

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO. 140 OF 2014

BOLLORE AFRICA LOGISTICS

TANZANIA LIMITED PLAINTIFF

VERSUS

DEUS NYANZA t/a MBN TRADERS DEFENDANT

24th & 27th February, 2015

JUDGMENT

MWAMBEGELE, J.:

This is a default judgment. On 5.11.2014, the plaintiff Bollore Africa Tanzania Limited; a company registered under the Companies Act, Cap. 212 of the Revised Edition, 2002, instituted this suit against the defendant Deus Nyanza trading under business registered name of MBN Traders. As can be discerned from the plaint, the plaintiff is praying for the following orders:

1. Payment of USD 36,624.00;
2. Payment of general damages to be assessed by the Court for loss of reputation;

3. Interest at the commercial rate of 10% per annum on the sum of USD 36,624.00 from 2112.2013 to the date of judgment;
4. Court interest on the decretal sum from the date of judgment to the date of final fulfillment of the Decree;
5. Costs of this suit; and
6. Any other relief which this honorable court may deem fit and just.

The kernel of this suit revolves around non-performance of contract on the part of the defendant for the delivery of the loading equipment to the plaintiff. It is stated in the plaint that the plaintiff having been approached by a client namely Rift Valley Tea Solutions Limited for provision of three 10-tone Mobile Loading Ramps, engaged the defendant to procure the same. It is stated further that it was agreed that the plaintiff would pay 70% of the purchase price and the 30% balance was payable upon delivery of the three loading equipment at the Plaintiff's Tabata Yard. Pursuant to that agreement, and upon invoices issued to the plaintiff by the defendant, the former transferred a total of USD 36,624.00 to the defendant's bank account at Exim Bank Tanzania Limited on 31.10.2013 and 02.12.2013. It is also stated that despite such transfer and various demands, the defendant failed to deliver the said equipment pursuant to the agreement. Neither did he refund the amount already disbursed to him; hence the present suit.

Despite being served with the summons to appear and enter defence, the defendant could not file any defence against the suit. On 12.02.2015 the defendant was present when the suit was called before me for necessary

orders and told the caught that he was quite aware that he had not filed any defence and that he was in the process of negotiating with the plaintiff to have this suit settled out of court. On the very date, Ms. Burure Ngocho who appeared for the plaintiff intimated to the court that the defendant having been served with the plaint on 26.11.2014 and no defence was filed up to that date, she would file a formal application for default judgment under rule 22 (1) of the High Court (Commercial Division) Procedure Rules, 2012 – GN No. 250 of 2012 (henceforth “the Rules”). On 19.02.2015, the plaintiff’s counsel, indeed, walked the talk; she filed the application for default judgment.

There is no dispute that the defendant was served with the plaint and, equally undisputed, he did not file any defence thereof. The defendant conceded to this glaring truth and intimated to the court that he was in the process of settling the matter out of court. He did not do that and the plaintiff has filed an application for default judgment as required by the Rules. The plaintiff is entitled to judgment as prayed for in the plaint. Accordingly, in terms of rule 22 (1) of the Rules, I enter judgment for the plaintiff and pronounce as follows:

1. The defendant shall pay the plaintiff the sum of United States Dollars thirty six thousand six hundred twenty four (USD 36,624.00);
2. The defendant shall pay the plaintiff general damages in the sum of Tanzania Shilling five million (Tshs. 5,000,000/=);

3. The defendant shall pay interest at the commercial rate of 10% per annum on the sum of United States Dollars thirty six thousand six hundred twenty four (USD 36,624.00) from 21.12.2013 to the date of this judgment;
4. The defendant shall pay the plaintiff interest at court's rate of 7% on the decretal sum from the date of this judgment to the date of final and full satisfaction of the decree; and
5. The defendant is condemned to pay the plaintiff costs of this suit.

In terms of rule 22 (2) (a) and (b) of the Rules, I further direct that the decree in this case shall not be executed unless the decree holder has, within a period of ten (10) days from the date of this judgment, published a copy of the decree in at least two (2) newspapers of wide circulation in the country and after a period of twenty-one (21) days from the date of expiry of the said period of ten (10) days has lapsed. It is so ordered.

DATED at DAR ES SALAAM this 27th day of February, 2015.

J. C. M. MWAMBEGELE
JUDGE