

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB-REGISTRY

AT MUSOMA

CIVIL CASE NO. 27200/2023

REFERENCE NO. 20231208000027200

BETWEEN

BUNDA TOWN COUNCIL.....1ST PLAINTIFF

THE ATTORNEY GENERAL.....2ND PLAINTIFF

VERSUS

PEK BROTHERS COMPANY LTD.....DEFENDANT

Date of Last Order: 25/03/2024

Date of Judgment: 03/04/2024

SUMMARY JUDGMENT

Kafanabo, J.:

This is a summary judgment in respect of a summary suit instituted by the Plaintiffs under Order XXXV Rule 2(2) of the Civil Procedure Code, Cap. 33. R.E. 2019 (hereinafter the 'CPC') against the Defendant claiming a total sum of Tanzania Shillings 23,153,560.40 being a service levy in arrears.

The Applicant being sued under Order XXXV of the CPC, as a matter of law, had no automatic right to defend the suit. The Defendant sought leave to defend the suit under Order XXXV Rule 3(1) of the CPC vide civil case 4067/2024. However, on 25th March 2024, the said application was dismissed for want of merits by this court.

The Defendant, being unsuccessful in her bid for the leave to defend this summary suit, the law dictates that judgment be entered in favor of the

plaintiffs as prayed in the plaint. It follows that, before entering a summary suit, it is important to quickly analyse the claims and prayers as pleaded in the plaint.

According to paragraphs 7 and 8 of the plaint and annex BTC-1 thereto, the Plaintiffs claim that the Defendant is required to pay a total sum of Tanzania Shillings 23,153,560.40 as an outstanding service levy payable for the calendar years of 2019, 2020, 2021, 2022 and January-June 2023 for the business conducted, at the rate of 0.3 percent of the annual turnover after the deduction of the Value Added Tax (VAT).

Paragraphs 9, 10, and 11 of the plaint and annexes BTC-2 and BTC-3 thereto, indicate that the plaintiffs made efforts to ensure that the matter is resolved amicably between the parties but the Defendant did not honour her promises as expected, and thus the plaintiffs were compelled to institute this suit.

The plaintiffs also pray for orders that the Defendant be ordered to pay: (i) Tanzanian Shillings 23,153,560.40 being service levy in arrears (ii) Interest at 12% from judgment date till final payment. (iii) Costs of the suit. (vi) any other order(s) as the Court may deem just and appropriate to grant.

Therefore, as earlier stated, on 25th March 2024 the said Defendant's application for leave to defend this summary suit was dismissed for want of merits. It follows that the claims/allegations made by the plaintiff in the plaint are deemed to be admitted by the defendant. This is pursuant to the provisions of Order XXXV Rule 2(2) of the CPC. Also, the cases of **CRDB Bank Limited vs. John Kagimbo Lwambagaza [2002] TLR 117** and

Maendeleo Bank Plc vs Yusuph Hamis Kitumbo (Commercial Case 15 of 2021) [2021] TZHCComD 3335 (17 September 2021) are relevant.

Moreover, it is important to take into account the provisions of section 6(1)(u) of the **Local Government Finance Act, Cap. 290 R.E. 2019** (hereinafter the 'LGFA'). The said section provides as that:

"6(1) The revenues, funds, and resources of an urban authority shall consist of-

(u)all monies derived from the service levy payable by corporate entities or any person conducting business with business licence at the rate not exceeding 0.3 percent of the turnover net of the value added tax and excise duty:

Provided that, the branches of corporate entities shall pay services levy to the urban authorities in whose areas of jurisdiction they are located.

The said section undoubtedly entitles the 1st Plaintiff to collect from the Defendant a service levy at the rate not exceeding 0.3 percentum of the turnover net of VAT and excise duty, and thus the same was rightly demanded by the Plaintiffs from the Defendant.

Therefore, in light of the foregoing, this court enters judgment in favour of the Plaintiffs as follows:

1. The Defendant shall pay the 1st Plaintiff Tanzanian Shillings 23,153,560.40 being service levy in arrears for the calendar years of 2019, 2020, 2021, 2022, and January-June 2023;
2. Pursuant to section 29 and Order XX Rule 21 of the CPC, the Defendant shall also pay the 1st Plaintiff an interest of seven *percentum* (7%) per annum of the decreed amount/judgment debt from the date of this judgment to the date of final payment or full satisfaction of the same.
3. Since this was a summary suit, and the defendant had no audience in defending the suit, no costs are awarded.


It is so ordered.

Dated, signed, and sealed at Musoma this 3rd day of April 2024.




K. I. Kafanabo
Judge

The Judgment has been delivered in the presence of Mr. Stamili Ndaro, (learned State Attorney) for the Plaintiffs and in the absence of the Defendant.


K. I. Kafanabo
Judge
03/04/2024