

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

COMMERCIAL CASE NO. 15202 OF 2025

DELTA INDUSTRIAL EQUIPMENT LIMITED PLAINTIFF

VERSUS

PIVOTECH COMPANY LIMITED DEFENDANT

DEFAULT JUDGEMENT

03/06/2026 & 03/7/2026

KINYAKA, J.:

By way of plaint lodged in this Court, the plaintiff claims against the defendant for breach of a Parts Open Account Agreement entered between the parties on 16th June 2021, hereinafter referred to as the "Agreement". It is alleged in the plaint that the plaintiff and the defendant entered into the said Agreement whereby the plaintiff agreed to supply various spare parts to the defendant on credit, and the defendant undertook to pay for the supplied goods within the agreed contractual period.

The plaintiff averred that under the Agreement, the defendant was required to issue a Local Purchasing Order or Order Letter duly executed by its authorized officer, specifying the order reference number, quantity, part number and clear description of the goods ordered. Upon delivery of the goods, the plaintiff was required to issue tax invoices and delivery notes, and the defendant was bound to settle the purchase price within thirty days upon receipt of the goods.

It was further alleged that in the event of default or late payment, the defendant was required to pay interest at 5% plus the prevailing Central Bank of Tanzania lending rate on the overdue balance until full payment. The plaintiff also had a contractual right to put the defendant's credit account on hold and to take recovery measures in the event of continued default.

The plaintiff's case is that pursuant to the said Agreement, it supplied various spare parts to the defendant for a total consideration of TZS 67,623,832.76. The defendant, however, made only an initial payment of TZS 15,000,000 and failed to settle the remaining outstanding amount. The plaintiff contended that as at 3rd October 2024, the outstanding balance, inclusive of delay interest, stood at TZS 75,573,934.15.

The defendant's failure to pay the outstanding amount prompted the plaintiff to institute the present suit claiming the following reliefs:

1. A Court order for the defendant to pay specific damages to the tune of TZS 75,573,934.15 being the outstanding amount in respect of the Parts Open Account Agreement for the supply of various spare parts plus interests to the plaintiff;
2. Interest on the above amount at the commercial rate of 15% per month from when the last demand notice, dated 25th February 2025, until the date of judgment;
3. Interest on the above amount at the commercial rate of 12% from the date of the decree until full payment;
4. Costs of the suit; and
5. Any other relief this Honourable Court may deem fit to grant.

The matter proceeded to default after the defendant failed to place a valid written statement of defence on record within the time ordered by the Court. Initially, the defendant had filed a written statement of defence and an application for leave to defend, since the matter was brought under summary suit, but both were withdrawn and expunged from the record on 20th November 2025 for being irregularly filed. The Court then

extended time for the defendant to properly apply for leave to defend the summary suit.

After the application for leave to defend was granted, the defendant was ordered on 4th March 2026 to file his written statement of defence on or before 11th March 2026. However, when the matter came up on 26th March 2026, the Court noted from the electronic record that no written statement of defence had been filed. The plaintiff therefore filed Form No. 1 applying for default judgment. The said application is supported by the affidavit of Monica Owino, the Principal Officer of the plaintiff, who is conversant with the facts of the claim.

Since the plaintiff has complied with the conditions for the grant of default judgment under Rule 22(1) of the High Court (Commercial Division) Procedure Rules, GN No. 250 of 2012 as amended by Rule 13 of the High Court (Commercial Division) Procedure (Amendment) Rules, G.N. No. 107 of 2019, my role is to determine whether the plaintiff's application for default judgment has proved the plaintiff's claims so as to justify the grant of the reliefs sought in the plaint. See also the decision of this Court in **Mobikey Trucks and Bus Limited vs Ikamba International Company Ltd** (Commercial Case No. 30190 of 2024) [2025] TZHCComD 128 (13 June 2025).

In paragraph 2 of the affidavit, the deponent stated that on 16th June 2021, the plaintiff entered into a Parts Open Account Agreement with the defendant for the supply of various spare parts on credit, for a total consideration of TZS 67,623,832.76. A certified copy of the said Agreement was produced and admitted as **Exhibit DIEL-1**.

Upon perusal of **Exhibit DIEL-1**, I am satisfied that the parties had a contractual relationship governed by clear terms and conditions. The Agreement expressly required the defendant to issue Local Purchasing Orders or Order Letters duly executed by its authorized officer before the plaintiff could supply goods. The Agreement also required the plaintiff to issue sales tax invoices and delivery notes after delivery of goods.

