IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CIVIL CASE NO 25852 OF 2023

REFERENCE NO. 20231122000025852

BETWEEN

TARIME DISTRICT COUNCIL ..... 1ST PLAINTIFF

THE ATTORNEY GENERAL ..... 2ND PLAINTIFF

VERSUS

KASERKANDIS CONSTRUCTION LTD ..... DEFENDANT

SUMMARY JUDGMENT

19th & 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** 309,037,031.57 being service levy which was supposed to be paid to the 1st plaintiff for a diverse period of time from year 2010 to December 2022 and TZS 50,000,000.00 being exemplary damages.

In suits of this nature defendant has no automatic right to defend, the

leave must be sought and obtained as per provisions of Order XXXV Rule 2(2) of the Civil Procedure Code (Supra). Undoubtedly, failure to obtain leave, the Plaintiff will be entitled to the Judgement and Decree on the amount claimed.

The record is silent if applicant has obtained leave to defendant as he did not show up in any of the scheduled date although he is aware of this suit. 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 was pleaded by the Plaintiff while in exercise of its vested statutory power of collecting revenue from various sources includes taxes, fee and service levy, plaintiff called defendant in a meeting where she was notified of her legal obligation but she did not pay. Further, plaintiff served the Defendant with a demand note for outstanding service levy but did not respond.

Without further ado, Under Order XXXV Rule 2, I hereby pronounce judgment in favour of the plaintiffs and against the Defendant for the sum of TZS 309,037,031.57 together with interest of 15% of the decretal sum from the judgement date till final payment. No order as to costs.

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

M. L. KOMBA

Judge

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

M. L. KOMBA

Judge

19th June 2024