

IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA

DISTRICT REGISTRY

AT TABORA

MISCELLANEOUS CIVIL APPLICATION NO. 1 OF 2022

[Originating from High Court Civil Case No. 5 of 2021]

KAHAMA OIL MILLS LIMITED -----APPLICANT

VERSUS

IGUNGA DISTRICT COUNCIL -----RESPONDENT

RULING

Date: 03/08/2022 & 09/09/2022

BAHATI, SALEMA, J.:

The applicant herein named KAHAMA OIL MILLS LIMITED made this application by way of Chamber Summons under Order XXXV rule 2(2) of and 3(1) (a) (b) and Section 68(e) of the Civil Procedure Code, Cap 33 [R.E 2019] praying this Court to grant unconditional leave to defend the suit in Civil Case No. 5 of 2021 filed by the respondent under Summary Procedure.

The application is supported by an affidavit duly sworn by Juma Said Obote, a Human Resource officer of the Applicant. The respondent in this application is Igunga District Council a local government authority.

Order XXXV under which the application is brought provides for a procedure in suits on negotiable instruments by reason of which

when the suit is filed under the Order the facts stated in the plaint are deemed to have been admitted and the plaintiff is entitled to a decree on his pleadings unless the defendant satisfies the Court that he has a tenable defence and the court is pleased to grant him leave to defend.

Having keenly read the affidavit of Juma Said Obote, the Counter affidavit sworn by Grace Mkunda Nyamwanji the officer of the respondent and the submissions made by both parties in respect of the application; having considered the same I am satisfied that the proposed defence advanced by the respondent which is centered on a disagreement between demand note and the plaint on the amount claimed by the respondent qualifies to be a sufficient ground to support the application.

Since the applicant has satisfied the conditions set in Order XXXV Rule 2 and 3 of the Civil Procedure Code, Cap 33 [R.E 2019] leave is hereby granted to the applicant to defend the suit in Civil Case No. 5 of 2021, therefore, the application is granted. Costs to follow the event.

Order accordingly.



A. BAHATI SALEMA

JUDGE

09/09/2019



Date: 09/09/2022

Coram: Hon. G.P. Ngaje, Ag DR

Appellant: Absent Esther Mchele holding brief for advocate Sam Kamkolwe

Respondent: Mariam Matovolwa, State Attorney
B/C Grace Mkemwa, RMA

Ms. Matovolwa: The matter comes for ruling.

Court: Ruling delivered in presence of Ms. Esther Mchele, advocate, holding brief for advocate Sam Kamkolwe and Ms. Mariam Matovolwa State Attorney for the respondent, in the open court.



G.P. NGAEJE
Ag. DEPUTY REGISTRAR
09/09/2022

Court: Right of appeal fully explained.



G.P. NGAEJE
Ag. DEPUTY REGISTRAR
09/09/2022

