IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 18178 OF 2025

BETWEEN

CEDAR EXIM LIMITED ....PLAINTIFF

VERSUS

CHESANO COTTON GINNERY (2006) TANZANIA LIMITED ....DEFENDANT

DEFAULT JUDGMENT

Date of Last Order: 1/06/2026

Date of Judgment: 12/06/2026

GONZI, J.

The Plaintiff instituted this suit praying for judgment and decree of the Court against the Defendant for reliefs as follows: -

i. That the Honourable Court be pleased to declare that the Defendant is in breach of the Memorandum of Understanding Cum Agreement dated 13th June 2024.

ii. That the Honourable Court be pleased to order the Defendant to pay the Plaintiff United States Dollars Twenty Thousand

(USD 20,000.00) being a refund of the sum paid by the Plaintiff and received by the Defendant for purchase of cotton bales.

iii. That the Honourable Court be pleased to order the Defendant to Pay the Plaintiff United States Dollars Ten Thousand (USD 10,000.00) being penalty imposed upon the Plaintiff by the buyers of the cotton bales following the Defendant's failure to supply the same.

iv. That the Honourable Court be pleased to Pay the Plaintiff United States Dollars Thirty-Seven Thousand Four Hundred Seventy-Eight and Forty-Six Cents (USD 37,478.46) being loss of earning/profit from the sale of cotton bales due to the Defendant's failure to supply.

v. That the Honourable Court be pleased to order the Defendant to pay the Plaintiff United States Dollars One Hundred Thousand (USD 100,000.00) being loss of name and goodwill to the Plaintiff's potential customers.

vi. General damages as shall be assessed by the Court.

vii. Interest on prayer (ii) above at the rate of 12% per annum from the date the said sum was paid to the Defendant until full payment.

viii. Interest on prayers (iii) and (iv) above at the rate of 12% per annum from 15/07/2025 to the date of full payment.

ix. Interest on prayers (v) and (vi) above from the date of judgment to the date of full payment.

x. Costs of this suit.

xi. Any other reliefs this Honourable Court may deem just and fit to grant.

The Plaintiff's case as pleaded in the Plaint and the Affidavit in Proof of Claim is that the Plaintiff, Cedar Exim Limited, entered into a commercial arrangement with the Defendant, Chesano Cotton Ginnery (2006) Tanzania Limited, for the supply by the Defendant to the Plaintiff, of cotton bales.

It is the Plaintiff's case that sometime on 13th June 2024, parties herein entered into a Memorandum of Understanding Cum Agreement, whereby the Defendant agreed to sell and supply to the Plaintiff approximately 500 cotton bales for the season of 2024/2025.

The Plaintiff averred that, under the said Agreement, it was agreed that the Plaintiff would make advance payment of United States Dollars Forty Thousand (USD 40,000.00) in two instalments. The first instalment of United States Dollars Twenty Thousand (USD 20,000.00) was to be paid immediately, while the second instalment of United States Dollars Twenty Thousand (USD 20,000.00) was to be paid after the Defendant handing over all credentials, including user names, passwords and certificates relating to the organic cotton farming project and process certifications by Control Union Certifications B.V., Raw Cotton (NOP/EC) and GOTS/OCS for ginnery.

The Plaintiff, further, averred that the Defendant issued Proforma Invoice No. CCG/2025/001 dated 13/06/2024 for the sum of United States Dollars 147,709.54. Pursuant to the Agreement, the Plaintiff paid the first instalment of USD 20,000.00 to the Defendant.

It is the Plaintiff's case that, in breach of the Agreement, the Defendant failed to supply valid credentials as agreed. Instead, the Defendant supplied invalid and/or non-working credentials. Consequently, the Plaintiff could not proceed to pay the second instalment of USD 20,000.00.

The Plaintiff also averred that it was an express term of the Agreement that the advance payment would be adjusted towards the supply of cotton bales mentioned in the Proforma Invoice. It was, further, agreed that should the Defendant fail to fulfil the conditions or fail to supply the bales, the Defendant would refund the advance payment, failing which the Plaintiff would have the right to take lawful recovery measures.

According to the Plaintiff, the Defendant neither supplied the agreed credentials nor supplied the cotton bales as per the Proforma Invoice. The Defendant, also, refused and/or neglected to refund the advance payment of USD 20,000.00 made by the Plaintiff.

