

TANZANIA / JUDGMENT

biharamulo district council vs oryx oil company t limited 2022 tzhc 3007 22 april 2022

COURT
TZHCDECIDED
22 April 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TNZANIA BUKOBA DISTRICT REGISTRY AT
BUKOB A CIVIL CASE NO. 06 OF 2017 BIHARAMULO DISTRICT
COUNCIL..... PLAINTIFF VERSUS ORYX OIL COMPANY (T)
LIMITED..... DEFENDANT

JUDGMENT

Date of Last Order: 12.04.2022. Date of Judgment: 22.04.2022. A.E. MWIPOPO, J. The plaintiff herein namely Biharamulo District Council sued the respondent herein namely Oryx Oil Company (T) Limited for payment of US Dollar 418,876/= being service levy for the service rendered by the respondent to Tulawaka Gold Mine which is situated within Biharamulo District Council for a period of 4 years starting from 2009 to 2012. The said amount claimed includes surcharge of 1.5% for the late payment. The plaintiff also prayed for the defendant to pay general damage to be assessed by this Court, interest on the decretal amount from the date of delivery of the judgment up to the final satisfaction of the said amount and the cost of the suit. i The defendant denied and refuted the claims raised by the applicant in his written statement of defense. The defendant alleged that the claims are unfounded as he has paid the required amount as the service levy. The defendant prayed for the Court to dismiss this suit with cost. The matter was fixed for Court mediation which failed. Then, the Court after consultation with the counsel for the plaintiff namely Ms. Zainab Kassim Ally, State Attorney, and Mr. Gerese Ruben, Advocate for the respondent, framed three issues as follows;-

1. Whether the defendant rendered service to Tulawaka Gold Mine which is within Biharamulo District Council.
2. Whether the defendant is entitled to pay service levy to Biharamulo District Council for the services rendered within the area of Biharamulo District Council.
3. To what relief both parties are entitled to. The plaintiff called two witnesses who testified on oath. The names of the witnesses are Bahati Irakize Dominick and Dr. Sospeter Budeba Mashamba. The plaintiff also tendered one exhibit to prove his case. On his side, the

defendant called one witness namely James Ngasa who testified on oath and they did not tender any exhibit in proving their case. Briefly, the testimony of plaintiff's witnesses and that of the defendant were as follows: 2 PW1 - Bahati Irakiza Dominick, who is a Trade Officer of the plaintiff, testified that the defendant rendered service to Tulawaka Gold Mine situated within locality of Biharamulo District Council from 2009 to 2012 but the defendant did not pay service levy to the plaintiff. He said that they served the defendant with demand notice for payment of US dollars 418,876/= the amount which includes the service levy and penalty for delay to pay the service levy. He said that the efforts to meet and negotiate about the claims with the defendant failed, as a result, they decided to file this case. In cross examination PW1 said that the defendant never attended any meeting which was called by the applicant for purpose of resolving the dispute over claims. That the said service levy is paid under the Local Government Finance Act. He also said that they know the amount of money charged as service levy from the Tulawaka Gold Mine returns. That the turnover from the service rendered may be obtained from Tanzania Revenues Authority, Bank where transaction was conducted or to the person whom the service was rendered. Dr. Sospeter Budeba Mashamba - PW2, who is the head of Livestock and Fisheries Department of the Biharamulo District Council, testified that, apart from being the head of his Department in the District Council, sometimes he was acting District Executive Director of Biharamulo District Council. He said that he know Tulawaka Gold Mine is situated at Biharamulo District. That the defendant provided 3 service to Tulawaka Gold Mine from 2009 to 2012, for that reason it was supposed to pay service levy to the Biharamulo District Council. It was his testimony that service levy is charged to the person of Company which conduct its business in the District Council where 0.3% of the total income has to be paid to the respective District Council according to the law. The total turnover of the person or Company doing business in the district is obtained from the person doing business or from TRA or from the Company where the service was rendered. The defendant never paid the service levy to the plaintiff for the service it rendered to Tulawaka Gold Mine. The witness tendered Demand Notice dated 08.09.2017 - Exhibit P1 which was reminding the defendant to pay for the service levy claimed by the plaintiff. He said further that the principal sum arising from the service levy was US dollar 123,000/= plus the interest which makes the total amount to be US dollars 418,000/=. The plaintiff closed its case after testimony of PW2. The defence case opened and the defendant called one witness namely James Ngasa - DW1. It was DW1 testimony that he is employed by the defendant as the Marketing and operation officer. That the defendants rendered service in Biharamulo District Council which is in Kagera region. The defendant has no office in Kagera region. The defendant supplies fuel to Kagera region from Kahama District which is in Geita region. The defendant's mini depot at Kahama supplies fuels to the region around Lake Victoria region including Biharamulo District. 4 Service levy is paid where the company has an office. And for service rendered in Tulawaka Gold Mine situated at Biharamulo District the service levy was paid at Kahama District Council where the defendant has office (mini depot). The defendant paid service levy to Kahama District Council between 2009 and 2012 for the business conducted in the lake region. The main depot for the defendant is in Dar Es Salaam. The defendant's clients at

