

TANZANIA / JUDGMENT

car general trading ltd vs steward paul ta jiwe kubwa enterprises 2022

tzhccomd 285 16 september 2022

COURT
TZHCCOMDDECIDED
16 September 2022

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT PAR ES SALAAM
COMMERCIAL CASE NO. 54 OF 2022 CAR & GENERAL TRADING LIMITED.....
PLAINTIFF VERSUS STEWARD PAUL t/a JIWE KUBWA ENTERPRISES.....DEFENDANT Date of
Last Order: 08/09/2022 Date of Judgement: 16/09/2022 DEFAULT JUDGEMENT MAGOIGA, J. This is
a default judgement. The plaintiff, CAR & GENERAL TRADING LIMITED by way of plaint
instituted the instant suit against the above named defendant praying for judgement and decree
in the following orders, namely:

- a. An order for payment of Tshs.332,77,066.67 being principal sum and accrued interest as of 19th April, 2022;
- b. Payment of general damages to be assessed by the court; , i
- c. An order for payment of interest on the principal sum at commercial rate;
- d. An order for payment of interests on the decretal amount at court's rate;
- e. Costs of the suit;
- f. Any other relief(s) the court may deem just and fit to grant. The brief facts giving rise to this suit are not complicated. It is stated that, in the year 2020 plaintiff supplied to the defendant 2wheelers motorcycle worth Tshs. 167,737,000/= and 3wheelers motorcycle worth Tshs.900,000/= and the plaintiff raised invoices for payment but which were not paid for. Several efforts by plaintiff to have the defendant paid the money due for goods supplied were in vain. It is against the above back ground, the plaintiff instituted the instant suit claiming the reliefs as contained in the plaint, hence, this default

judgement.

The plaintiff's efforts to serve the defendant with the summons and plaint were fruitless behoving this court to grant service by way of publication 2 which was done on 14/07/2022 in Mwananchi Newspaper and 13/07/2022 in Daily News respectively. Despite being served by way of publication, the defendant failed to enter defence. When this suit was called on for orders on

30th August, 2022, Mr. Desderi Ndibalema, learned advocate for the plaintiff informed the court that 21 days have elapsed but no defence has been filed nor application for extension of time to file has been preferred. In the circumstances, Mr. Desderi Ndibalema, learned advocate for the plaintiff prayed to proceed under the provisions of Rule 22(1) of the High Court (Commercial Division) Procedure Rules, 2012 as amended by G.N.107 of 2019. The learned advocate guided by Rule 22 of this court's Rules on 05th September, 2022 filed an application for default judgement. In the circumstances, I fixed the date of judgement on the strength of the application for default judgement made. The plaintiff in order to prove her case filed Form number 1 accompanied with affidavit in proof of the claim deposed by, one, ABDALLAH AMRAN MOHAMED as provided for under Rule 22 (1) as amended by G.N. 107 of 2019, paving way for this default judgement. 3 Having carefully gone through the affidavit and the exhibits 14 collectively annexed in the affidavit in proof of the claim, I am satisfied that the plaintiff has discharged his legal burden required in civil cases in reliefs claimed in paragraphs (a) to (d) which are for specific damages as claimed in the plaint save for one aspect of interest. In essence this suit revolves around breach of contract for failure to pay for goods supplied. Paragraph (a) of the plaint is on the claim of specific damages which are to be strictly proved. See the case of ZUBERI AGOSTINO vs. ANICET MUGABE

[1992] TLR 137. This Court faced with similar situation in the cases of NITRO EXPLOSIVE (T) LIMITED v. TANZANITE ONE MINING LIMITED, COMMERCIAL CASE NO. 118 OF 2018 (HC) DSM (Unreported) AND AONE PRODUCTS AND BOTTLERS LIMITED v. TECHLONG PACKAGING MACHINERY LIMITED AND ANOTHER, COMMERCIAL CASE NO 105 OF 2017 (HC) DSM (Unreported) in the interpretation of Rule 22 (1) as amended, held that for the plaintiff to enjoy fruits of justice under Rule 22(1), the following cumulative ingredients must be proved, namely; 4

- (a) Proof of the service to the defendant but who has failed to file written statement of defence.
- (b) The plaintiff must make an application in the prescribed Form No. 1 to the First Schedule to the Rules.
- (c) That the said application in Form No.1 must be accompanied by an affidavit in proof of the claim (Emphasis and underline mine). In the instant suit, there is no dispute that the defendant was served by way of publication in accordance with the law on 13th and 14th July, 2022 respectively. However, despite such proof of service, no written statement of defence was filed in time nor application for extension made in time. Equally, it is not in dispute that the plaintiff made an application in prescribed Form No. 1 and same was accompanied with the affidavit in proof of the claim. In the totality of the above, this Court having carefully gone through the affidavit and exhibits 14 thereto, I am satisfied that the plaintiff has been able to prove TZS. 168,635,000/= being value of wheelers motorcycles supplied to the defendant but which were not paid for, hence, breach of contract. In the circumstances, I am inclined to enter 5 a default judgment and decree against the defendant in favor of the plaintiff as follows:

- i. I order for immediate payment of Tshs.168,635,000.00 to the plaintiff being value of goods supplied to the defendant but did not pay to the plaintiff; ii. The claim of Tshs.164,138,066.67 being accrued interest is to fail for want of evidence, in particular, for failure to state how the same was calculated and arrived at and at what rate in the affidavit in proof of the claim; iii. I order the defendant to pay the plaintiff general damages to the tune of Tshs. 10,000,000/ = for causing unnecessary disturbance and anxiety caused to the plaintiff in making follow ups; iv. I order the defendant to pay the plaintiff 23% being interest commercial interest on the decretal amount from the date of judgement till payment in full;
- v. I order the defendant to pay the plaintiff interest at 7% from the date of judgement till payment in full; vi. The plaintiff will have costs of this suit. 6 In terms of Rule 22 (2) (a) of the Rules as amended by G.N. 107 of 2019, 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 this judgement, publicize the decree in Daily Newspaper and Mwananchi Newspaper one copy each and a period of twenty one days (21) from the date of expiry of the said ten (10) days has elapsed. It is so ordered. 7

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Prepared on 13 October 2026 · Esheria