

**IN THE HIGH COURT OF TANZANIA
MUSOMA SUB - REGISTRY
AT MUSOMA**

CIVIL CASE NO. 27090 OF 2023

REFERENCE NO. 20231207000027090

BUNDA TOWN COUNCIL 1ST PLAINTIFF

ATTORNEY GENERAL 2ND PLAINTIFF

VERSUS

ABDALLAH OMARY MAGOMA DEFENDANT

SUMMARY JUDGMENT

18th & 19th June, 2024

M. L. KOMBA, J.:

The Plaintiff above named filed a Plaint by way of Summary Procedure under Order XXXV of Civil Procedure Code, Cap. 33 [R.E. 2019] praying for payment of a total sum of **Tanzania Shillings 14,595,133.26** being an outstanding service levy payable cumulatively for calendar years of 2019, 2020, 2021, 2022 and January-June 2023 for the business conducted at the rate of 0.3 percent together with interest.

Indeed, in accordance to the provisions of Order XXXV Rule 2(2) of the

Civil Procedure Code (Supra), the Defendants were supposed to obtain leave of the court to defend the Summary Suit within 21 days. Undoubtedly, failure to obtain leave, the Plaintiff will be entitled to the Judgement and Decree on the sum claimed. The record is silent if applicant has obtained leave to defend as he did not show up in any of the scheduled date. That is to say, the Defendant have defaulted in obtaining leave to appear and defend the suit. Counsel for the Plaintiff has prayed for a summary judgment under Order XXXV Rule 2(2). The cited provision is to the effect that in default of the defendant obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted.

It pleaded by the Plaintiff while in exercise of its vested statutory power as a taxing authority served the Defendant with a demand note for outstanding service levy but did not respond. Plaintiff was further summoned the defendant to attend a meeting for discussing how he (Defendant) would settle the outstanding debt which had accumulated to **TZS. 14,595,133.26**. In the said meeting defendant agree to settle the debt but in vain.

Accordingly, Under Order XXXV Rule 2, I hereby pronounce judgment in favour of the plaintiffs and against the Defendant for the sum of Tsh **TZS. 14,595,133.26** together with interest of 12% from the judgement date till final payment.

The plaintiffs are also awarded costs of the suit.

DATED at **MUSOMA** this 19th day of June 2024.



Nk
M. L. KOMBA
Judge

Judgement delivered in chamber in the presence of Mr. Stamili Ndalo, State Attorney for plaintiffs and in the absence of defendant as he did not show interest to defend the suit.

Nk
M. L. KOMBA
Judge

19th June, 2024