

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**  
**MISC. CIVIL APPLICATION NO. 17 OF 2021**  
*(Original Civil Case No. 34 of 2018)*

**A. M. STEEL & IRON MILL LIMITED.....APPLICANT**

***VERSUS***

**TANZANIA ELECTRIC SUPPLY COMPANY  
LIMITED..... RESPONDENT**

*Date of last order: 11/08/2022*

*Date of Ruling : 21/10/2022*

**RULING**

**MGONYA, J.**

Vide **Civil Case No. 34 of 2018** filed in this court under Summary Suit Procedure, the Respondent Tanzania Electricity Supply Company Limited, is suing the Applicant A. M STEEL & IRON MILL LIMITED for payment of **Tshs. 2,055,423,184. 44** being payment of electricity bills due to revenue loss on electricity supplied via metre number 209421938, occasioned by the reversal on red and blue phase started in **July 2015** to **August 2016**.

Upon expiry of 21 days' condition without application for leave to appear and defend, the court proceeded to grant a Summary Judgment in favour of the Respondent. Then the

Respondent's application for execution was filed before this court. To oppose the application, the Applicant under certificate of urgency filed this application to stay the application for execution under **Order XXI Rule 24(1) and 27 of the Civil Procedure Code, Cap. 33 [R. E. 2019]**.

The background of this matter as gathered from the affidavit in support of the application affirmed by the Applicant goes as follows: On 9<sup>th</sup> March, 2018, the Applicant was served with two important documents being a Summary Suit Plaintiff in **Civil Case No. 34 of 2018** and Summons in Summary Suit on negotiable instrument (0.33). Upon the expiry of 21 days' condition without any application in the court record, the court proceeded to grant the Summary Judgment in favour of the Respondent. Recently, the Applicant discovered that the Summary Summons served to them was made under **Order XXXV of the Code of Civil Procedure 19666 (Act No. 49), of 1961** and also the said summons was stamped with the stamp of the Regional Manager Tanesco Temeke Region, Dar es Salaam in the position of the Deputy Registrar. The Summary Summons never provided any form of interest and other prayers but the court gave a blanket judgment.

On 28<sup>th</sup> December, 2020 the Respondent herein served her with the application for **Execution No. 91 of 2020** arising from

**Civil Case No. 34 of 2018** together with the summons. To serve the danger of permanently injury, the Applicant filed this Application. The Applicant's application was strongly disputed by the Respondent through the counter affidavit duly sworn by Howa Hiro Msefya, the Respondent's Principal Officer.

The hearing of this application proceeded by way of written submission where by, it was Mr. G. S Ukongwa, Advocate prepared and filed the submission in support of the application on behalf of the Applicant while the Respondent submission in reply was drawn by the Respondent's Legal Department.

In his submissions in support of the application, Mr. Ukongwa commenced by adopting the supporting affidavit sworn by the Managing Director of the Applicant. He then argued that, they have noted the fact in paragraph 7 of the plaint in which Plaintiff stated that, she never claimed that the Defendant/Applicant occasioned the loss as the reversal of the red and blue phase which was done when the Plaintiff's technical staffs were conducting replacement of the defective metering unit, the fact which automatically disqualified **Civil Case No. 34 of 2018** from being a Summary Suit case because the matter framed in the plaint does not apply in terms of **Order XXXV(1)(d) of the Civil Procedure Code, Cap 33. [R. E**

**2019]**. He stated that sub rule (d) stipulates the kinds of claims Tanesco is allowed to claim under Summary Procedure.

Further that going through the plaint the Respondent's claim is said not covered as the revenue loss, out rather was due to Tanesco's own negligence. He contended further that, Paragraph 3 of the plaint where it was stated that, rather the claim against the defendant is for payment of Tshs. 2,055,423,184. 44 being electricity bills due to revenue loss on electricity, has been cleared by the contents of paragraph 7 of the plaint. In his view the Plaintiff's claim was and is marred with apparent element of illegality.

According to Mr. Ukongwa, the areas where illegality has been manifested is on the jurisdiction that the suit is disqualified by operation of the law to be a Summary Suit and also the summons issued was based on a none existing law in the country. To fortify his stance, Mr. Ukongwa cited the case of ***CHARLES ZEPHANIA MWENESANO VS DANIEL SAMWEL CHUMA, CIVIL APPLICATION No. 274 of 2015*** where the Court of Appeal with approval of decisions in the case of ***PRINCIPLE SECRETARY MINISTRY OF DEFENCE AND NATIONAL SERVICE VS. DERVAN VALAMBIA*** (1992) TLR 182, extended time for the applicant for the purpose of ascertaining the point and if the alleged illegality be established.

It was further argued by Mr. Ukongwa that, **Order XXXV Rule 8 of the Civil Procedure Code, Cap. 33 [R. E. 2019]**, gives court discretion powers to order stay of execution. In this matter the sum involved in the said execution is said to be so great hence the Applicant is bound to suffer financially if stay is not allowed. The Applicant's Counsel pleaded this court to refer to **Section 3A of the Civil Procedure Code, Cap. 33 [R. E. 2019]** for the interest of justice that the Applicant deserves to be granted stay and chance to be heard on merits. Counsel said, if execution is granted, the Applicant will run bankrupt and he may fail to meet the production of the materials that are so much in need for the construction industries.

