

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

AT DAR ES SALAAM

CIVIL CASE NO. 31 OF 2020

NATIONAL COLLEGE OF TOURISM.....1ST PLAINTIFF

ATTORNEY GENERAL.....2ND PLAINTIFF

VERSUS

BAGAMOYO ECO ENERGY COMPANY LIMITED.....DEFENDANT

SUMMARY JUDGMENT

Date of last Order: 14th Dec, 2022

Date of Judgment: 24th February, 2023

E.E. KAKOLAKI, J.

The plaintiffs herein in terms of Order XXXV of the Civil Procedure Code, [Cap. 33 R.E 2019] (the CPC) filed a summary suit against the defendant claiming among other things for payment of Twenty Eight Thousand, Seven Hundred and Ten, United States Dollars only,(USD 28,710) being payment for recovery of rent for fourteen (14) months and eleven days (11), interest at commercial rate of 25% from the day of default to the day of full payment, interest at the Court's rate of 12% per annum from the date of judgment till full payment, together with other costs of the suit.

The tale behind this suit runs thus, on 12th May 2015 the 1st plaintiff (being the registered owner of the NASRI Virji Building located at plot No. 280490

India Street Bagamoyo) signed a lease agreement with the defendant for a period of twelve months commencing from 12th May, 2015 to 11th May 2016, which is renewable at consideration of Two Thousand United States Dollars only (USD 2,000) per month. It was their term of agreement that, rent should be paid three months in advance; hence forth the defendant paid six thousand (6,000) United States Dollars only as advance payments for three months. It appears that, after expiration of the first lease Agreement (which expired on 11th May 2016) the 1st plaintiff entered into another lease agreement with the defendant for term of 8 months commencing from 12th May 2016 to 11th January 2017 for official use only. They further agreed that, the rent per month will be two thousand United States Dollars only and the defendant was as usual required to pay rent for three months in advance, but did not honour that term. Facts provide that, during the subsistence of the second agreement, the defendant defaulted rent payments for the said 8 months, thus in total the defaulted rent payments were for a period of 14 months for both 1st and 2nd lease agreement, hence an aggregate sum of USD 28,710. The plaintiff attached annexure NCT -3 exhibiting the number of invoices sent to the defendant and the amount involved.

The 1st plaintiff's efforts to realize her rent arrears could not bear any fruits despite of receiving a letter on 15th March 2017, (through email from Eco Energy Development in Europe AB) claiming to be the holding company of the defendant and undertaking to pay the outstanding rental arrears owed to the defendant provided that, she receives the monies owed the Government of the United Republic of Tanzania, from amicable settlement or an international arbitration in the process of taking place in 2 to 4 years in relation to the dispute arising from sugar cane project. However the 1st plaintiff was in a total disagreement with the said proposal since Eco Energy Development in Europe AB was not party to the lease agreement between her and the defendant. On 18th January 2019, the 1st Plaintiff instructed the second plaintiff through the office of the solicitor general to demand for immediate payment of the rent arrears to the tune of twenty-Eight Thousand Seven hundred and Ten United States Dollars only from the defendant in which the efforts proved futile. It is due to that default by the Defendant, the plaintiff filed the present case praying for the Judgment and Decree against the defendant on the reliefs above stated.

It turned out that, upon filing a summary suit and having effected service to the defendant, vide Misc. Civil Application No. 541 of 2021, the defendant

successfully sought conditional leave of this Court to appear and defend the suit as per the requirement of Order XXXV Rule 2(2) of the CPC, in which she was to deposit first the undisputed outstanding rent arrears of USD 24,710, within thirty (30) days from 04/11/2022, which was the date of ruling. The defendant was ordered to deposit that amount as USD 4,000 seemed to be contested hence her need to defend the suit contesting the same. On the 14/12/2022, when the matter was scheduled for mention, to ascertain compliance of Court's order made on 04/11/2022, the defendant without notice or justifiable cause defaulted appearance in Court. Subsequent to that, Ms. Rehema Mtulya, learned State Attorney who appeared for the plaintiff informed the Court that, the defendant was yet to pay the agreed amount of USD 24,710 as per the Court's order. She therefore invited the Court to enter Summary Judgment in favour of the plaintiff.

The issue for determination by this Court is whether the prayer by the plaintiff is maintainable in law. The law under the provisions of Order XXXV Rule 2(2)(a) of the CPC dictates that, the plaintiff shall be entitled to recovery of the claimed money not exceeding the sum mentioned in the claim or issued summons, upon default of appearance by the defendant. In the

present suit since the defendant was given allows a conditional leave to defend the suit in terms of Order XXXV Rule 3(2) of the CPC, subject to payment in Court undisputed amount of money to the tune of USD 24,710, and since she failed to comply with the conditions set out in the granted leave within the prescribed period, I find the plaintiff's prayer is justified and therefore entitled to summary judgment. I therefore proceed to enter summary Judgment in favour of the plaintiff and it is hereby decreed that, the defendant shall pay the plaintiff the following:

- (1) Twenty- Eight Thousand Seven Hundred and Ten United States Dollars (USD 28,710) being the outstanding rent arrears to the 1st plaintiff.
- (2) Interest on the decreed amount at commercial rate of 12 % per year from the date of default to the date of judgment.
- (3) Payment of interest at the Court rate of 7% per annum from the date of Judgment to full payment.
- (4) Costs of this suit.

It is so ordered.

Dated at Dar es Salaam this 24th day of February, 2023.



E. E. KAKOLAKI

JUDGE

24/02/2023.

The Judgment has been delivered at Dar es Salaam today 24th day of February, 2023 in the presence of Mr. Lilian Mchuruza, State Attorney for the Plaintiff and Ms. Asha Livanga, Court clerk and in the absence of the defendant.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

24/02/2023.