The Plaintiff, further, contended that due to the Defendant's breach, the Plaintiff failed to supply cotton bales to one of its potential customers namely M/s Delight Life Like General Trading LLC of the UAE. The Plaintiff stated that through a Proforma Invoice Cum Sales Contract dated 5th April 2025, it had secured a contract to supply 500 cotton bales to the said customer at a price of USD 185,188.00, to be supplied by June 2025. It is the Plaintiff's case that following the Defendant's failure to supply the cotton bales, the Plaintiff lost the said contract and suffered loss of earning/profit in the sum of USD 37,478.46. The Plaintiff, further, stated that by a Debit Note dated 15th July 2025, it was subjected to a penalty of USD 10,000.00 for non-supply of the cotton bales to M/s Delight Life Like General Trading LLC.

The Plaintiff, further, claimed that it is a reputable company trading internationally and that the Defendant's breach exposed it to loss of its well-established name and goodwill. On that basis, the Plaintiff claims USD 100,000.00 as compensation for loss of name and goodwill.

Upon institution of this suit, the Court ordered the Defendant to enter appearance and file a Written Statement of Defence within the prescribed time. However, the Defendant failed to file its Written Statement of Defence and failed to comply with the order of this Court. Consequently, the Plaintiff filed an Application for Default Judgment under Rule 22 of the High Court (Commercial Division) Procedure Rules, 2012 as amended by G.N. No. 107 of 2019,. The Application was viding Form No.1 supported by an Affidavit in Proof of the Claim sworn by one Mohit Gupta, Principal Officer of the Plaintiff.

The Plaintiff attached to the affidavit in proof of the claim Exhibit C-1 being copies of the Agreement, Proforma Invoice and Swift Payment Advice evidencing the payment by the Plaintiff to the Defendant of USD 20,000.00. This Exhibit was intended to establish the contractual relationship between the parties and payment of the first instalment. The Plaintiff, also, relied on Exhibit C-2, being an e-mail relating to invalid credentials supplied to the Plaintiff by the Defendant. The Plaintiff, further, relied on Exhibit C-3, being copies of the Proforma Invoice Cum Sales Contract and the Debit Note, to support its claim for loss of profit of USD 37,478.46 and USD 10,000.00 it had to pay as a penalty.

The suit at hand is premised on breach of contractual obligations arising from the Memorandum of Understanding Cum Agreement for sale and supply of cotton bales between the parties. For such a claim to succeed, even in default, the Court must satisfy itself that there existed a valid contractual relationship between the parties; that the Defendant breached the contractual obligations; and that the Plaintiff suffered loss as a result thereof.

Undoubtedly, by virtue of the Memorandum of Understanding Cum Agreement, Exhibit C-1, the Plaintiff has sufficiently established an existence of a contractual relationship between the Plaintiff and the Defendant. The said Agreement shows that the Defendant agreed to supply cotton bales and related credentials to the Plaintiff while the

Plaintiff agreed to make advance payment in accordance with the terms agreed by the parties. Hence, the first issue is answered in the affirmative.

As to whether or not the Defendant breached the contractual obligations, the Plaintiff has relied on the Affidavit in Proof of Claim and the annexures thereto. The evidence demonstrates that the Plaintiff paid the first instalment of USD 20,000.00 pursuant to the Agreement. It is further demonstrated that the Defendant was required to hand over valid credentials and thereafter supply the cotton bales to the Plaintiff as agreed. However, the Defendant failed to supply valid credentials and, also, failed to supply the cotton bales. The Agreement expressly provided that should the Defendant fail to fulfil the conditions or fail to supply the cotton bales, the Defendant would refund to the Plaintiff the advance payment. The Defendant did not refund the said advance payment. In absence of a Written Statement of Defence or evidence to the contrary, I find that the Defendant breached its contractual obligations to the Plaintiff.

As to damages suffered, through the Affidavit in Proof of Claim and the annexures thereto, the Plaintiff has sufficiently shown that it was deprived of the sum of USD 20,000.00, being the advance payment made to the Defendant. The Plaintiff has, also, shown that it was subjected to a penalty of USD 10,000.00 arising from the Defendant's failure to supply the cotton bales.

