 41,081,000.00 and that, the inputs were supplied on credit. He testified further that, in March 2013, the respondent was paid TZS 20,000,000.00 and in December 2013, the amount of TZS 10,000,000.00. He went on to state that, within that period, the company changed its management team with a view of ensuring that the debts are cleared. He later learnt however, through the demand letter (exhibit P6), that the respondent's outstanding debt had not been paid. He also learnt from the letter that, the amount claimed was TZS 168,000,000.00 which included interest of 5% while that had never been agreed upon between his company and the respondent.

He disputed exhibit P2 contending that, there was no agreement signed in the office of Mr. Ngalo, advocate on the mode of payment of the outstanding amount. According to him, the purpose of the meeting between him, Mr. Ngalo, advocate and Hussein Omari in the said advocate's office, was to verify the outstanding debt, the exercise which, he said, was unsuccessful because the respondent refused to discuss on how he had arrived at the claimed amount of TZS 168,000,000.00. He also denied that either himself or the Board of Directors had authorised Hussein Omari, who was the appellant company's Accountant, to sign exhibit P2 on behalf of the appellant.

On the interest of 5%, DW1 stated that, even if that would have been agreed upon, it would be charged on the outstanding balance and thus the claim would not have exceeded TZS 39,000,000.00 which, if added with the outstanding balance of TZS 11,081,000.00, would be around TZS 50,000,000.00.

From the parties' evidence, the trial court framed two issues for determination:-

"1. Whether the agreement between the parties dated 8/2/2013 was valid.

2. What ... reliefs [are the] parties entitled to."

With regard to the first issue, having considered the undisputed evidence to the effect that the parties met in the office Mr. Ngalo, advocate in his presence on 8/2/2013 together with Hussein Omari, the learned Judge agreed with the respondent that, the purpose of that meeting was to enter into an agreement on the terms and conditions for payment of the outstanding amount of TZS 41,081,000.00. She therefore, found that exhibit P2 was a valid agreement. On the contention by DW1 that the said Hussein Omari did not have the authority to sign the agreement because he was not one of the Directors of the appellant, the learned trial Judge was of the view that, since the signing was done in the presence of DW1, the said person acted under authority of the former. She relied on the provisions of s. 38 (b) of the Companies Act, Chapter 12 of the Revised Laws (the Act).

The learned trial Judge observed further that, the appellant's act of implementing the terms of the agreement by paying the first instalment of

TZS 20,000,000.00 within the period set in the agreement and later payment of TZS 10,000,000.00 after reminders by the respondent, signified that the agreement was valid.

On the second issue, concerning the reliefs, the trial court found that, on the outstanding amount of TZS 11,081,000.00 which was the subject matter of exhibit P2, the respondent was entitled to interest at the agreed rate of 5% per month from 30/3/2013 to the date of institution of the suit on 13/11/2018. She also awarded the respondent interest of 5% on the principal sum from the date of judgment to the date of full satisfaction of the decree. As for the claimed damages, relying on the case of **Anthony Ngoo and Another v. Kitinda Kimaro**, Civil Appeal No. 25 of 2014 (unreported), the trial court held that, the respondent had not substantiated that he suffered any special damages. As for general damages, the learned trial Judge was of the opinion that, the awarded interest covered the damages which arose from the appellant's breach of the agreement.

The appellant was aggrieved by the decision of the High Court hence this appeal which is predicated on the following four grounds of appeal:-

"1. The learned trial Judge erred in law and in fact by holding that the purported agreement between the appellant and the respondent dated 08th February, 2013 was valid;

2. That the learned trial Judge erred in law and in fact by holding that the appellant paid the respondent in accordance to the purported agreement dated 08th February 2013;

3. The learned trial Judge erred in law and in fact by holding that the said Hussein Omari had the authority to sign to purported agreement dated 08th February 2013 on behalf of the appellant without any sufficient evidence on the same;

4. The learned trial Judge erred in law by failing to quantify the exact amount in which the appellant should pay the respondent."

On his part, the respondent raised a cross-appeal consisting of the following five grounds:-

"1. That the learned trial Judge erred in law and fact in granting simple interest of 5% monthly while the accrued interest is compounded to the principle sum from the date of default to full payment.