Biharamulo were supplied with fuels from Kahama Depot. The defendant supplied its fuels from Kahama Mini Depot to its client in Biharamulo District. In cross examination, DW1 said that he know that there is agreement entered between Pangea Gold Mine and Defendant. The place where the service was rendered is at Tulawaka Gold Mine which is situated at Biharamulo District. The Depot means is the place where the fuel are stored. At Tulawaka Mine there are tanks but there is no depot. The service levy was paid by defendants at Dar Es Salaam and at Kahama. After the testimony of DW1, the defendant closed its case. Both sides filed their final submissions. Briefly, the plaintiff stated in the final submission that on the first issue the defendant has admitted to render service to Tulawaka Gold Mine which is within jurisdiction of Biharamulo District Council between 2009 and 2012. On the second issue, the counsel stated that the service levy is paid in an area where service is rendered according to section 7(1) (y) of 5 the Local Government Finance Act, Cap. 290, R.E. 2019. As the defendant rendered service to Biharamulo District it was not proper for the defendant to pay service levy at Kahama as it is different District Council. The service was rendered to Biharamulo and not Kahama. The counsel said that defendant is obliged to pay service levy to the plaintiff for the service rendered in Biharamulo District. The defendant counsel briefly stated in his final submission that there is no dispute that the defendant rendered service to Tulawaka Gold Mine for the period starting from 2009 to 2012. On the second issue the counsel stated that section 7

- (1) (y) of the Local Government Finance Act, Cap. 290, R.E. 2019, provides that the branches of corporate entities pays service levy at the jurisdiction within which they are located. He said that DW1 proved that the defendant has a branch of its office in Kahama District and it is this office which supplied the service to Tulawaka Gold Mine. For that reason the defendant properly paid service levy to Kahama District Council where branch of the defendant is situated. The purpose of the Legislature to incorporate the proviso in section 7 (1) (y) of Cap. 290, R.E. 2019, is to avoid double payment of the service levy. As the wording of statues are clear, they need no interpretation as it was stated in the case of Dangote Industries Ltd Tanzania v. Warnercom (T) Limited, Civil Appeal No. 13 of 2021, Court of Appeal of Tanzania at Dar Es Salaam, (Unreported). 6 Provided that, the branches of corporate entities shall pay services levy to the district councils in whose areas of jurisdiction they are located." The new position which became operation from 1st July, 2012 up to the present is that the corporate entities and any person conducting business with business license are required to pay service levy to the District Council. The amendment provides further in the proviso that the branches of the corporate entities shall pay service levy to the District Councils in whose areas of jurisdiction they are located. In the present case, the plaintiff is claiming that the defendant defaulted to pay service levy from 2009 to 2012 for the service defendant rendered to Tulawaka Gold Mine which is located within jurisdiction of the Biharamulo District Council. His means that between January, 2009 and June, 2012 the applicable law was section 7 (1) (z) of the Local Government Finance Act. At that time, the proviso which provides for the branches of the corporate entities shall pay service levy to the District Councils in whose areas of jurisdiction they are located was not introduced. The same was

applicable between 1st July and 31st December, 2012. The said proviso introduced by 2012 amendment is the centre of the dispute between the plaintiff and the defendant.

Unfortunately, the proviso is applicable to only to the last 6 months of the defendant service to the Tulawaka Gold Mine. 9 Since the plaintiff claims against the defendant were not proved, the claims for general damages and interest which were pleaded by the plaintiff could not be granted. Consequently, the case is dismissed for want of merits. As the plaintiff is Government Authority vested with duty to provide services for people in its jurisdiction and the suit was instituted in good faith for the purpose of correcting service levy which is revenue for the authority, there will be no order as to the cost of the suit. It is so ordered.

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CASE PAGE <https://chat.esheria.ai/case-law/tanzania/biharamulo-district-council-v-oryx-oil-company-t-limited-servicelevy-tzhc-2022>

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