

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**LAND CASE NO. 46 OF 2019**

**SIGORI INVESTMENT (T) LTD ..... 1<sup>st</sup> PLAINTIFF  
MOSES STEPHANO SIGORI ..... 2<sup>nd</sup> PLAINTIFF**

***VERSUS***

**EQUITY BANK OF TANZANIA LIMITED... 1<sup>st</sup> DEFENDANT  
BILO STAR DEBT COLLECTORS  
COMPANY LIMITED ..... 2<sup>nd</sup> DEFENDANT**

*Date of last Order: 05/05/2020*

*Date of Judgment: 19/05/2020*

**R U L I N G**

**MGONYA, J.**

The instant suit was initially filed on 24<sup>th</sup> September 2019 in this Registry where all parties to this matter were respectively represented.

The Plaintiffs in this matter prays for Judgment and Decree on the following reliefs:

- (a) *This Court be pleased to issue a perpetual injunction to restrain the defendant from disposing the Plaintiffs' mortgaged properties;*
- (b) *Court be pleased to declare the loan repayment has been frustrated by the illegal inaction of the defendants' unjustifiable decision;*
- (c) *Court be pleased to order payment of **TZS. 300,000,000/=** by the 1<sup>st</sup> Defendant for breach of contract;*
- (d) *Court be pleased to order the rescheduling of repayment of the remaining Principal loan without interest and grant the Plaintiffs extension of time to repay the loan being consequential loss;*
- (e) *Court be pleased to order payment of **Tshs. 200,000,000/=** by the 1<sup>st</sup> Defendant being loss of earning following the Plaintiffs' business frustration without justifiable cause;*
- (f) *Court be pleased to order punitive/exemplary damages of **Tshs. 500,000,000/=** by the 1<sup>st</sup> Defendant, as may be assessed by this Honourable Court;*
- (g) *Court be pleased to order general damages of **Tshs. 1,000,000,000/=** by the 1<sup>st</sup> Defendant for pain and*

*sufferings, as may be assessed by the Honourable Court.*

*This includes loss of reputation;*

*(h) Costs of this suit be met by the Defendants; and*

*(i) Any other relief that this Court deems fit and just to grant.*

After the completion of the pleadings, on 5<sup>th</sup> March 2020, I accordingly conducted the 1<sup>st</sup> Pre-trial Conference and further referred the case to Mediation for the period of one month from the date of the first session with the Mediator.

When the matter was called before the court on 19<sup>th</sup> May 2020 before this honorable court, after the matter has been returned from Mediation, only **Ms. Queen Allen** the Counsel for the 1<sup>st</sup> Defendant appeared in court in the absence of the Plaintiffs and the 2<sup>nd</sup> Defendant Counsel. It is from the record of the court, it came to my knowledge that the Mediation failed due to the Plaintiffs' absence. I quote the Mediator's words as herein below:

**"COURT:**

***Mediation is not conducted because the Plaintiffs defaulted appearance for four consecutive scheduled mediation sessions.***

***The file is returned to the trial Judge to deal with the matter in terms of Order VIII Rule 29 of the Civil Procedure Code, 1966 as amended by GN. 31 of 2019, If she so wishes, hearing of the Counter Claim can commence.***

***(Signed)***

***Mgetta J.***

***5/5/2020"***

It is from the said order, the 1<sup>st</sup> Defendant's Counsel Ms. Queen Allen prayed to this Honorable court to invoke the provisions of **Order VIII Rule 21 of the Civil Procedure Code (Amendment of the First Schedule GN. No. 381/2019)** and proceed to dismiss the entire suit with cost.

It is from the above divergence submissions, I decided to take up the 1<sup>st</sup> Defendant's Counsel concern and prayer, make a decision, and come up with this Ruling.

Indeed the **Civil Procedure Code** under **GN. No. 381/2019** has brought the massive and revolutionary amendments to the Civil Litigation System in this Country. The aim being to strengthen the Civil legal procedure according to the rapid social economic development that has occurred recently

taking into account the factors of time, expenses and other aspects of life. In the amendment brought under **GN. No. 381/2019**, the purpose and nature of Mediation has been well elaborated under **section 26** of the same. Further under **section 27** attendance to the Mediation has been well elaborated where parties to the Mediation have been recognized as herein below:

***"27 (1) The Party or his Advocate or both; where the parties are represented shall be notified of the date of Mediation and shall attend the Mediation session.***

***(2) Where the third party may be liable to satisfy all or part of a judgment in the suit or to indemnify or reimburse a party for money paid in satisfaction of all or part of a judgment in the suit, the third party or his advocate may also attend the mediation session, unless the court orders otherwise."***

On the same vein of making Mediation be conducted in a more accurate way and to reach the goal of Mediation, **section 28** of the same provides Authority to settle where the same provides:

***"28 (1) A party to a mediation session shall have authority to settle any matter during the mediation session.***

***(2) A party who requires the approval of another person before agreeing to a settlement shall, before the mediation session, arrange to have ready means of communication to that other person throughout the session, whether it takes place during or after regular business hours."***

The above sections have exhaustively made all the ways possible for a party to make use of Mediation as it was intended by the law. In case the Party to the suit can't make it to the Mediation, there are other alternatives provided by the law that can be used to make the Mediation possible and useful to the parties.