2. Without prejudice to the 1st ground therein above, is the below herein follows grounds: the learned trial Judge erred in law and fact in granting flat rate monthly simple interest of 5%

until the date of filing the suit contrary to what was agreed in the Agreement dated 28/02/2013, Exhibit "P2" in clause no. 4 of the agreement and paragraph (b) of the respondent's prayers in the Plaint.

3. *That, the learned trial Judge erred in law and fact in granting flat rate monthly interest of 5% agreed in clause No. 4 of Exhibit "P2" out of Tshs. 11,081,000/= times the number of months in default thereto contrary to the actual balance of Tshs 21,081,000/= which was an outstanding debt on the date of default on 31/03/2013 after payment of Tshs 20,000,000/= deposited in the respondent's account on 28/02/2013, the amount which remained stagnant up to 11/12/2014 when the appellant reduced the amount by depositing Tshs 10,000,000/= in the respondent's account.*

4. *That the learned trial Judge erred in law and fact in granting flat rate monthly interest of 5% from the date of default on 31/03/2013 to the date of filing the suit on 13/11/2018 and skipping granting interest from the date of filing the suit on 13/11/2018 to the date of judgment delivered on 28/08/2020 or in full payment.*

5. *That the learned trial Judge erred in law and fact in granting interest of 5% per annum of decretal amount from the date of Judgment to payment in full contrary to Order XX Rule 21 of Civil Procedure Code, Cap 33 [Revised edition 2019]."*

At the hearing of the appeal, the appellant was represented by Mr. John Mushi, learned counsel. On his part, the respondent appeared in person, unrepresented. At the outset, Mr. Mushi informed the Court that he was abandoning the 4th ground of appeal. As for the rest of the grounds which challenge part of the decision of the trial court, particularly the finding that exhibit P2 was a valid agreement, he submitted that the grounds raise the following issue:-

> Whether the High Court properly examined the evidence on the record before it held that the parties had entered into the agreement dated 8/3/2013 signed by Hussein Omari on behalf of and upon authorization by the appellant.

Submitting on that issue, the learned counsel argued that, being a limited liability company, which by virtue of its certificate of incorporation (exhibit P1) had two Directors, Felix Mosha and Anna Felix Mosha, the agreement could not have been signed by a person other than any of the two Directors. He was however, alive to the position that, the agreement could be signed by such other person provided that, he should have been authorized through the company's board resolution but stressed that such

was not the case with Hussein Omari. For that reason, the learned counsel submitted that, the agreement was void. Relying on the provisions of s. 10 of the Act, the appellant's counsel argued that, an agreement becomes valid only when it is entered into by the parties to the contract. Highlighting this point in his oral submissions, he cited the case of **Louis Dreyfuls Commodities Tanzania Limited v. Roko Investment Tanzania Limited**, Civil Appeal No. 4 of 2013 (unreported).

He went on to reiterate his argument that, Hussein Omari, who was the employee of the appellant in the capacity of an accountant was not authorized to sign the agreement through the company's resolution or by a power of Attorney. According to the learned counsel, the respondent failed to discharge its duty under s. 110 of the Evidence Act, Chapter 6 of the Revised Laws to prove that, Hussein Omari was authorized to sign the agreement on behalf of the appellant.

In response to the submission of the learned counsel for the appellant on that issue, the respondent countered the argument that Hussein Omari did not sign exhibit P2 in Mr. Ngalo's office in the presence of DW1. Referring the Court to page 106 of the record of appeal, the

respondent contended that, DW1 had admitted that they met once in the office of Mr. Ngalo together with Hussein Omari. According to the respondent, that was the date on which the agreement was signed. The respondent went on to submit that, it was at the instance of DW1, who instructed Mr. Ngalo to prepare the agreement, that the meeting was arranged.

