

TANZANIA / JUDGMENT

techpack t ltd vs tanesco another 2023 tzhccomd 220 17 july 2023

COURT
TZHCCOMDDECIDED
17 July 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT
PAR ES SALAAM MISC. COMMERCIAL APPLICATION NO, 83 OF 2023 (Arising from Commercial
Case No. 59 of 2023) TECHPACK TANZANIA LIMITED..... APPLICANT VERSUS
TANZANIA ELECTRICAL SUPPLY COMPANY LTD... 1st RESPONDENT ATTORNEY
GENERAL..... 2nd RESPONDENT

RULING

A.A. MBAGWA, J This is an application for leave to appear and defend a summary suit. It is made by chamber summons under Rule 2(2) of the High Court (Commercial Division) Procedure Rules and Order XXXV Rule 3(l)(a) and (b) of the Civil Procedure Code. The application is supported by an affidavit sworn by Hussein Ladha, the applicant's Director. On the adversary, the application was strongly opposed by the respondents through a counter affidavit of Elizabeth Kimako, the 1st respondent's Principal Officer. It is deponed by the applicant that the applicant is a customer of the 1st respondent with customer reference Number 00052444 operating at Ubungo i and it is registered as a large power user under the Tariff Three (T3) category since March, 2014. It is further contended by the applicant that the applicant has been paying the due bills until 2018 when she started encountering financial difficulties and for this reason she had held meetings with the 1st respondent on the best ways to clear the bills. The applicant further states that the claimed amount of TZS 205,767,807.72 is a result of wrong estimations and calculations made by the 1st respondent. The applicant also laments that she was surprised by the exaggerated bill. On the contrary, the applicant's averments were contested by the respondents. The respondents state that the applicant was aware of the outstanding bill since 2018 as she was served with a disconnection notice and demand notice both indicating the due bill. The respondents attached disconnection notice dated 18th September, 2018 (OSG3) and demand notice dated 12th September, 2022 (OSG4). According to annexure OSG4, the due debt was TZS 188,746,991.40 as of 12th September, 2022. On the hearing date, the applicant and its counsel were absent whereas Mr. Boaz Msofe, Faika Mamuya, Stephen Kimaro and Victoria Lugendo, learned State Attorneys appeared for the respondents. 2 2 Although, the applicant's counsel was absent on the date scheduled for hearing, I did not see the reason to postpone the hearing and determination of the matter owing to the fact that the application is principally decided based on the affidavit and not

submissions. In that regard, considering that both parties had filed their respective depositions, I found it appropriate, for the interest of time, to proceed with the determination of the matter. In arriving at this position I was fortified by the decision of this court in the case of Atuwonekye Mwenda vs Hezron Mangula, Misc. Land Application No. 5 of 2020, HC at Iringa. Besides in the case of Mohamed Enterprises (T) Limited vs Biashara Consumer Services Ltd [2002] TLR 159, this court held; "In the application of this nature, the court is not required to involve its lengthy arguments but, rather to look upon the affidavit filed in support of the application to see whether the deposed facts have demonstrated a triable issue fit to go for trial. The applicant is only required to show a fair and reasonable defence". I have pensively considered the depositions by the parties. The question for determination is whether the applicant has disclosed sufficient facts which demonstrate a triable issue as to warrant her the right to defend the suit as required under Order XXXV rule 3(l)(b) of the Civil Procedure Code. According to the applicant's affidavit, the claimed amount is exaggerated, however, she did not tell the court in the affidavit as to which amount she considers to be the genuine one so that the court could ascertain whether there is a need for her to bring the defence. In my view, mere verbal that the claimed amount is exaggerate is not sufficient to demonstrate a triable issue. In the case of CRDB Bank Limited vs John Kagimbo this court held; 'The purpose of Order XXXV: Summary Procedure "is to enable a 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. I am of the settled view that order XXXV is self-contained in so far as it relates to suits stipulated there-under.' Guided by the above authorities, I am opined that the applicant has failed to meet the threshold. In the results, I find the application without merits and consequently, I dismiss it with costs. It is so ordered. „ A.A. Mbagwa JUDGE

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