

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

**AT DAR ES SALAAM**

**CIVIL CASE NO. 85 OF 2019**

**HONG YANG INTERNATIONAL COMPANY LTD ..... PLAINTIFF**

*VERSUS*

**SARAH INVESTMENT LIMITED ..... DEFENDANT**

**RULING**

1<sup>st</sup> July, 2020

**E. E. KAKOLAKI J**

The Plaintiff in this suit sued the defendant for payment of Tanzania Shillings Three Hundred Seventy Eight Million Seven Hundred Forty Three Thousand Two Hundred only. (Tshs. 378,743,200.00) being outstanding debt for the work performed as per the agreement of completion of finishing of three floors of the flat located at Kisutu, within Ilala District Dar es Salaam Region. The Plaintiff is also claiming for general damages to be assessed by the court, costs of this suit and any other relief(s) that the court may grant.

The claims were challenged by the defendant who filed a Written Statement of Defence. He also raised two points of preliminary objection against the Plaintiff's Complaint as follows:

1. That, the complaint contravenes the provision of Order VII Rule (e) of the Civil Procedure Code, [Cap 33 of R.E. 2002] and
2. That, the suit is time barred.

Following the Preliminary Objections raised this court scheduled the matter for hearing of the same on the 1/07/2020. When the matter was called for hearing both parties were represented. **MR. JOHN NTINE** learned advocate appeared for the Plaintiff whereas **MR. STANSLAUS MICHAEL** learned advocate represented the defendant.

Before Mr. Michael could submit on the preliminary points of objection raised, Mr. John Ntine for the Plaintiff informed the court that the Plaintiff was conceding to both points of objection but was praying for waiver of costs. In his response Mr. Michael did not object the Plaintiff's prayers for waiver of costs.

I have looked at the points of objection raised as conceded to by Mr. Ntine. All of them if considered have the effect of rendering the suit before the court incompetent. For that matter it deserves to be struck out. As the defendant is not objecting to the prayer for waiver of costs this court has no reason to refuse the Plaintiff's prayer.

In the circumstances and for the foregoing reasons, I am inclined to hold that this suit is incompetent and is hereby struck out.

No order as to costs.

  
E. E. Kakolaki

**JUDGE**

**01/07/2020.**

