

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM SUB-REGISTRY**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 9791 OF 2024.**

**CASE REFERENCE NO. 202405021000009791**

(Arising from Civil Case No. 3887 of 2024)

**SHAJAR SCHOOLS ASSOCIATION ..... APPLICANT**

**VERSUS**

**BAGAMOYO DISTRICT COUNCIL ..... 1ST RESPONDENT**

**THE ATTORNEY GENERAL.....2ND RESPONDENT**

**RULING**

**26th June & 04th July 2024**

**KIREKIANO, J:**

The respondent filed civil Case No. 3887 of 2024 against the applicant, alleging that the applicant is required to submit the turnover report of her services for computation and pay service levy at a rate exceeding 0.3% in each quarter of the financial year. The allegation is that the applicant neglected to do so for three consecutive financial years from 2020/2021, 2021/2022, and 2022/2023.

Under the summary procedure, the respondent seeks the applicant's payment of Tshs: 65,332,406.81, the outstanding amount for unpaid service levy. Upon being served with the plaint under summary procedure, the defendant, now the applicant, filed this application seeking leave to appear and defend the suit, which is civil case No. 3887 of 2024.

The application has been preferred under Order XXXV Rule 3(1) (b) of the Civil Procedure Code, [Cap. 33 R.E 2019] (CPC), supported by an affidavit of Miss Shani Halfani Rashid, the principal officer of the applicant. The respondents did not file a counter affidavit. When the application came up for hearing on 08/05/2024, Mr. Adam Mwambene appeared for the applicant. In contrast, Miss Lucia Kikala, Learned State Attorney, appeared for the respondents and informed this court that the respondent was not objecting to the application.

In his brief submission, the counsel for the applicant adopted the affidavit and clarified that the application's grounds are based on section 22 (b) (iii) of the Local Government Finances Act, Cap 290, which provides that charitable and educational institutions are exempted from rating and assessment. He argued that the applicant, as proven in Shani Rashid Swai's

affidavit, is an academic institution that provides pre and primary education, ordinary-level, and secondary education, as well as an orphan center. The defense sought to be relied on by the applicant is that the applicant is exempted from rating, a legal basis that is crucial in the main case.

As such, he argued that the assessment and rating included 2022/2023, whose financial report has not been audited yet; thus, it was not an appropriate claim.

Mr. Mwambene cited the cases of **Makungu Investment Company Ltd vs. Petrosol (T) Limited (Civil appeal no. 23 of 2013) 280** and **Chisels Ltd vs. Arusha International Conference Center & Ag Misc. Civil Appl. No. 107 of 2022**), and **Mohamed Enterprises v Biashara Consumer Ltd (2022) TLR pg. 159** to the effect that when there is a triable issue, the application may be granted, and in considering if there is a triable issue to warrant the grant of the application, the same must be made clear in the affidavit.

As indicated above, the application is uncontested. I have considered whether there is a triable issue to be determined.

In the affidavit supporting the application, the applicant states that the applicant enjoys exemption under section 22 (b) (iii) of the Local Government Finances Act, Cap. He further noted that the claims indicated for 2022/2023 have not been audited, so the assessment may not be appropriate. It is thus clear that the interpretation of the cited law is the basis and merit or otherwise of the respondent's claims. The same can not be addressed here but in the main case. I thus find that this issue is sufficient to grant the application.

All said this application is merited. The applicant is granted unconditional leave to appear and defend the summary suit filed by the respondents. The applicant should file a written Statement of Defence within 21 days from this ruling date. Since this application was not contested, I shall make no order regarding cost.



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**COURT:**

The ruling was delivered in the presence of Mr Adam Mwambene, counsel for the applicant, and in the absence of the respondents.



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**A.J. KIREKIANO**

**JUDGE**

**04.07.2024**