The law further provides remedies upon failure of the parties to attend the mediation as well stated under **section 29** of the **GN. No. 381/2019**. The same provides:

***"29 Where it is not practicable to conduct a schedule mediation session because a party fails without good cause to attend within the time appointed for the***

***commencement of the session, the mediator shall remit the file to the trial judge or magistrate who may:***

- (a) Dismiss the suit, if a non-complying party is a plaintiff, or strike out the defence, if the non-complying party as a defendant;***
- (b) Order a party to pay costs; or***
- (c) Make any other order he deems just."***

Back to the matter at hand, from the wording of the Mediator, my Brother Mgetta J., and the order emanating there to, the reason of failure to the Mediation on this matter, is the failure of the Plaintiffs to attend the Mediation without any good cause that was advanced before the Mediator. Under the circumstances, I wonder as to why the Plaintiffs' Counsel have failed to appear before the Mediator on the scheduled date, or even send someone to hold his brief since on the date the court conducted the First Pretrial Conference towards Mediation, the Mediation date was in the knowledge of the Plaintiffs' Counsel since he was before the court.

It is my expectation that, by now the Plaintiffs' Counsel must have come across and is conversant with the recent amendment

of the Civil Procedure Code but he decided to take the matter lightly.

Under the circumstances of this matter and particularly for the stated reason of the Plaintiffs' failure to attend mediation sessions, there was quite a wide range of choices to remedy the situation and continue with the mediation as intended by law. In this event, the Counsel for the Plaintiffs was expected and in particular after consultation with his client be vested with powers to proceed with the mediation taking into account the rights of the client as directed. What the counsel was supposed to do is just to inform the Mediator that he has been vested with those powers where the Mediator for record purposes could have noted in the coram. The law **under section 27(1)** clearly states that in mediation, ***the Party or his Advocate or both; where the parties are represented shall be notified of the date of Mediation and shall attend the Mediation session.*** Further, the authority to settle has been derived under **section 28 (1)** and **(2)** clearly that ***a party to a mediation session shall have authority to settle any matter during the mediation session; further a party who requires the approval of another person before agreeing to a settlement shall, before the mediation session, arrange to have ready***



***means of communication to that other person throughout the session, whether it takes place during or after regular business hours.***

From the above legal position of which has relieved and improved the mediation procedures for both parties and the court, should not be taken for granted. Under the circumstances, not only the Counsel for Plaintiffs was in position to stand on behalf of the Plaintiffs during mediation, but also upon arrangement, another person duly appointed by the Plaintiffs could have attended the mediation.

On my part, I take the recent amendments **very seriously** as I do not want to undermine the work that has been done by the Legislature in bringing these amendments of which its main purpose is to focus on the intended results of mediation in litigations to attain the benefits of mediation as intended by the law.

Before I make my decision on the situation, I want to urge the legal practitioners to take these amendments seriously. The amendments are meant to be used not just for fun, but instead we should take the advantage of the same by improving litigations without having flimsy excuses on these serious matters

which takes time, energy and brains to try settling the disputes in a modernized way.


All said and done, as said above, I take the recent Amendment to the **Civil Procedure Code Cap. 33** very seriously and under the circumstances, I join hands with Ms. Queen Allen the Counsel for the 1<sup>st</sup> Defendant that the instant Suit ought and deserve to be dismissed for the above legal reasoning.

In the event therefore, I have decided to invoke the provisions of **section 29 (a) of the Civil Procedure Code (Amendment of the First Schedule GN. No. 381/2019)** and proceed to **DISMISS THE INSTANT SUIT**, that is **CIVIL CASE NO. 46 of 2019** accordingly on account of the Plaintiffs' failure to attend the Mediation.

Defendants should have their costs accordingly.

It is so ordered.

Right of Appeal explained.



**L. E. MGONYA**  
**JUDGE**  
**19/05/2020**

**Court:** Ruling delivered in chamber in the presence of Ms. Queen Allen the Counsel for the 1<sup>st</sup> Defendant; and Ms. Janet RMA this 19<sup>th</sup> day of May, 2020.



**L. E. MGONYA**  
**JUDGE**  
**19/05/2020**