

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISCELLANEOUS COMMERCIAL APPLICATION NO. 144 OF 2019**

*(Arising from Commercial Case No. 70 of 2019)*

**BETWEEN**

**PROMECH LIMITED .....APPLICANT**

**Versus**

**SALMAN'S TRANSPORT CO. LTD.....RESPONDENT**

Last Order: 25<sup>th</sup> Mar, 2020

Date of Ruling: 19<sup>th</sup> May, 2020

**RULING**

**FIKIRINI, J.**

The applicant, Promech Limited brought this application by way of chamber summons under Order XXI Rule 24 (1) of the Civil Procedure Code Cap 33 R. E, 2002 (the CPC) and supported it with the affidavit of Hussein Kermali. The applicant is seeking for an order to stay the default judgment and decree in Commercial Case No. 70 of 2019 dated 29<sup>th</sup> October 2019, pending the hearing and determination of the Miscellaneous Application No. 142 of 2019 for setting aside the default judgment and decree.

The respondent contested the application by filing a counter-affidavit through Haiderali Muzafar Gulamali, as well filed a notice of preliminary point of objection that pursuant to Order XXI Rule 24 (1) of the CPC, that the application was premature and incompetent before the Court.

The applicant in this application was represented by Mr. Deogratias Ringia, learned advocate while the respondent enjoyed the legal service of Mr. Norbert Mlwale, learned advocate. The application was argued by way of written submissions, which both counsels prayed for adoption of the affidavits and submissions to form part of their submissions for and against the notice of preliminary point objection.

Ordinarily, the preliminary point of objection would have been determined on merits, but considering that Miscellaneous Commercial Application No. 142 of 2020, has already been determined in favour of the applicant, by the Court and the default judgment entered on 29<sup>th</sup> October, 2019, set aside, I find this application to have been overtaken by events.



**P. S. FIKIRINI**

**JUDGE**

**19<sup>th</sup> MAY, 2020**