

TANZANIA / JUDGMENT

SKONGE DISTRICT COUNCIL VS MICHAEL JULIUS SIMWERA

COURT
TANZLIIDECIDED
20 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA TABORA SUB-REGISTRY AT
TABORA CIVIL CASE NO. 10328 OF 2024 SIKONGE DISTRICT

COUNCIL..... 1st PLAINTIFF ATTORNEY

GENERAL..... 2nd PLAINTIFF VERSUS MICHAEL JULIUS

SIMWERA..... DEFENDANT SUMMARYJUDGMENT Date of the last
Order: 23/07/2024 Date of Judgment: 20/08/2024 KADILU, J. On 07/05/2024, the plaintiffs filed a suit
in this court under Order XXXV Rule 1 (e) 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. 11,864,000/= as un deposited amount from revenue collected by using PCS. ii. The defendant be ordered to pay interest of 25% of the amount claimed. Hi. 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 1st plaintiff has been claiming from the defendant the payment of TZS. 11,846,000/= being un deposited amount from revenue collected by the defendant as an agent of 1st plaintiff. As per the Local Government Finance Act [Cap. 290 R.E. 2002], the 1st plaintiff is obliged to collect revenues within the area of its jurisdiction. It then outsourced the collection service to the defendant whereby from 2020 to 2022, the 1st plaintiff contracted the defendant to collect revenue on its behalf and deposit it into the 1st plaintiff's bank account. The plaintiffs assert that the defendant never honoured his contractual obligation of depositing the collected revenue to the 1st plaintiff's bank account for the entire contractual period. With such a failure, the plaintiffs issued a demand notice with reference number HWS/HWS/PF/A/194/15 to the defendant on 20th February 2024. Despite the written demands and oral reminders from the 1st plaintiff, the defendant failed to honour the said letters and further, the 1st plaintiff made several follow-ups but the defendant willfully refused, neglected, ignored, and defaulted to heed to such efforts made by the plaintiffs. Having filed the present suit under the summary procedure as stipulated under the CPC, the defendant was duly served with the instructions that he could, within 21

days from the date of service, apply for leave of the court to defend the suit. On 23/07/2024 when the matter came up for necessary orders, Mr. Gureni Mapande, the learned State Attorney representing the plaintiffs, wanted to know if the defendant had filed leave to defend. The record reveals that up to that date, the defendant had not filed the said leave. Since the Advocate for the defendant was absent, Mr. Gureni prayed for the court to grant the prayers as presented in the plaint. It is undisputed that the defendant was duly served a summons but he failed to apply for leave to defend the suit within the prescribed time. As a matter of law, once a suit is filed under Order XXXV, an appearance to 2 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 15/06/2024, which informed him what to do. Order XXXV Rule 2 of the CPC provides: "... 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 /r I have carefully examined the plaint and its annexures to find out if all the claims are supported with evidential material. Annexure SDC1 is a copy of the demand notice with reference number HWS/HWS/PF/A/194/15 of 20th February 2024 which was served to the defendant. Part of the said demand notice reads as follows: " Uiiikabidhiwa POS na kusajiiiwa kama mkusanya mapato (Kibarua) katika mfumo wa mapato (LGRCIS). Haimashauri ya Wiiaya ya Sikonge inakutaka kuwasiisha fedha uiizokusanya kupitia POS yenye namba ya usajiii (Payer ID).309100004323 ambazo nijumia ya shiingi TSHS. 11,864,000/=. Hadi sasa, haujawasiisha fedha hizo benki huku ukijua kabisa kuwa kitendo hicho ni kinyume cha sheria ya fedha za serikali za mitaa sura ya 290 pamoja na marekebisho yake, na sheria nyingine za fedha, kanuni, na miongozo mbaiimbai inayoratibu usimamizi wa fedha za serikali." 3 Up to 07/05/2024 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 the suit makes it possible for the allegations contained in the plaint to be deemed as having been admitted by him. 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\2^2} TLR 117, it was held that the purpose of the summary procedure is to enable the 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 him, 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 the 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. 11,864,000/= as un deposited amount from revenue collected by using POS.
- 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. 4 It is so ordered. KADILU, MJ. JUDGE 20/08/2024 The Judgment delivered in chamber on the 20th day of August, 2024 in the presence of Mr. Gureni Mapande, State Attorney for the plaintiffs, and Mr. Ally Maganga, Advocate for the defendant. 7 MJ. JUDGE 20/08/2024 5

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