

TANZANIA / JUDGMENT

abdallah saleh tuwel vs tunduru district council and another 2023 tzhc 18825 12 july 2023

COURT
TZHCDECIDED
12 July 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB - REGISTRY OF
SONGEA AT SONGEA MISC. CIVIL APPLICATION NO. 16 OF 2022 ABDALLAH SALEH TUWEL
..... APPLICANT VERSUS TUNDURU DISTRICT COUNCIL
..... 1ST RESPONDENT THE ATTORNEY GENERAL
2ND RESPONDENT (Arising from Civil Case No. 11 of 2022)

RULING

12th and 12th July, 2023 KISANYA, J.: The applicant, Abdallah Saleh Tuwel has moved this Court to be pleased to grant him leave to enter appearance and defend a summary suit instituted against him by the above named respondents. His application is preferred under Order XXXV rule 3(1)(a) of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC). Supporting the application is an affidavit deposed by the applicant. On receipt of the application, the respondents filed a joint affidavit to contest the application. However, when the application was called on for hearing today, Mr. Egidy Mkolwe, learned State Attorney who appeared for the respondents informed the Court that he was not contesting the 1 application. In that regard, he was at one with Mr. Optatus Japhet, learned advocate for the applicant that the application be granted. Although the application is not contested, this Court is duty bound to satisfy itself on whether it meets the legal requirement. Unlike in ordinary suits where the defendant has an automatic right to be heard, a defendant in a summary suit do not have such an inherent right. His right to appear and defend himself is exercised after obtaining leave to such effect. Pursuant to Order XXXV Rule 3 (1)(b) of the CPC, application for leave to defend summary suit is granted when the affidavit in support of the application discloses facts which the court deems sufficient to support the application. The law is further settled that in determining application of this nature, the Court must be satisfied that there is a triable issue of fact or law or both. I am fortified among others by the case of Tanzania Telecommunications Company Limited vs. Timothy Lwoga [2002] TLR 150. In this application, the respondents' claim in the summary suit is for payment of TZS 26,364,370.35/= being unpaid service levy for the period between 2017 and 2020. On the other hand, the applicant states in the affidavit in support of the application that he was neither served with written letter

stipulating the unpaid service levy nor notified about the 2 claim. Indeed, it is not clear whether the demand notices appended to the summary plaint were received by the applicant. Further to this, the applicant deposed to have paid service levy for two years. In that regard, I am of the considered view that the triable issue is whether the respondents are entitled to TZS 26,364,370.35/= claimed in the summary suit. This is so when it considered that the application is not challenged by the respondents. For the foresaid reasons, the application is hereby granted. Accordingly, leave is granted to the applicant to enter appearance and file his written statement of defence within 21 days from the date of this ruling. Costs shall follow event in the main case. It is so ordered. DATED at SONGEA this 12th day of July, 2023. S.E. KISANYA JUDGE 12/07/2023 3 Ruling delivered on this 12th day of July, 2023 in the presence of Mr. Egidy Mkolwe, and Mr. Ibrahim Kabelwa, leaned State Attorneys for the respondents and Mr. Optatus Japhet, learned advocate for the applicant. S.E. KISANYA JUDGE 12/07/2023 4

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