He argued further that, when he attempted to question Mr. Hussein Omari's capacity to sign the agreement, DW1 told the respondent that, the said person was the official of the appellant's company who had the authority to do so in accordance with the company's internal affairs which should not have been necessarily known by the respondent. On this aspect, it was the respondent's contention that since DW1 did not cross-examine the former on that evidence, he could not raise the argument in the appeal, that the said person signed the agreement without having been authorized through the company's board resolution. The respondent cited the case of **Martin Misara v. Republic**, Criminal Appeal No. 428 of 2016 (unreported) to bolster his argument that the appellant was barred from raising that matter of fact.

He argued further that, the allegation by DW1 that the purpose of the meeting in the office of Mr. Ngalo was to verify the outstanding amount, was a mere allegation which was not all substantiated with any evidence. He cited the case of **Hemed Issa v. Mohamed Mbilu** [1984] T.L.R. 113 in support of his argument that, DW1 should have led evidence to substantiate his defence either by calling Mr. Ngalo or Mr. Hussein Omari and thus failure to do so jeopardized his defence. Furthermore, the respondent went on to argue, apart from contending that exhibit P2 was forged, DW1 admitted that he did not take any action against Hussein Omari or Mr. Ngalo, advocate.

The respondent's submitted also that, although earlier on, DW1 had contended that the agreement could not be signed by any person other than any of the Directors of the appellant, he admitted that under s. 38 of the Act any other person could do so on behalf of the company if he or she had been authorized.

Relying also on s. 37 of the Act, the respondent argued that, he did not have the duty to inquire on the capacity of Hussein Omari to sign the agreement on behalf of the appellant. In support of his argument, he cited

the decision of the High Court in the case of **Urafiki Agency Ltd and Another v. Abbasali Aunali Kassam and Another**, Commercial Case No. 59 of 2010 (unreported) which emphasized the application of s. 37 of the Act to the effect that, when an agreement is signed and stamped with a seal of the company, any person dealing with that company would not have the duty of inquiring on whether or not the person who signed the document had the capacity to do so. The reason is that the question of authorization is a matter which is within the internal affairs of the company and by affixation of its stamp, the company is deemed to have authorized the signatory thereto.

Making further reference to s.48 of the Act, the respondent argued that, even if it was to be believed that Hussein Omari had signed exhibit P2 without authority, by honouring the terms of payment through deposit in the respondent's bank account with TZS 20,000,000.00 as first instalment on the date stated in the agreement and later on, the amount of TZS 10,000,000.00, the appellant ratified the agreement and was therefore, bound by it.

We have duly considered the submissions of the appellant's counsel and the respondent on the grounds of appeal which gave rise to the first issue. In our considered view, the evidence to the effect that the agreement (exhibit P2) was prepared and signed by the respondent and Hussein Omari on 8/3/2013 in the office of Mr. Ngalo, advocate who witnessed it, was not seriously disputed by the appellant. As submitted by the respondent, the discord between the parties is on the capacity of the said Hussein Omari to sign the agreement on behalf of the appellant company. The appellant challenged the finding of the trial court that exhibit P2 was signed in the presence of DW1 hence a valid agreement. Having considered the evidence tendered by the parties, the learned trial Judge was satisfied that the agreement was signed in Mr. Ngalo's office in the presence of DW1. She was not impressed by DW1's conduct of waiting until the institution of the case to complain that Hussein Omari signed the agreement without the authority of the appellant. In her judgment at page 167 of the record of appeal, the learned trial Judge observed as follows:-

> *"It is baffling to think that Mr. Hussein Omari would just sign an agreement without the approval of DW1 who actually was physically present and*

considering he had no personal interest in the same... DW1 acknowledges that Mr. Hussein was their accountant yet he had never questioned him on the meeting they held in Mr. Ngalo's office nor the claim after the demand notice issued by the plaintiff."

Indeed, the demand notice referred to exhibit P2 which contained the terms of payment of the outstanding amount of TZS 41,081,000.00. it was expected that DW1 would have responded to it if at all it referred to an agreement which was strange to him. Again, as found by the trial court, the fact that the first instalment was paid in accordance with the schedule stated in the agreement connotes that the appellant's defence was an afterthought.

