

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO.10 OF 2022**

EQUITY BANK (T) LIMITED.....PLAINTIFF

VERSUS

ANNE SARA KOMBE T/A

EMERALD HOUSE.....DEFENDANT.

DEFAULT JUDGMENT.

Date of Last Order: 20/07/2022.

Date of Judgment: 29/07/2022.

Z.A MARUMA J.

The Plaintiff is a corporate body duly established under the Companies Act Cap 12, R.E 2002 of the laws of Tanzania and licensed under the Banking and Financial Institutions Act, 2006 to carry out banking business while the Defendant is a dully registered Sole Proprietor under the laws of Tanzania. Before this Court the Plaintiff is requesting a judgment and decree to be entered against the Defendant for the following reliefs prayed in the plaint for:

- a) Payment of USD 41,684.27 as pleaded in paragraph 3 of this Plaint.
- b) Payment of Interest at Commercial rate of 23% per annum for the sum in paragraph 3 of the Plaint from when it was due to the date of the judgment.
- c) Payment of interest on the decretal sum at 12% from the date of the Judgment until payment in full.
- d) Costs of this suit.
- e) Any other Order (s) and relief (s) may this Honourable Court deems fit and just to grant.

The Plaintiff's effort to trace the whereabouts of the Defendant through his last address was proved futile as a result a prayer of substituted service was granted on 16th May 2022. The defendant was served by substituted service twice through two common newspapers widely circulated in Tanzania within two weeks the order complied with on 10th June 2022 through two newspapers of Mwananchi of 10th June and Daily news of 10th June 2022 unsuccessful.

On 20th July 2022, Mr. Zuriel Kazungu, Advocate for the Plaintiff filed form no. 1 for default judgment supported by an affidavit in compliance of rule 22 (1) of the High Court (Commercial Division) Procedure (Amendment) Rules, 2019 which provides that,

"....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 19, within the period of such extension, the Court shall upon proof of service and on application by the plaintiff in Form No.1 set out in the Schedule to these Rules enter judgment in favour of the plaintiff".

Based on the sequential procedural steps above, the compliance of the requirements for the grant of the default judgment have been met. I have also gone through the application for default judgment and supported affidavits of one Lucky Titus Kagu, the Principal officer of the Plaintiff together with the plaint and attached documents therein to prove the claim. Having guided by the decision of the Court of Appeal in the case of **Nitro Explosives T. Limited vs Tanzanite One Mining Limited** (Civil Appeal 175 of 2019) [2021] TZCA 634 (03 November 2021) at page 10-11 when it referred the case of **Bruno Wenceslaus Nyalifa vs. The permanent Secretary, Ministry of Home Affairs & Another**, Civil Appeal No. 82 of 2017 (unreported) in which the Court held that,

"...Annexures to the affidavit should not be ignored. This is for obvious reason that, affidavit is evidence and the annexure thereto

is intended to substantiate the allegations made in the affidavit Unless it is controverted therefore, the document can be relied upon to establish a particular fact...."

On the guidance above, I am certain that the plaintiff's claims are established to the required standards and so far, not contested by the defendant.

In the event, in terms of rule 22(2) 22 (1) of the Commercial Court Rules of 2014, read ***mutandis mutandis*** with Order VIII rule 14 (1) of the Civil Procedure Code, Cap. 33 R.E of 2019. I therefore, enter a judgment for the plaintiff in the following terms;

1. The defendant to pay the Plaintiff USD 41,684.27 as pleaded in paragraph 3 of this Plaint.
2. The defendant to pay the plaintiff an interest at Commercial rate of 23% per annum for the sum in paragraph 3 of the Plaint from when it was due to the date of the judgment.
3. The defendant to pay the plaintiff the f interest on the decretal sum at 12% from the date of the Judgment until payment in full.
4. Costs of this suit.

".... 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 19, within the period of such extension, the Court shall upon proof of service and on application by the plaintiff in Form No.1 set out in the Schedule to these Rules enter judgment in favour of the plaintiff".

Based on the sequential procedural steps above, the compliance of sine qua non for the grant of the default judgment have been met. I have also gone through the application for default judgment and supported affidavits of one Lucky Titus Kagu, the Principal officer of the Plaintiff together with the plaint and attached documents therein to prove the claim. Having guided by the decision of the Court of Appeal in the case of **Nitro Explosives T. Limited vs Tanzanite One Mining Limited** (Civil Appeal 175 of 2019) [2021] TZCA 634 (03 November 2021) at page 10-11 when it referred the case of **Bruno Wenceslaus Nyalifa vs. The permanent Secretary, Ministry of Home Affairs & Another**, Civil Appeal No. 82 of 2017 (unreported) in which the Court held that,

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On the guidance above, I am certain that the plaintiff's claims are established to the required standards and so far, not contested by the defendant.

In the event, in terms of rule 22(2) 22 (1) of the Commercial Court Rules of 2014, read ***mutandis mutandis*** with Order VIII rule 14 (1) of the Civil Procedure Code, Cap. 33 R.E of 2019. I therefore, enter a judgment for the plaintiff in the following terms;

1. The defendant to pay the Plaintiff USD 41,684.27 as pleaded in paragraph 3 of this Plaint.
2. The defendant to pay the Plaintiff Interest at Commercial rate of 23% per annum for the sum in paragraph 3 of the Plaint from when it was due to the date of the judgment.
3. The defendant to pay the Plaintiff interest on the decretal sum at 12% from the date of the judgment until payment in full.
4. The defendant to pay the Plaintiff Costs of this suit.

The decree of this case should be executed in compliance with the terms under rule 22 (2) (a) and (b) of the Rules.

It is so ordered.



Z . A. Maruma, J

29/07/2022

Judgment delivered this 29th July 2022 in the presence of Ms. Christabella Madembwe for the Plaintiff in absence of the Defendant.

M. B. MPAZE

DEPUTY REGISTRAR

29/07/2022