Further, the Agreement provided that all sums invoiced by the plaintiff became payable within thirty days upon issuance thereof, unless otherwise agreed in writing by the parties. It was also a term of the Agreement that where the defendant defaults in making payment within the stipulated time, the defendant will be liable to pay interest at 5% in addition to the prevailing Central Bank of Tanzania lending rate on the overdue balance until full payment.

With the said evidence, I hold that the plaintiff has established the existence of a valid contractual relationship between her and the defendant.

As to whether the defendant breached the Agreement, paragraphs 2 and 3 of the affidavit together with the tax invoices produced and admitted as **Exhibit DIEL-2**, establish that the plaintiff supplied various spare parts to the defendant pursuant to the Agreement and issued tax invoices for payment. The statement of account produced and admitted as **Exhibit DIEL-3** further supports the plaintiff's claim. The said statement shows the transactions between the parties, the invoices raised, the payments made, interests for the defendant's delayed payment, and the outstanding balance. According to the affidavit, the total value of the goods supplied under the Agreement was TZS 67,623,832.76. The defendant made only an initial payment of TZS 15,000,000. As at 3rd October 2024, the outstanding balance, inclusive of interest, stood at TZS 75,573,934.15.

The plaintiff further averred in paragraph 6 of the affidavit that in acknowledgment of the debt and outstanding amount, the defendant attempted to make payments towards the outstanding balance by issuing seven cheques dated 23rd March 2024. However, the said cheques were returned unpaid by the defendant's bank. The bank's letter dated 25th

March 2024, and the returned cheques were produced collectively as **Exhibit DIEL-4**. This evidence supports the plaintiff's assertion that the defendant acknowledged the outstanding liability but failed to honour the contractual terms by paying the outstanding balance.

In paragraphs 7 and 8 of the affidavit, the plaintiff further stated that despite several reminders and requests, the defendant failed to make any effort to settle the outstanding balance. The plaintiff communicated with the defendant through various channels requesting payment or concrete instalment arrangements, but the defendant failed to honour the agreed payment terms under the Agreement. The email communications and reminders were produced collectively as **Exhibit DIEL-5**. In addition to the said reminders, paragraph 9 of the affidavit shows that the plaintiff, through its advocates, issued a formal demand notice dated 25th February 2025 to the defendant admitted as **Exhibit DIEL-6**.

In view of the above evidence, I am satisfied that there was breach by the defendant of the Agreement.

As to damages, the plaintiff averred that the defendant's refusal to settle the outstanding amount affected the plaintiff's business operations since the plaintiff borrows funds for its operations from banks and had already

paid necessary taxes for the spare parts supplied to the defendant. The plaintiff also stated that the defendant's continued default forced the plaintiff to institute recovery proceedings for the outstanding amount.

From the above evidence, I am satisfied that the plaintiff has proved its claim against the defendant on balance of probability. The evidence establishes that there was a valid Parts Open Account Agreement between the parties; that the plaintiff supplied various spare parts to the defendant under the said Agreement; that the defendant was required to pay for the supplied goods within thirty days; that the defendant made only partial payment of TZS 15,000,000; and that the defendant failed to pay the outstanding sum despite repeated reminders and a formal demand notice. I am further satisfied that the plaintiff has proved that the defendant breached the Agreement by failing to pay the outstanding amount of TZS 75,573,934.15.

As regards to interest, the plaintiff prayed for interest on the outstanding amount at the commercial rate of 15% per month from when the last demand notice dated 25th February 2025 was issued until the date of judgment which I grant as prayed. The plaintiff also prayed for interest at the commercial rate of 12% from the date of decree until full payment. I

find prudent to award the plaintiff interest on the decretal sum at the rate of 7% per annum.

In view of the foregoing findings and in terms of Rule 22(1) of the High Court (Commercial Division) Procedure Rules, I enter judgment and decree in favour of the plaintiff against the defendant as follows:

1. The defendant shall pay the plaintiff TZS 75,573,934.15 being the outstanding amount arising from the supply of various spare parts under the Parts Open Account Agreement.
2. The defendant shall pay interest on the amount in item (1) above at the commercial rate of 15% per month from when the last demand notice dated 25th February 2025 to the date of judgment.
3. The defendant shall pay interest on the decretal sum at the rate of 7% from the date of decree until full payment.
4. The defendant shall pay the plaintiff costs of the suit.

I further order that the decree emanating from the present 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.

It is so ordered.

DATED at DAR ES SALAAM this 3rd day of July 2026.



H. A. KINYAKA

JUDGE

03/07/2026