On the basis of the foregoing, we agree with the respondent and find that, the answer to the first issue is in the affirmative, that Hussein Omari signed the agreement on the authority of DW1 before Mr. Ngalo, advocate who attested it. The fact that the said person was not one of the Directors of the appellant is immaterial so long as the appellant, through DW1 authorized him to sign it on his behalf, which is permissible under s. 38 of

the Act. The 1st ground of appeal is therefore, meritless. We thus dismiss it.

That said and done, we now turn to consider the 2nd issue which arises from the four grounds raised in the cross-appeal in which the respondent challenged the awarded amount on the basis that it was not calculated on the basis of the interest rate agreed upon by the parties. Submitting in support of those grounds of appeal, the respondent argued that, the learned trial judge erred in awarding simple interest of 5% per month instead of compound interest on the outstanding amount. According to the respondent, that was what the parties agreed under paragraph (b) of the prayers in the plaint and clause 4 of exhibit P2. He stressed that, the accrued interest was to be compounded to the principal amount from the date of default to the date of full payment.

He argued thus that, it was on the basis of that calculation based on compound interest that he arrived at the claimed amount of TZS 444,970,512.78 at the time when the suit was filed on 13/11/2018. In paragraphs 6.4. of his written submissions, he submitted that, the formular should have been applied as from the date of filing the suit to the date of

full payment of the outstanding amount as, according to him, that was what the parties agreed in exhibit P2, that the interest of 5% was to be paid from the date of default on 31/3/2013 until the whole debt is fully paid.

Elaborating on the amount which the trial court was supposed to have awarded, the respondent submitted that, the interest of 5% started with the amount of TZS 540,000.00 which remained after payment of the first instalment which was supposed to be TZS 20,540,000.00 but the appellant paid TZS 20,000,000.00. Relying on the case of **Unilever Tanzania Ltd v. Benedict Mkasa t/a Bema Enterprises**, Civil Appeal No. 41 of 2009 (unreported), the respondent argued that, it was not open to the court to change the terms agreed upon by the parties. In this case, the respondent argued, the parties had agreed that the interest of 5% was payable monthly from the date of default to the date of full payment of the outstanding amount.

On the application of O.XX. r. 21 (1) of the CPC, the respondent argued that, even if the learned trial Judge was justified to award interest

on annual basis, the same should not have been 5% but 7% from the date of judgment to the date of full satisfaction of the decree.

On the basis of his submissions, the respondent prayed that his cross-appeal be allowed and be awarded the principal sum plus compound interest of 5% from the date of default to the date of full payment of the debt. In the alternative however, he prayed that, should the Court adopt the formular which was applied by the High Court, then he should be granted the principal sum of TZS 21,081,000.00 plus interest of 5% from the date of default on 31/3/2013 to 11/12/2014 reduced by TZS 10,000,000.00 which was paid on 11/12/2014 and interest of 5% per month on the subsequent outstanding amount of 11,081,000.00 from 30/3/2013 until full payment as per clause 4 of the agreement and paragraph (b) of his prayers in the plaint. He also prayed for costs and any other reliefs which the Court may deem fit to grant.

Responding to the submissions of the respondent on the cross-appeal, Mr. Mushi submitted that, grounds 1,2,3 and 4 therein are devoid of merit. He argued that, the payable interest on the outstanding amount of TZS 11,081,000.00 is 5% from the date due to the date of judgment

and thereafter, at the court's rate of 7% per annum from the date of delivery of judgment to the date of full satisfaction of the decree. He thus submitted that, with the exception of the 5th ground of the cross-appeal, the other grounds are lacking in merit and should be dismissed.

Having considered the submissions, we wish to start by reproducing the terms stipulated in exhibit P2. In that agreement the parties agreed as on the mode of payment to the respondent of the outstanding amount of TZS 41,081,000.00 as follows:-

> *"1. The second party [the appellant] shall pay to the first party [the respondent] the sum of Tshs 20,540,500 on or before the 28th February 2013.*
>
> *2. The second party shall pay the remaining balance of Tshs 20,540,000/= to the first party on or before 30th March 2013.*
>
> *3. Upon receipt of the money from the second party the first party shall immediately pay to Balton (T) Limited.*
>
> *4. In the event the second party fails to pay the first party as stated herein, the second party will be liable to pay interest at the rate of 5% per month on the outstanding amount until the whole debt has been cleared."*

