

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT ARUSHA

COMMERCIAL CASE NO. 03 OF 2022

STEPHEN MAHENDEKA MGANGA.....PLAINTIFF

VERSUS

BESTWAY CAPITAL

MANAGEMENT LIMITED (BCM)..... DEFENDANT

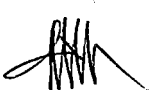
Date of Last Order and Judgement: 01/06/2022

DEFAULT JUDGEMENT

MAGOIGA, J.

This is a default judgement. The plaintiff, **STEPHEN MAHENDEKA MGANGA** by way of plaint instituted the instant suit against the above-named defendants praying for judgement and decree in the following orders, namely:

- a. A declaration that the letter issued by the defendant on 11th January, 2022 to the plaintiff was unlawful;



- b. A declaration that the defendant herein breached the term of Portfolio Service Management agreement executed on 24th May, 2021 by failure to pay the return of investment.
- c. Payments of special damages at the tune of:
 - (i) Tshs.100,000,000 One Hundred Million Tanzania Shillings only as the trading capital investment by the plaintiff herein the defendant as financial market,
 - (ii) Tshs.33,350,000/= (say Tshs. Thirty-Three Hundred Thirty Five Thousands Only) as the return of investment that the plaintiff would have earned from December to May 2022.
- d. Payment of general damages at the tune of 1,000,000,000/=(One Billion Tanzania Shillings),
- e. Costs of the suit be borne by the defendant;
- f. Any other relief(s) that this honourable court may deem fit and just to grant.

The brief facts giving rise to this suit are not complicated. It is stated that, on 24th May, 2021 plaintiff entered into agreement of Portfolio Service Management with the defendant in which plaintiff invested Tshs.100,000,000/= as a trading capital invested in financial market.



And in return, the plaintiff was entitled to 6.67% of the amount invested. Facts go that, it was agreement of the parties, among others, that in return plaintiff will receive 6.67% of the amount invested for period of 12 calendar months from the date of agreement.

Facts go further that, at the beginning, things went well until on December, 2021 to March 2022 when defendant failed to perform its contractual obligation as a such the unpaid return on investment as per April, 2022 stand at TZS.33,350,000. It was stated further that, defendant communicated to plaintiff through letter dated 11th January, 2022 informing it that the return on investment has been suspended for four months. The plaintiff's efforts to have the outstanding return on investment paid has been in vain, hence, this suit claiming the reliefs as contained in the plaint.

The efforts by plaintiff to serve the defendants by normal means were in vain. There is an affidavit of the process server to that effect dated 13th May, 2022.

When the suit called on for orders on 31st May, 2022 no defence has been filed nor any application for extension of time made to file one. In the circumstances, Ms. Upendo Msuya the learned advocate for the plaintiff prayed to be allowed to proceed under the provisions of Rule 22(1) of the



High Court (Commercial Division) Procedure Rules, 2012 as amended by G.N.107 of 2019 and prayed to file an application under Rule 22 of this court's Rules. I granted the prayer because time to file written statement of defence and time for filing extension of time to file written statement of defence had long elapsed and fixed this suit today for date of judgement. Ms.Msuya informed the court to have complied with the orders and prayed for date of judgement.

In the circumstances, I fixed this suit for judgement and went to consider her application for default judgement. The plaintiff in order to prove her case filed Form number 1 accompanied with affidavit in proof of the claim as provided for under Rule 22 (1) as amended by G.N. 107 of 2019, paving way for this default judgement.

In proving the claim, the plaintiff on 1st day of June, 2022 filed in this Court, Form 1 accompanied by the affidavit of, one, STEPHEN MAHENDEKA MGANGA who is the plaintiff in this suit.

Having carefully gone through the affidavit and the exhibits 1-3 collectively annexed in the affidavit in proof of the claim, I am satisfied that the plaintiff has discharged his legal burden required in civil cases in reliefs claimed in paragraphs (c) which is specific damages as claimed in the plaint. In



essence this suit revolves around breach of contract for non-payments of return on investment and return of capital invested by the plaintiff.

Paragraph (a) of the plaint is on the claim of specific damages which are to be strictly proved. See the case of ZUBERI AGOSTINO vs. ANICET MUGABE [1992] TLR 137.

This Court faced with similar situation in the cases of **NITRO EXPLOSIVE (T) LIMITED v. TANZANITE ONE MINING LIMITED, COMMERCIAL CASE NO. 118 OF 2018 (HC) DSM (Unreported) AND A-ONE PRODUCTS AND BOTTLERS LIMITED v. TECHLONG PACKAGING MACHINERY LIMITED AND ANOTHER, COMMERCIAL CASE NO 105 OF 2017 (HC) DSM (Unreported)** in the interpretation of Rule 22 (1) as amended, held that for the plaintiff to enjoy fruits of justice under Rule 22(1), the following cumulative ingredients must be proved, namely;

- (a) Proof of the service to the defendant but who has failed to file written statement of defence.
- (b) The plaintiff must make an application in the prescribed Form No. 1 to the First Schedule to the Rules.



(c) That the said application in Form No.1 **must be accompanied by an affidavit in proof of the claim** (Emphasis and underline mine).

In the instant suit, there is no dispute that the defendants were served in accordance with the law. However, despite such proof of service, no written statement of defence has been so far filed nor any application for extension of time made to file one. Equally, it is not in dispute that the plaintiff has made an application in prescribed Form No. 1 and same was accompanied with the affidavit in proof of the claim. In the totality of the above, this Court having carefully gone through the affidavit and exhibits 1-3 thereto, I am satisfied that the plaintiff has been able to prove TZS.33,350,000/= being an unpaid return on investment specific claims in paragraph (c)(ii) of the plaint. In the circumstances, I am inclined to enter a default judgment against the defendant and decree infavor of the plaintiff as follows:-

- i. I declare that the letter issued by the defendant on 11th January, 2022 to the plaintiff was unlawful;
- ii. I declare that the defendant is in breach of the terms of the Portfolio Service Management Agreement executed on 24th May, 2021 by failure to pay the return of investment;



- iii. I order the defendant to pay the plaintiff TZS.100,000,000/= being trading capital invested by the plaintiff herein with the defendant as the financial market;
- iv. I order the defendant to pay the plaintiff Tshs.33,350,000/= being the return on investment from December, 2021 to May 2022;
- v. The defendant is equally ordered to pay Tshs.5,000,000/= being general damages for inconveniences caused to the plaintiff;
- vi. The plaintiff will have costs of this suit.

In terms of Rule 22 (2) (a) of the Rules as amended by G.N. 107 of 2019, I further order that the decree in this suit shall not be executed unless the decree holder has, within a period of ten (10) days from the date of this judgement, publicize the decree in Daily Newspaper and Mwananchi Newspaper one copy each and a period of twenty-one days (21) from the date of expiry of the said ten (10) days has elapsed.

It is so ordered.

Date at Arusha this 1st day of June, 2022.




S.M. MAGOIGA

JUDGE

26/05/2022.