

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA**

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 61 OF 2023

KATAVI MINING COMPANY LIMITED.....1ST PLAINTIFF

AHMED ALI AHMED AL HOQANI.....2ND PLAINTIFF

ISSA ALI AHMED AL HOQANI.....3RD PLAINTIFF

RASHID SAIF MOHAMED ALRAJHI.....4TH PLAINTIFF

VERSUS

MONA SULEIMAN AHMED

SAEED AL HOQANI (*as an administratrix of the Estate of
Sulaiman Ahmed Said Al Hawqani*)DEFENDANT

Date of Last Order: 18/9/2023

Date of Judgment: 20/10/2023

DEFAULT JUDGMENT

NANGELA, J.:

This is a default judgment. It arises from an alleged breach of contract and failure on the part of the Defendant to file a written statement of defense as required by the law, despite having been duly served via his email address and by way of DHL courier services.

The Plaintiffs, being a company and its shareholders, instituted the instant suit against the above-named Defendant praying for judgment and decree as follows: -

1. A declaration that the Defendant has breached the shareholders Agreement.
2. An order that the Defendant pay a total of United States Dollars Eighteen Million Sixty-Three Thousand Three Hundred Thirty-Three and one Hundred and Nineteen Cents (USD 18,063,333.190) being his portion of capital injection, repayment of loans and share of losses suffered by the 1st Plaintiff for the period between 2017 to 2022.
3. An order for payment of interest on the amount in prayer No.2 above at Commercial rate of 26% per annum from the date the entire amount was

required to the date of this judgment.

4. An order for payment of interest on the decretal sum at the court rate of 7% per annum from the date of judgment to the date of full satisfaction.

5. General damages.

6. Costs of and incidental to the suit.

The background to this suit may be briefly stated. In 2010, the 2nd, 3rd and 4th Plaintiffs including Mr. Suleiman Ahmed Said Al Haqwani (now deceased) registered a Company in Tanzania by the name of **Katavi Mining Limited** (1st Plaintiff) and as well as a subsidiary company known as **Katavi and Kapufi Mining Company Limited**.

As time went by, in 2015 the shareholders entered into a shareholders' Agreement (SHA) where it was agreed, among other terms, that, whenever there will be a need to inject capital in the 1st Plaintiff arises as loan or equity, it shall be compulsory for all shareholders to participate in

injecting funds or repayment of borrowed money based on their shareholding ratio at the time.

According to the plaint the first call for share capital contribution was done in March 2017 and the second call for capital injection was in October 2017 done through the 1st Plaintiff's Extra Ordinary Annual General Meetings (EAGM) which the 2nd, 3rd and 4th Plaintiffs fully participated. It has been averred that, for period between 2017 to 2022 the 2nd, 3rd and 4th plaintiffs contributed to the OPEX and CAPEX of the 1st Plaintiff in form of equity to the tune of USD 39,370,829.016 and such contribution depended on the number of shares held in the company.

However, since the 1st Plaintiff borrowed from various source only the 2nd, 3rd and 4th Plaintiffs contributed towards the repayment of this loan except the late Suleiman Ahmed Said Al Hawqani who did not contribute his share at the time of his existence as the loan taken before his demise was yet to become due and payable.

It was submitted further that, even after his demise the Defendant, being the administratrix of the late Suleiman Ahmed Said Al Hawqani, has failed, ignored, or refused to participate in the activities of the 1st Plaintiff, including facilitating transmission of shares or sell thereof and participating in recapitalization per the provisions of the shareholders Agreement. It has averred that; the Defendant is required to contribute USD 18,063,333.19 based on sharing ratio of 16.44% of which include repayment of the loan and accumulated losses as per the Shareholders Agreement.

