

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO. 118 OF 2021

BETWEEN

SIEYUN ELECTRIC COMPANY LIMITED.....PLAINTIFF

Versus

M/S SHULTZ-NET COMPANY LIMITED DEFENDANT

Date of last order: 21st October, 2022

Date of Ruling: 21st November, 2022

RULING

MKEHA, J.

Through Mr. Maliki Juma learned advocate, the plaintiff has raised a preliminary point of objection to the effect that, the written statement of defence is bad in law for contravening Order VIII Rules 3 & 4 of the Civil Procedure Code. According to the learned advocate, the law demands denial to be specific. In view of the learned advocate the paragraphs containing evasive denials should be a basis for entering judgment on admission in

favour of the plaintiff.

The learned advocate condemned the defendant for denying the plaintiff's claims without specifically telling the court why she generally denies the plaintiff's claims. He made reference to paragraphs 4 to 9 of the defendant's written statement of defence. In that regard, he prayed that, it be taken that, the defendant has admitted the plaintiff's claims as per Order VIII Rule 5 of the Civil Procedure Code.

Mr. Rwegasira learned advocate for the defendant submitted in reply that, the defence is not evasive. According to the learned advocate, the written statement of defence has an answer to each and every allegation. Maintaining that the denial should be clear and unambiguous, the learned advocate insisted that, even if it were evasive denial, judgement on admission was being wrongly asked. According to the learned advocate, the plaintiff ought to file rejoinder to the written statement of defence before asking for judgement on admission.

When the learned advocate for the plaintiff was invited to re-join, he

submitted that, mere denial of contract while admitting performance of the contract is equal to admission. In view of the learned advocate, it was not possible to file rejoinder to the written statement of defence in the absence of any fact pleaded in the defence.

With regard to the area of contention between the learned advocates for the parties, the position is settled that, the main allegations which form the foundation of the suit should be dealt with and be expressly denied. Such facts should be taken up separately as far as possible in the order stated in the plaint and the defendant should either admit or deny them or state definitely that he does not admit. Under Rule 5 of Order VIII of the Civil Procedure Code, facts not specifically dealt with are taken to have been admitted.

In the instant case, the main allegations forming foundation of the plaintiff's suit are found in paragraphs 4 and 7 of the plaint. These have been sufficiently and specifically denied in paragraphs 4 and 7 of the defendant's written statement of defence.

For the foregoing reason, the preliminary point of objection is overruled and dismissed for want of merit. Costs to be in the main cause. It is so ordered.

Dated at DAR ES SALAAM this 21st day of November, 2022.

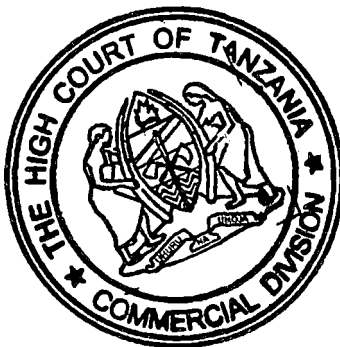



C. P. MKEHA

JUDGE

21/11/2022

Delivered this 21st November, 2022 in the presence of Advocate Francis Wisdom for the Plaintiff and Advocate Abdon Rwegasira for the Defendant.





J. M. MINDE

DEPUTY REGISTRAR

21/11/2022