Regarding the claim for loss of earning/profit in the sum of USD 37,478.46, the Plaintiff relied on the Proforma Invoice Cum Sales Contract between it and M/s Delight Life Like General Trading LLC and the related documents. In the absence of any rebuttal from the Defendant and upon considering the affidavit evidence placed before the Court, I am satisfied that the Plaintiff has proved this head of claim.

However, as regards the claim of USD 100,000.00 for loss of name and goodwill, the Court is of the view that although the claim was pleaded, the same required strict proof. Goodwill is nothing more than the probability that the old customers will return to the old place. It is a type of proprietary right representing the reputation, good name and connection of a business. In **Primus International Holding Company & Ors v Triumph Controls – UK Ltd & Anor** [2020] EWCA Civ 1228, the Court of Appeal for England and Wales grappled with the proper interpretation of "goodwill" in a commercial contract, considering the natural meaning of "goodwill" in the commercial context. The Court held that in a commercial context, the ordinary legal meaning of goodwill is the good name and public reputation of the business concerned and that the goodwill damaged or destroyed is goodwill in the sense of the probability that the customers will resort once more to the same source of supply. Quoting Volume 80 (2013) of **Halsbury's Laws of England** at 807, the court held that:

> *"The goodwill of a business is the whole advantage of the reputation and connection formed with customers together with the circumstances, whether of habit or otherwise, which tend to make that connection permanent. It represents in connection with any business or business product the value of the attraction to customers which the name and reputation possess."*

In the persuasive case of **IRC v Muller and Co's Margarine Limited** [1901] AC 217, at 223, Lord MacNaghten said:

> *"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a*

new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has power of attraction sufficient to bring customers home to the source from which it emanates. Goodwill is composed of a variety of elements. It differs in its composition in different trades and in different businesses in the same trade. One element may preponderate here and another element there…The goodwill of a business is one whole."

The Plaintiff in this case has pleaded loss of good will. There is no precise or mathematical method for assessing the loss of goodwill and reputation. Given that goodwill and reputation cannot be quantified with mathematical precision, damages under this head are awarded as general damages, which do not require the same specific proof as is required for special damages. As Lord MacNaghten aptly put it in **Trego v Hunt** [1896] AC 7:

"Goodwill is the very sap and life of the business without which it would yield little or no fruit".

Goodwill encompasses the entire advantage derived from a business' reputation and relationships, built by years of honest work, or gained by lavish expenditure. For the customer, goodwill may be a label to represent a favourable disposition for which he possesses towards a place, but for the owner, goodwill is a manifestation of the strength and influence his business wields in the marketplace. By the Defendant defaulting to supply the cotton bales to the Plaintiff thereby inducing a breach by the Plaintiff on its obligations and undertakings towards its customers, inevitably, the Plaintiff must have suffered loss of good will built by years of honest work, or gained by lavish expenditure. The Plaintiff deserves to be compensated by the Defendant for the loss of good will. The question is how much amount is reasonable compensation to the Plaintiff for loss of good will and how the court will be able to ascertain such amount given that goodwill and reputation cannot be quantified with mathematical precision since damages under this head are awarded as general damages, which do not require the same specific proof as is required for special damages.

In a persuasive decision of **Perusahaan Otomobil Kedua Sdn Bhd & Anor** v **Lee Lap Kee** [2024] MLJU 2797, the Malaysian High Court awarded damages for the plaintiffs' loss of goodwill and reputation, taking into account the following key considerations:

(i) That the plaintiffs had built up substantial goodwill and reputation in a particular place in connection with their products;

(ii) Significant investments in advertising and promotional activities had been made over the years to strengthen the market presence of the Plaintiff's products;

(iii) The plaintiffs recorded sales figures evidencing strong market penetration;

(iv) The commercial value of the Plaintiff's products is regarded as substantial owing to the plaintiffs' position in the market;

(v) The Plaintiff's products had received numerous prestigious awards and accolades, further enhancing its reputation and market standing.