Despite several efforts of the plaintiffs on various occasion and on diverse dates tried to engage the defendant to participate in the affairs of the 1st plaintiff including ensuring transmission of the shares of the late Suleiman Ahmed Said Al Hawqani to the rightful beneficiaries to no avail. For that reason, in 2022 the 1st Plaintiff resolved to move the court for disposition of shares of the deceased by operation of law which was granted but still the Defendant

does not cooperate with others to ensure the transmission of those shares, and hence, this suit and the reliefs sought therein.

When service to the Defendant who resides abroad in Oman was effected through substituted means, via the DHL, and also via the Defendant's known e-mail address, he refused to accept service as evinced on the DHL papers. The evidence available does show that the Plaintiff served the Defendant on 27th June 2023 through DHL and through email on 26th July 2023.

When this suit was called on for orders on the 15th of August 2023, no written statement of defense had been filed and, at the same time, the Defendant did not appear in court be it in person or through an advocate. It was at that juncture that, the learned counsel for the Plaintiff prayed that she be allowed to proceed under Rule 22 (1) of this Court's Rules of Procedure and file Form No.1, a prayer which this court readily granted.

The learned counsel for the Plaintiff has therefore filed Form No.1 in accordance with Rule 22 (1) of the High Court (Commercial Division) Procedure Rules, G.N.250 of 2012 (as amended by GN.107 of 2019). The Form No.1 filed by the Plaintiff's advocate has been supported by an affidavit, this being the requirement of the above cited rule. The affidavits filed in this court on 12th September 2023, affirmed by Mr. Omar Hasan Younis Gharaibeh and Mr. Muhmood Abdul Razaq Yass Al Jubori who are the accountant and chief executive officer of the 1st Plaintiff respectively.

Other affidavits which accompany Form No.1 were affirmed by Mr. Ahmed Ali Ahmed Al Hoqani who is the Director and shareholder of the 1st Plaintiff, Issa Ali Ahmed Al Hoqani, the director and shareholder as well as the affidavit of Mr. Rashid Saif Mohammed Al Rajhi also the director and shareholder of the 1st Plaintiff.

Having carefully gone through the affidavits and the exhibits annexed in proof of the claims, I am satisfied that this suit revolves around a breach of contract resulting from

the failure on the part of the Defendant to pay his requisite shareholder's contribution to the company as per the Shareholders Agreement.

I have also noted that the Plaintiffs have complied with the requirement as stipulated under Rule 22 (1) of the High Court (Commercial Division) Procedural Rules, G.N. 250 as amended by G.N. 107 of 2019. The said Rule provides as follows:-

Rule 22(1) 'Where a party required to file written statement of defence fails to do so within the specified period or where such a 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 the 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.'

In the circumstances, it is my finding that the Plaintiffs have satisfied the requirements of the law and are entitled to the prayers in the Plaint. It follows, consequently, that, in

terms of Rule 22(1) of the Rules as amended by G.N. No.107 of 2019, this court enters a default judgment and decree in favour of the Plaintiffs and states as follows: -

1. That the Defendant is hereby ordered to pay to the 1st Plaintiff a sum USD 18,063,333.19 being his portion of capital injection, repayment of loans and share of losses suffered by the 1st Plaintiff for the period between 2017 to 2022 which remain unpaid.
2. That the Defendant is hereby ordered to pay interest on the above sum at the Commercial rate of 14% from the date of filing this suit to the date of this default judgment.
3. That the Defendant is hereby ordered to pay interest on the decretal amount at the court rate of 7% from the date of judgment till the date of full satisfaction.

4. That the Defendant is condemned to pay costs of this suit.

FURTHER ORDER

5. That In terms of Rule 22(2) (a) and (b) of the rules, 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 the default judgment, published a copy of the decree in at least two newspapers of wide circulation in the country and after the period of twenty one (21) from the date of expiry of the said ten (10) days has elapsed.

It is so ordered.

DATED AT DAR-ES-SALAAM ON THIS 20TH DAY OF OCTOBER
2023



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DEO JOHN NANGELA
JUDGE