In reply to the Applicant's written submissions, the Respondent when submitting on the point that Summary Procedure summons was defective, they submitted that the summons was not defective and has all legal requisite features of Summary Procedure summons. Further that the applicant was served with Summary Procedure suit accompanied by a court summons with the proof of service from court process sever but decided not to file an application for leave to defend hence the judgment was entered in favour of the Respondent. He referred this court to the High court decision in the case of ***JKT LIMITED AND FOUR OTHERS VERSUS NBC LTD [CITATION]***, where

the court dictates the provisions of **Order 35 Rule 2(2) of the Civil Procedure Code.**

Turning to the Applicants complain that the summons was signed by the Regional Manager of the Respondent. The Respondent submitted that the fact is not true. Hence the summons were issued and signed by the court and signed by Deputy Registrar. On the point that Summary Suit was under **Order XXXV of the Civil Procedure of 19666 (Act No. 49) of 1961**, the Respondent argued that, the summons was issued properly served and received by the Applicant and not acted upon according to **Order XXXV Rule 1 of the Civil Procedure Cap. 33 [R. E. 2002]**, which requires the Applicant to apply for leave to defend. The Counsel is of the view that, in any way it cannot be illegality which can render the process to obtain summary judgment to be marred with incurable mistakes. To support his argument, Counsel cited the case of ***INTERGRATED PROPERTY INVESTMENT (T) LIMITED AND TWO OTHERS Versus THE COMPANY FOR HABITAT AND HOUSING IN AFRICA, CIVIL APPEAL NUMBER 107 OF 2015, Court of Appeal*** where Summary Judgment was obtained as the Applicant was aware of the date for hearing but they failed to enter appearance.

To conclude, the Respondent submitted that, the Applicant has totally failed to adduce any ground to get an order for stay of execution pending determination of the Application for extension of time to file application to set aside Summary Suit Judgment. Further, it was observed that The Applicant misdirected himself that there was illegality hence their prayer for this application be dismissed with costs.

In his rejoinder the Applicant reiterate what he submitted in their submission in chief. He submitted further that as per **Order V Rule 2 of the Civil Procedure Code, Cap. 33 [R. E 2019]**, it is mandatory that a summons shall be signed and stamped by the Judge or Magistrate or such officer as may be appointed by the Chief Justice in that behalf and shall be sealed with the seal of the Court. Hence the Respondent's action of inserting their own company stamp on top of the signature of the Honourable Deputy Registrar makes the summons to be highly defective.

Having serenely examine the Chamber Summons, the Parties' affidavit and counter affidavit as well as their rival submission. The issue before this court is whether there is sufficient reason to warrant this court to grant an Application.

As much as am aware that the purpose of execution is to allow the party whose judgment he entered in his favour to enjoy

the fruit of the decision. Therefore, for the applicant to oppose the execution of judgment he must show good cause to avoid the execution as it was stated in ***J.W. LADWA (1977) LIMITED VERSUS BANSONS ENTERPRISES LIMITED, Civil Application No.566/17 of 2019 (CAT-Unreported).***

It is gathered from the Applicant's Chamber Summons that the reasons for his application are; Summary Summons in **Civil Case No. 34 of 2018** was made under unknown law, as summons was apparently issued and signed by the Regional Manager of the Respondent. To start with the first reason where the Applicant faults the wrong citation of the enabling provision. It is undisputed that annexure "A" of the applicant's affidavit has been made under **Order XXXV of the Code of Civil Procedure, 1966 (Act N. 49 of 1961)**. Looking from the citation, it is direct that there is improper citation of the law. However, I find the said defect not enough to grant the application as it is a settled legal stance now that, none or wrong citation, of the law is not fatal as long as the Court has the requisite jurisdiction and powers to entertain the matter. The Court of Appeal in the case of ***JOSEPH SHUMBUSHO VS. MARY GRACE TIGERWA AND 2 OTHERS, CIVIL APPEAL NO. 183 OF 2016 (CAT-unreported)*** held that:



***“...we still hold the same position of the law that the citation of superfluous provisions of the law in the chamber application does not make the application incompetent.”***

That being the position of the law, I **find the first reason is devoid of merits.**

The Applicant also faulted that the summons was signed by the Regional Manager instead of the Court Registrar. Going through the records, it is revealed that apart from this application, there are other attempts made by the Applicant. There is the ruling which shows that the Applicant did file an application for leave to appear and defend in a **Civil Case No. 34 of 2018**. That being the reality, it is without dispute that apart from being served with the summons which he alleges to be improperly signed the Applicant had a knowledge on the existence of the matter against her and she also acted on it although she was unsuccessful due to time limitation and other professional mistakes.

That being the facts, **I find there is no sufficient reason for the court to grant an Application for stay of execution. Accordingly, the Application is hereby dismissed.**

Each party to bear its own costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya", with a horizontal line extending to the right.

**L. E. MGONYA**

**JUDGE**

**21/10/2022**