

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA SUB-REGISTRY
AT TABORA
LAND CASE NO. 05 OF 2023
UYUI DISTRICT COUNCIL 1ST PLAINTIFF
ATTORNEY GENERAL 2ND PLAINTIFF
VERSUS
PACHTEC COMPANY LIMITED DEFENDANT

SUMMARY JUDGMENT

Date of the last Order: 14/02/2024

Date of Judgment: 20/02/2024

KADILU, J.

On 15/08/2023, the plaintiffs filed a suit in this court under Order XXXV of the Civil Procedure Code (CPC) [Cap. 33 R.E.] 2019, naming it as Summary Procedure. In the plaint, the plaintiffs prayed for summary judgment and decree against the defendant as follows:

- i) An order for the defendant to pay to the plaintiff TZS. 100,173,499,93/= as produce crop cess.*
- ii) The defendant be ordered to pay interest at the court's rate and commercial rate of 25% on the decretal amount from the date of judgment to the date of final payment.*
- iii) General damages to be assessed by the court.*
- iv) Costs of the suit be borne by the defendant.*
- v) Any other relief the court may deem fit and just to grant.*

The facts leading to the foregoing prayers are thus, the plaintiffs have been claiming from the defendant the payment of TZS. 100,173,499,93/= being unpaid crop cess for tobacco season in 2020/2021. The plaintiffs assert that under the Local Government Finance Act [Cap. 290 R.E. 2019] and the

Uyui District Council By-Laws, G.N. No. 384 of 2017, the defendant is obliged to pay the plaintiff tobacco cess for every season. The plaintiffs allege, however, that in the 2020/2021 tobacco season, the defendant defaulted to pay the said cess despite several reminders.

With such a failure, the plaintiffs issued demand letters to the defendant in February and March 2022. The plaintiffs aver that in April 2022 the defendant wrote a letter to them acknowledging being indebted to them, yet it ignored, failed, neglected, or refused to repay the amount due to the plaintiffs, hence the present case. Having filed the present suit under the summary procedure as stipulated under the CPC, the defendant was duly served. However, the defendant never filed any application to the court to be allowed to defend the suit. On 21/11/2023 when the matter came up for necessary orders, Mr. Lucas Kashindye who is the Advocate for the defendant prayed for an extension of time to apply for leave to appear and defend the suit.

The prayer was objected to by Mr. Gureni Mapande, Advocate for the plaintiffs on the ground that the summons that was served to the defendant indicated expressly that the defendant was required to file leave within 21 days if he wished. Mr. Gureni added that for failing to file leave within time, the defendant had waived his chance to defend the suit. The learned Counsel prayed for the court to grant the plaintiffs the claimed reliefs. In rejoinder, Mr. Kashindye submitted that the defendant got the summons in time but one of its directors was abroad so, the meeting of the board of directors

could not be convened to deliberate whether the defendant should defend the suit or not.

Relying on Order XXXV Rule 2 of the CPC, the court withheld the defendant's prayer for an extension of time to file leave after having been satisfied that the defendant had not demonstrated a good cause for the delay. It is undisputed that the defendant was served a summons but he failed to apply for leave to defend the suit. As a matter of law, once a suit is filed under Order XXXV, an appearance to defend the suit is not automatic. The law is clear that if the defendant intends to appear and defend the suit, he must apply to the court and obtain leave. In the instant matter, no such application was filed by the defendant after having received the summons on 16/10/2023, which informed the defendant what it was supposed to do. Order XXXV Rule 2 of the CPC provides that:

"... the defendant shall not appear or defend the suit unless he obtains leave from the judge or magistrate as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) and such sum for costs as may be prescribed ..."

I have examined the plaint and its annexures to find out if all the claims are supported with evidential material. Annexure PU-01 is the defendant's letter dated 01/04/2022 addressed to the 1st plaintiff acknowledging being

indebted and promising to settle it before 31/05/2022. Part of the said letter reads as follows:

"Ni kweli kabisa kuwa halmashauri yako inatudai kiasi hicho kama kichwa cha habari kinavyojieleza na pia tunakiri na kutambua juu ya ucheleweshaji wa malipo haya. Tumepambana na changamoto nyingi za kibiashara kama ambavyo tumeshaainisha kwenye barua zetu za awali. Kutokana na mipango tuliyo nayo katika kushughulikia suala hili, tuna uhakika kwamba deni litakuwa limelipwa lote kabla ya tarehe 31.05.2022. Hivyo, tunaomba uendelee kutuvumilia mpaka wakati huo tulioahidi kukamilisha malipo."

Up to 15/08/2023 when this suit was filed, the defendant had not paid a penny and it failed to take the requisite steps to obtain leave to defend the suit against it. According to Order XXXV Rule 2 of the CPC, failure on the part of the defendant to obtain leave to defend makes it possible for the allegations contained in the plaint to be deemed as having been admitted by the defendant. In light of that, the 1st plaintiff is entitled to the reliefs sought as stipulated under Order XXXV Rule 2 (a) of the CPC.

In the case of ***CRDB Bank Limited v John Kagimbo Lwambagaza*** [2002] TLR 117, it was held that the purpose of summary procedure is to enable a plaintiff to obtain judgment expeditiously where the defendant has in effect no substantial defence to the suit and prevent the defendant from employing delaying tactics and, in the process, postpone the day of reckoning. The above-cited case applies equally to the case at hand. Since the defendant has not been able to heed the summons served upon it, this

court is entitled to deem it that, the claim contained in the plaint filed by the plaintiffs has been admitted, and the 1st plaintiff is entitled to judgment.

In the upshot, this court grants judgment to the plaintiffs and makes the following orders:

- (a) The defendant is ordered to pay the 1st plaintiff a sum of TZS 100,173,499,93/= being the outstanding crop cess for the 2020/2021 season.
- (b) That the defendant is hereby ordered to pay the 1st plaintiff interest on the decretal amount at the court's rate of 7% per annum from the date of judgment to the date of final payment.
- (c) The defendant shall pay the 1st plaintiff costs of this suit.

It is so ordered.


KADILU, M.J.
JUDGE
20/02/2024.

Judgment delivered in chamber on the 20th Day of February 2024 in the presence of Mr. Samwel Mahuma, State Attorney for the plaintiffs.




KADILU, M.J.,
JUDGE
20/02/2024.