

TANZANIA / JUDGMENT

Sikonge vs Pachtec

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4 July 2024

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA TABORA SUB REGISTRY ATTABORA
CIVIL CASE NO.27519 OF 2023 SIKONGE DISTRICT COUNCIL..... 1st PLAINTIFF
ATTORNEY GENERAL..... 2nd PLAINTIFF VERSUS PACHTEC COMPANY
LIMITED..... DEFENDANT SUMMARY JUDGEMENT Date of Last Order:
19/06/2024 Date of Ruling: 04/07/2024 MANGO, J The Plaintiff herein filed a summary suit against the Defendant claiming for payment of Tshs 9,876,985.6 being unpaid crop cess for tobacco season for the year 2019/2020 and USD 54,049.21 being unpaid crop cess for Tobacco season for the year 2020/2021 which is the Defendant's obligation as per Local Government Finance Act [Cap 290, R.E 2002], interest of 25% of the unpaid crop cess from the date of refusal to the date of judgement and costs of the suit. It was pleaded that Defendant Company did not pay for tobacco purchased in the two seasons to the extent of the amount mentioned in this judgement. Despite serious efforts to obtain the outstanding amount due to the 1 Defendant, orally and via several written reminders by the first Plaintiff, the Defendant refused and neglected to pay the outstanding amount due. It was further alleged that, the Defendant had been served with demand notice with reference number HWS/F.10/12VOLVII/45 dated 23rd March 2022 and demand notice of 27th May 2022 which were attached to the plaint collectively as annexure SDC1. Immediately after the suit was filed, Court summons was issued in compliance with Order XXXV Rule 2(1) of the Civil Procedure Code, [Cap 33 R.E 2019]. Service was effected to the Defendant on 12th February 2024 via Charles Muhikwa, a director of the Defendant Company who received and signed the summons on behalf of the Company. This proves that, the Defendant was effectively served and opted not to seek leave to defend the suit. Mr. Gureni Mapande, learned State Attorney representing the Plaintiff's prayed for this Court to enter a summary judgment in favor of the Plaintiff in terms of Order XXXV Rule 2(2) of the Civil Procedure Code, [Cap.33 R.E 2022] as the Defendant has decided not to lodge her application for leave to defend the suit within a statutory time of 21 days from the date of service. The law requires that where a summary suit is filed, the Defendant should not enter appearance and defend the suit until he obtains leave of the Court. In the event of failure to obtain leave, the allegation contained in the plaint shall be deemed to be admitted by the Defendant and the Plaintiff shall be entitled to a decree. Order XXXV Rule 2

(2) of the Civil Procedure Code provides that: "In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless 2 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..." In the instant case, the Defendant has not applied for the leave to defend and the Plaintiff has proved to the satisfaction of the Court that she dully served the Defendant. In such circumstances, a summary judgement is entered in favor of the Plaintiff and it is hereby decreed that:

- i. The Defendant should pay the first Plaintiff the principal sum of Tshs. 9,876,985.6 as unpaid up produce cess for the years 2019/2020. ii. The Defendant should pay the first Plaintiff USD 54,049.21 being unpaid crop cess for tobacco season for the year 2020/2021 hi. The Defendant should pay interest of 25% of the unpaid crop cess from the date of refusal to the date of judgement iv. Costs of this suit be borne by the defendant Dated at Tabora this 4th day of July 2024 Z. D. MANGO JUDGE 3

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ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/313803/source_file/f459858ebb3eaff9/Sikonge_vs_Pachtec.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/sikonge-district-council-v-pachtec-company-limited-summaryjudgment-tanzlii-2024

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