In the case at hand, the Plaintiff has claimed for USD 100,000.00 as damages for loss of good will and business reputation. No facts were pleaded in the plaint or adduced as evidence to show that the plaintiff has built up substantial goodwill and reputation in a particular place in connection with their products. No facts were pleaded in the plaint or adduced as evidence to show that significant investments in advertising and promotional activities have been made over the years to strengthen the market presence of the Plaintiff's products. No recorded sales figures were pleaded or adduced as evidence evidencing strong market penetration by the Plaintiff. Thus, the Plaintiff's claim for USD 100,000.00 as damages for loss of good will and business reputation remains a wishful thinking. In absence of materials on record to enable the court come to a reasonable estimation of the Plaintiff's loss of good will and reputation, the Court relies on the advance payment paid by the plaintiff to the Defendant for the supply of cotton bales, namely USD 20,000.00 and loss of business income in the sum of USD 37,478.46 from a single customer of the Plaintiff namely M/s Delight Life Like General Trading LLC of the UAE who probably will not resort, once more, to the same source of supply (Plaintiff's business). With business exposure and presence of USD 20,000.00 in Tanzania and USD 185,188.00 from a single customer of the Plaintiff in the United Arab Emirates, I find that awarding the Plaintiff damages at the tune of USD 10,000.00 for loss of its good will and business reputation will meet the ends of justice in this case. I accordingly grant the Plaintiff USD 10,000.00 as damages for loss of good will and business reputation.

On general damages, I am satisfied that the Defendant's breach occasioned commercial inconvenience, loss of business opportunity and unnecessary litigation to the Plaintiff. I award the Plaintiff another USD 10,000.00 as general damages for inconveniences suffered.

All in all, having carefully gone through the Plaint, the Affidavit in Proof of Claim together with all annexures thereto, I am satisfied that there existed a valid contractual relationship between the Plaintiff and the Defendant. I am, further, satisfied that the Defendant failed to honour its contractual obligations under the Memorandum of Understanding Cum Agreement for the sale and supply of cotton bales between them hence causing the Plaintiff to suffer losses as a result of the Defendant's breach which losses are amenable to be remedied by payment of specific and general damages.

For the foregoing reasons, I enter judgment and decree in favour of the Plaintiff against the Defendant and proceed to make the following orders:-

(a). It is hereby declared that the Defendant breached the Memorandum of Understanding Cum Agreement dated 13th June 2024 for supply of cotton bales entered into between the parties.

(b). The Defendant is hereby ordered to pay the Plaintiff a sum of United States Dollars Twenty Thousand (USD 20,000.00) being refund of the advance payment made by the Plaintiff to the Defendant for the purchase of cotton bales.

(c). The Defendant is hereby ordered to pay the Plaintiff a sum of United States Dollars Ten Thousand (USD 10,000.00) being refund of the penalty suffered by the Plaintiff towards its clients following the Defendant's failure to supply the Plaintiff with cotton bales.

(d). The Defendant is hereby ordered to pay the Plaintiff a sum of United States Dollars Thirty-Seven Thousand Four Hundred Seventy-Eight and Forty-Six Cents (USD 37,478.46) as specific damages being loss of earning/profit suffered by the Plaintiff due to the Defendant's breach.

(e). The Defendant is hereby ordered to pay the Plaintiff a sum of United States Dollars Ten Thousand (USD 10,000.00) as general damages for loss of name and goodwill in its business.

(f). The Defendant is hereby ordered to pay the Plaintiff a sum of United States Dollars Ten Thousand (USD 10,000.00) as General damages for inconveniences suffered due to the breach of contract by the Defendant.

(g). The Defendant is hereby ordered to pay the Plaintiff interest at the rate of 12% per annum on (b) above from13/06/2025 the date the said sum was paid to the Defendant until the date of this Judgment.

(h). The Defendant is hereby ordered to pay the Plaintiff interest on the decretal sum at the Court rate of 07% per annum from the date of Judgment and Decree to the date of full and final satisfaction thereof.

(i) Costs of this suit shall be borne by the Defendant.

I further order that the decree emanating from this suit shall not be executed unless the decree holder has complied with the provisions of Rule 22(2)(a) and (b) of the High Court (Commercial Division) Procedure Rules, 2012, as amended in 2019.

It is so ordered.

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

A.H.GONZI

JUDGE

12th June, 2026

Judgment is delivered in Court this 12th day of June, 2026 in the presence of Mr. John James, Advocate for the Plaintiff and in absence of the Defendant who was notified of the date of delivery of the default Judgment.

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

A.H.GONZI

JUDGE

12th June, 2026