The respondent contended that, clause 4 of the agreement entitles him to compound interest on the outstanding amount. We are, with respect, unable to agree with him. Compound interest is awardable only where the parties expressly or by implication states so in their agreement. In the case of **Fergusson v. Fyee and Another** [1835 – 42] All E.R 48, the House of Lords held as follows on the party's entitlement to that relief:-

> *"Compound interest will not be allowed to a successful plaintiff in an action to recover money unless there is an agreement between the parties for the payment of such interest either expressly or to be implied from the method of dealing with the former accounts, or there is evidence of a custom for the payment."*

See also our decision in the case of **Trade Union Congress of Tanzania v. Engineering Systems Consultants Ltd and 2 Others**, Civil Appeal No. 51 of 2016 (unreported) and South African case of **The Rand West City Local Municapality v. Quill Associates (pty) Ltd.** [2021] ZASCA 150 (21 October 2021.)

It is obvious that, in this case at hand, clause 4 of the parties agreement does not expressly provide for compound interest. That

payment cannot, as will, be taken to have been implied because what is provided therein is a simple interest. The respondent has not further, led evidence to establish that the nature of their transaction is one that by custom, compound interest is awardable. For this reasons, we agree with the appellant that, the interest agreed upon by the parties is a simple one.

Having so found, the last issue for our determination is whether or not the trial court erred in calculating the amount of interest payable to the respondent. To start with, the respondent was entitled to the agreed interest of 5% of the amount which was outstanding from the date of default on 30/3/2013 (the decretal sum) to the date of institution of the suit. The respondent is also entitled to that interest until the date of delivery of the judgment. That is the position as stated in the case of **Njoro Furniture Mart Ltd v. Tanzania Electric Supply Co. Ltd** [1995] T.L.R. 205 in which the Court observed that:-

> *"Under s. 29 of the Civil Procedure Code, a court has power ... to order interest to be paid up to the date of judgment at such rates as it may be deemed reasonable .... The appellant had claimed in the plaint, 'interest at bank rate on the decretal sum calculated from the date of filing the suit to the date*

of final judgment'. We think under the circumstances of this case, the claim is fully justified. The appellant is entitled to interest at bank rate from the date of filing the suit to date of delivery of judgment."

In the present case, the respondent prayed for interest of 5% from the date of defaulting to pay the outstanding amount to the date of full payment. In that regard, the claim includes the period between the filing of the suit and the date of delivery of judgment. We hold therefore, that the respondent is entitled to be paid interest of 5% per month from the date of default of payment of the outstanding amount of TZS 11,081,000 to the date of delivery of the judgment and interest from the date of judgment to full satisfaction of the decree. As correctly agreed by the appellant, the applicable rate is that which is provided under Order XX r. 21 (1) of the CPC which is 7% per annum. The respondent is thus awarded the principal sum of 11,081,000 plus interest at the rate of 5% from the date of default to the date of delivery of judgment and interest on the decretal sum at the rate of 7% per annum from the date of judgment to the date of full satisfaction of the decree.

On the basis of the foregoing, the cross-appeal is partly allowed and as a result, the decision of the trial court is varied to the context shown above. In the circumstances, each party shall bear its own costs.

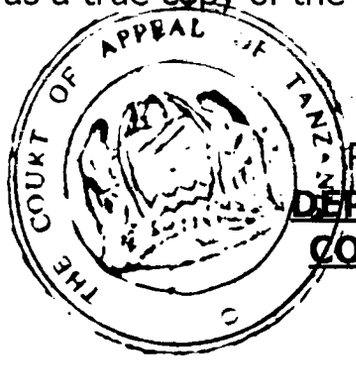
DATED at **MOSHI** this 22nd day of March, 2024.

A. G. MWARIJA
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

L. E. MGONYA
JUSTICE OF APPEAL

The Judgment delivered this 22nd day of March, 2024 in the presence of Mr. Mandela Mziray, learned counsel holding brief for Mr. John Mushi, learned Counsel for the Appellant and Respondent in person is hereby certified as a true copy of the original.



R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL