

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

COMMERCIAL CASE NO.146 OF 2019

**BETWEEN
ALAF LIMITEDPLAINTIFF
VERSUS**

**JOYCE MBUYEKU (*the Administratrix of the
Estate of the late Esmail Mbuyeku*).....RESPONDENT**

DEFAULT JUDGEMENT

Date of Last Order: 30/ 07/2020

Date of Judgement: 19/10/2020

NANGELA, J.:

This is a default judgement. It arises from a suit filed in this Court by the Plaintiff on the 6th of December 2019. In that suit the Plaintiff prays for judgement and decree against the Defendant as follows, that the Defendant be ordered to pay the Plaintiff:

- (a) a sum of **TZS 1,038,099,550/=** being monies due to the Plaintiff from the Defendant representing value of goods (steel products and roofing materials) supplied to (by the Plaintiff) and received by the Defendant on credit basis;
- (b) Interest on the above sum at a rate of 24% per annum, from the due date until the date of full payment thereof.
- (c) General damages as assessed by the Court;

- (d) Interest on number (c) above at Court rate from the date of judgement till when the decree is fully satisfied;
- (e) Costs and incidental to the suit; and
- (f) Any other relief(s) the Honourable Court may deem fit.

I will briefly state the facts leading to the suit. It is the Plaintiff's case that the two parties have been in business relations for some time, whereby, the Defendants had the advantage of purchasing large consignments of roofing materials from the Plaintiff either with cash or on credit. To facilitate smooth operations, the Plaintiff assigned an Identification Number (**ID No.DDLOO155**) to the Defendant.

In their arranged manner of doing business, however, it was agreed that the Defendants would press for orders for supply of goods and the Plaintiff would process such orders and deliver the goods to the Defendant with a delivery note to be acknowledged by the Defendant upon satisfaction and receipt. Later the Plaintiff would send to the Defendants invoices seeking for payments for the goods delivered.

It is alleged that, for sometime, up to 18th April 2017, the Plaintiff had supplied goods to the Defendant on credit basis, which goods are valued at **TZS 1,038,099,550.00**. It is the Plaintiff's assertions that, at several intervals the Defendant used to confirm in writing the outstanding debt balance and, the last communication which was on 19th April 2018, the Defendant confirmed that, as at 31st March 2018, the outstanding debt stood at **TZS 1,038,099,550.00/**.

It is the Plaintiff's averments that, the Defendant never reduced or cleared the outstanding debt despite there being a demand to do so. The Plaintiff alleges to have

suffered serious financial difficulties due to the Defendant's conduct, as the Plaintiff has been denied the opportunity to reinvest the monies so as to expand his business, thus, claiming for the payment of the entire outstanding debt, interest thereon, as well as general damages.

When this case was called up for both mention and hearing, the Defendant never showed up. On the 29th January 2020, Mr John James, the learned counsel who appeared for the Plaintiff on the material date, informed the Court that, the Defendant declined to receive the summons which was served upon her, and that, an affidavit of the process server is on record as evidence to that effect. Indeed there is such an affidavit. On that account, the learned counsel for the Plaintiff prayed that a second attempt by of substituted service be made. I granted the prayer and fixed the matter for a mention for orders on 12th February 2020.

On the material date, Ms Machira, learned Advocate appeared for the Plaintiff. She informed the Court that the Notice to appear and file defence to the suit was duly published on the 6th of February 2020. She prayed to be allowed to file Form No.1 and apply for a default judgement. The Court adjourned the matter to 5th March 2020 since the 21days within which the Defendant should have filed her defence following the publication of the notice to do so were yet to come to an end.

On the 5th March 2020, Mr. Ndanu appeared for the Plaintiff. Once gain the Defendant was absent. Mr Ndanu seized the moment and applied for leave to file Form No.1 and applied for a default judgement. The Court granted leave and the Plaintiff filed Form No.1. On 10th June 2020

the Plaintiff was as well ordered to file all original documents intended to be relied upon.

On 19th March 2020, the Plaintiff filed Form No 1 under Rule 13 of the *High Court (Commercial Division) Procedure Rules, 2012 (as amended, 2019)* setting out the prayers and reliefs which the Court is being asked to grant. The Form No.1 was accompanied with three affidavits, two of which were affidavits of proof of the claim and one was affidavit of proof of service. I have looked at all these affidavits. The two affidavits of proof of the claim by the Plaintiff make reference to the Annexure filed in this Court to prove the claim.

In her affidavit, **Ms Violeth John Tesha**, who is the employee of the Plaintiff as Credit Controller, stated that the Plaintiff and the Defendant's trading relationship started in April 2016. She averred that, while the Defendant used to clear her debts smoothly, from September 2016 the Defendant started to delay clearing her debts which accrued to a tune of **TZS 1,038,099,500/-**. She averred further that, as a Credit controller, she used to approve all tax invoices regarding consignments of roofing sheets which the Defendant used to purchase on credit. She attached original copies of the delivery notes and tax invoices as Annexure ALAF-1 which were received as **Exh.P-1**.

In the affidavit of proof of claim filed by **Mr. Narayan Verma**, the deponent stated that as a Finance Manager of the Plaintiff, his duties include, among others, preparation of financial accounts of the Plaintiff Company. He stated to be acquainted with the Defendant as their customer assigned **ID No.DDL00155** and, that, the Defendant used to

purchase goods from the Plaintiff on credit basis from September 2016 to 18th April 2017. He stated that up to that time the goods supplied were worth **TZS 1,038,099,500/-** as per Annex **ALAF-1 & 2** to the Plaintiff (and whose originals were availed to the Court) as **Exh.P-1**.

