

IN THE HIGH COURT OF TANZANIA
MUSOMA SUB- REGISTRY
AT MUSOMA
CIVIL CASE NO. 14 OF 2022

BETWEEN

BUNDA TOWN COUNCIL 1ST PLAINTIFF

ATTORNEY GENERAL 2ND PLAINTIFF

VERSUS

CHINA CIVIL ENGINEERING

CONSTRUCTION CORPORATINION (CCECC) DEFENDANT

JUDGMENT

21th February & 4th March, 2024

M. L. KOMBA, J.:

The plaintiff herein filed a Summary Suit against the defendant claiming amongst other things for payment of Tanzanian Shillings eight hundred sixty-four million (864,000,000/) being outstanding levy for 108,000 cubic meters (1,344,000 tonnes) of building materials excavated and used for defendants work until August 2021. Being summary suit, defendant has no automatic right to defend till and when he obtains leave.

It was pleaded that the defendant being a corporate entity which provides a wide range of services which includes but not limited to construction of

transportation infrastructures and that in recent years it was contracted by the Government of Tanzania to construct/upgrade Nyamuswa-Bunda-Buramba road (56 Kilometers) to Bitumen standards of which 40 kilometers lies within the jurisdiction of the 1st Plaintiff's Council.

In execution of its forementioned work as a whole, the defendant has excavated and used 864,000 cubic meters of building material (rock stones, gravels, sands and *Moram*) which entails the total amount of Tanzania Shillings 864,000,000/ as building material levy which is computed at the rate of Tanzanian Shilling 1,000/ per cubic meter. This was according to the Local Government Finance Act, [Cap 290 R. E 2002] and Bunda Town Council Bylaw (fee and levy).

It was further alleged that the defendant has defaulted payment despite several demand notices issued to them by the 1st plaintiff. A report showing the outstanding sum and correspondences between the parties in which the claimed non-payment of Tsh. 864,000,000/= is fully acknowledged by the defendant as attached to the plaint.

It is a trite Law that where a summary suit is filed, the defendant cannot enter appearance and defend the suit until he obtains leave of the Court. In

the event of failure to obtain leave, the allegation contained in the plaint shall be deemed to be admitted by the defendant and the plaintiff shall be entitled to a decree as per Order XXXV Rule 2 (2) (a) to (c) of the CPC. The provision reads;

2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from the judge or magistrate as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled;-

(a) where the suit is a suit, referred to in paragraph (a), (b) or (d) of rule 1 or a suit for the recovery of money under a mortgage and no other relief in respect of such mortgage is claimed, to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree maybe executed forthwith;

(b) Where the suit arises out of a mortgage and is for delivery of possession, redemption, discharge or transfer to a decree in

accordance with the provisions of Order XXXII and other provisions of this Code and such decree may, subject to exercise by the court of such powers as it may have, unless it is a preliminary decree, be executed forthwith;

(c) where the suit is for the recovery of possession of any immovable property, building or premises or for payment of rent, mesne profits or damages for unlawful occupation of such immovable property, building or premises, to a decree for possession and for payment of 3 rent, mesne profits or damages as claimed. [Emphasis is added].

Upon filing a summary suit and having effected service to the defendant, the defendant file application for leave to defend via Misc. Civil Application No.24 of 2022. When the said Application was set for hearing they failed to appear and was dismissed. Defendant successful restore her application but it was found with no triable issue and it was dismissed. When this matter was scheduled for hearing, Ms. Neema Mwaipyana, Mr. Stahimili Ndalo and Mr. Abdalah Makulo, all State Attorneys represented 1st and 2nd plaintiffs.

Mr. Ndalo prayed for this Court to proceed and enter a summary judgment in favour of the plaintiff in terms of Order XXXV Rule 2 (2) (a) of the Civil Procedure Code, Cap 33 R.E. 2019 (herein after referred to as a CPC), as the

defendant is failed to obtain leave to defend the suit and therefore the claims in the plaint shall be deemed to be admitted and pray this court to pronounce judgement. Ms. Mwaipyana submitted that they pray for the judgment in principal sum which is Tsh. 864,000,000/ and the interest of 12% rate from the date of judgement till final payment of the principle sum as prayed in plaint.


Under Order XXXV Rule 2, I hereby pronounce judgment in favour of the plaintiffs and against the Defendant for the sum of Tshs. 864,000,000/=.

The decretal sum shall accrue interest at the rate of 12% from the date of judgment to the date of full payment of the decreed sum.

The plaintiffs are also awarded costs of the suit.

DATED at TARIME this 04th day of March 2024.




M. L. KOMBA
Judge

Judgement delivered in chamber while this court operates from Tarime District Court premises in the presence of Mr. Stahimili Ndalo, State Attorney for plaintiffs and Mr. Andrew Luhigo Advocate for the defendant. Counsels were heard via teleconference, a service provided by Judiciary of Tanzania.


M. L. KOMBA

Judge

04 March, 2024