

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

COMMERCIAL CASE NO. 149 OF 2014

HASHI ENERGY (T) LTD PLAINTIFF

VERSUS

RICHOL COMPANY LTD

SINGIDA COPEC PETROL STATION

KCB BANK (T) LTD

KHAMIS MAGANGA

..... **DEFENDANTS**

2nd & 14th June, 2016

DEFAULT JUDGMENT

MWAMBEGELE, J.:

This is a default judgment. By a plaint filed on 17.11.2014, the plaintiff Hashi Energy (Tanzania) Limited; a limited liability company established, organized and existing under the Laws of Tanzania, instituted a suit against the defendants Richol Company Ltd t/a Singida Copec Service Station, Richard Gwau, Alex Kipaa Mbowe and Kenya Commercial Bank (correctly referred to as KCB Bank) seeking for several orders. By an amended plaint filed by the blessing of this court on 17.03.2015, the names of the defendants were slightly changed to the ones appearing in the heading of this Default Judgment. That is to say, the original 2nd and 3rd defendants were removed and in their stead Khamis Mganga impleaded. The original first defendant

whose name was styled in the former plaint as Richol Company Ltd t/a Singida Copec Service Station was split to two defendants; Richol Company Ltd and Singida Copec Service Station in the amended plaint.

The defendants filed their respective defences to the amended plaint. Of particular importance in this Default Judgment is the written statement of defence of the fourth defendant Khamis Mganga. The written statement of the fourth defendant raised a counterclaim which was couched in the following terms:

- (a) The Plaintiff be ordered to return the 113,000 litres of petroleum products to the 4th Defendant or pay him Tshs. 228,050,000.00 being the value of the petroleum products.
- (b) The Plaintiff be ordered to pay the 4th Defendant Tshs. 109,440,000.00 being loss due to non use of three trucks and three trailers for a period of eight months.
- (c) The Plaintiff be ordered to pay the 4th Defendant interest in paragraphs (a) and (b) herein above at commercial rates of 21% per annum from August 2014 until payment in full.
- (d) The Plaintiff be ordered to pay the 4th Defendant interest in paragraph (a) and (b) herein above at the Court's rates from the date of Judgment till the date the decree is satisfied in full.
- (e) The Plaintiff be ordered to pay the 4th Defendant general damages.
- (f) The Plaintiff be ordered to pay the 4th Defendant Costs of this suit.
- (g) Any other relief the Honourable Court may deem fit and justified.

It happened that the plaintiff did not file any reply to the written statement of defence of the fourth defendant. Neither did he file any defence to the counterclaim. Efforts by the plaintiff to have these documents filed out of time were made futile by a ruling of this court of 15.10.2015. Consequently, the fourth defendant has filed an application for a default judgment. The application has been made under rule 22 (1) of the High Court (Commercial Division) Procedure Rules, 2012 – GN No. 250 of 2012 (hereinafter “the Rules”) praying for the orders sought in the counterclaim “or as the honourable court may deem fit to grant”.

There is no dispute that Khamis Maganga; the fourth defendant filed a counterclaim which the plaintiff has not defended. The provisions of rule 22 (1) of the Rules provide, *inter alia*, that where any party required to file written statement of defence fails to do so within the specified period, the court shall, upon proof of service and on application by the plaintiff in Form No. 1 set out in the Schedule to the Rules, enter judgment in favour of the plaintiff. In the present case, there is no dispute that Khamis Maganga; (the fourth defendant and plaintiff in the counterclaim) enumerated his claim by way of counterclaim which Hashi Energy (T) Ltd; (the plaintiff and defendant in the counterclaim) has not filed any defence. The fourth defendant; Khamis Maganga (the plaintiff in the counterclaim) is therefore entitled to a default judgment as prayed for by way of counterclaim in his written statement of defence.

For the avoidance of doubts, I am alive to and take judicial notice of the mercantile practice of paying interest on debts and that petroleum product sales debts, the subject of the present case, ordinarily, attracts interest under mercantile practice – see: ***Engen Petroleum (T) Limited Vs Tanganyika***

Investment Oil and Transport Limited, Civil Appeal No. 103 of 2003; and unreported decision of the Court of Appeal.

Accordingly, in terms of rule 22 (1) of the Rules, I enter judgment on the counterclaim for Khamis Maganga and decree as follows:

1. Hashi Energy (T) Ltd shall return 113,000 litres of petroleum products to Khamis Maganga or pay him Tshs. 228,050,000/= being the value of the said petroleum products;
2. Hashi Energy (T) Ltd shall pay Khamis Maganga Tshs. 109,440,000/= being loss due to non use of three trucks and three trailers for a period of eight months;
3. Hashi Energy (T) Ltd shall pay Khamis Maganga interest in paragraphs 1 and 2 hereinabove at commercial rates of 21% per annum from the date of filing the counterclaim to the date of judgment;
4. Hashi Energy (T) Ltd shall pay Khamis Maganga interest on the decretal sum at the court's rate of 7% per annum from the date of judgment to the date of satisfaction in full;
5. Hashi Energy (T) Ltd shall pay the Khamis Maganga Tshs. 10,000,000/= as general damages; and
6. Hashi Energy (T) Ltd shall pay Khamis Maganga costs in respect of the counterclaim.

In terms of rule 22 (2) (a) and (b) of the Rules, I further direct that the decree in this case shall not be executed unless the decree holder has, within

a period of ten (10) days from the date of this default judgment, published a copy of the decree in at least two (2) newspapers of wide circulation in the country and after a period of twenty-one (21) days from the date of expiry of the said period of ten (10) days has lapsed.

Order accordingly.

DATED at DAR ES SALAAM this 14th day of June, 2016.

J. C. M. MWAMBEGELE

JUDGE