He also stated that on 25th November, 2017 the Plaintiff wrote to the Defendant to confirm the outstanding debt balance due to the Plaintiff and the Defendant confirmed it to be **TZS 1,038,099,500/-**. A copy of the letter Annex **ALAF -6** to the Plaintiff (whose original was shown to the Court) was admitted as **Ex.P-5**). Furthermore, it was also averred that, the Plaintiff sent demand notices to the Defendant pressing for the payment of the said **TZS 1,038,099,500/-** but the Defendant failed, neglected or refused to settle the debt. The Demand letter was availed to the Court as **Exh.P-8**.

The issue which I am called upon to determine in this case is whether the Plaintiff is entitled to the prayers and reliefs sought in Form No.1 filed in this Court. It is trite that a Plaintiff who files for default judgement is not insulated from the requirements to prove his case to the required standards. As it has been noted in this default judgement, the Plaintiff has filed three affidavits together with the original documents proving its case.

The right to apply for a default judgement is provided for under Rule 22(1) of the *High Court (Commercial Division) Procedure Rules, 2012 (as amended, 2019)*. The said rule 22(1) provides as follows:

“(1) Where any party required to file written statement of defence fails to do so within the specified period or where

such period has been extended in accordance with sub-rule (2) of rule 20, within the period of such extension, the Court may, upon proof of service and on application by the plaintiff in Form No.1 set out in the Schedule to these Rules accompanied by an affidavit in proof of the claim, enter judgment in favour of the plaintiff.”

As it has been demonstrated herein above, the Plaintiff did file Form No.1 in this Court applying for a default judgement following the failure by the Defendant to file a written statement of defence. The Defendant was given ample time to do so and apart from being served physically and declining to accept service; the Plaintiff went ahead and published the summons in *Mwananchi News Paper* dated 6th April 2020. Even so the Defendant did not file her defence nor appear in Court. It is also clear that the Plaintiff has filed affidavits to prove the claims.

In the case of **A-one Products Machinery Ltd v Hong Kong Hua Yun Industries Ltd**, Commercial Case No.105 of 2017, (see also **Nitro Explosives (T) Ltd v Tanzanite One Mining Ltd, Comm. Case No.118 of 2018 (unreported)**), this Court held that, the grant of a default judgement is made possible upon proof of the following:

- (a) That, there was proof of service to the Defendant but failed to file written statement of defence.
- (b) That, the Plaintiff had made an application to the Court in the prescribed **Form No.1** to the 1st Schedule to the Rules.
- (c) That, the said **Form No.1** is accompanied by an affidavit in proof of the claim.

In the above cited authorities, this Court emphasized that:

“the affidavit in proof must be self-explanatory proving every claim in the plaint and the exhibits must as well be authenticated and that the three ingredients must co-exist for the judgement in favour of the plaintiff to be given.”

There is no doubt that the Plaintiff in this case has satisfied the above requirements. As it stands, given the evidence available on record as per the annexures to the affidavits which accompany Form No.1, which are also annexed to the Plaint, the outstanding amount claimed by the Plaintiff is **TZS 1,038,099,500/-**. There is no dispute that the Plaintiff and the Defendant were having a business relationship and there is no dispute that the Plaintiff demanded from the Defendant payment of the said amount and the Defendant failed to honour the demands despite of acknowledging the total amount owed to the Plaintiff.

Having gone through the Plaint and the annexures thereto and, having examined the Form No.1, the Affidavits of proof of the Claim and proof of service, as well as the original documents (**Exh.P-1 & Exh.P-8**) availed to this Court by the Plaintiff, I am fully convinced that the Plaintiff has proved its case to the required standards and, hence, is entitled to a default judgement, as well as some of the prayers sought in Form-No.1.

It follows, therefore, in terms of Rule 22(1) of the *High Court (Commercial Division) Procedure Rules, 2012 (as amended, 2019)*; this Court do hereby enters judgement in default and decree in favour of the Plaintiff as follows:

- (a) That, the Defendant is ordered to pay to the Plaintiff a sum of **TZS 1,038,099,550;**

(b) That, the Defendant is ordered to pay Interest on the above sum at a rate of 17% per annum, from the due date of 18th March 2018 to the date of this default judgement.

(c) That, the Defendant is ordered to pay Interest on decretal amount at a rate of 7% from the date of this default judgement till when the decree is fully satisfied;

(d) That, the Defendant is ordered to pay to the Plaintiff all Costs pertaining to this suit.

Further orders:

That, in terms of Rule 22 (2) (a) and (b) *High Court (Commercial Division) Procedure Rules, 2012 (as amended, 2019)*, the Court makes further orders that the decree emanating from this suit shall not be executed unless the decree holder has, within a period of ten (10) days from the date of this default judgement, publish a copy of it (the decree) in at least two (2) widely circulated newspapers in the country and after a period of twenty one days (21), from the date of expiry of the said ten (10) days, has elapsed.

It is so ordered.



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DEO JOHN NANGELA
JUDGE,

High Court of the United Republic of Tanzania
(Commercial Division)
19 / 10 / 2020

Ex-parte Judgement, delivered on this 19th day of October 2020, in the presence of the Mr Ndanu, Advocate for the Plaintiff, and in the absence of the Defendants.



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DEO JOHN NANGELA
JUDGE,

High Court of the United Republic of Tanzania
(Commercial Division)
19 / 10 / 2020