

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR ES SALAAM  
COMMERCIAL CASE NO. 4 OF 2021**

**ALIOS FINANCE TANZANIA LTD.....PLAINTIFF**

**VERSUS**

**AHMED ALLY HEMED..... DEFENDANT**

Last order: 11<sup>th</sup> June, 2021

Judgment: 13<sup>th</sup> July, 2021

**DEFAULT JUDGMENT**

**NANGELA, J.:**

This is a Default judgment. It arises from a suit filed in this court by the Plaintiff on 11<sup>th</sup> January 2021. In that suit, the Plaintiff prays for Judgment and Decree against the defendant as follows:

(a) Declaration that the Defendant  
breached of the Vehicle Lease  
Agreement dated 21<sup>st</sup> September  
2017

(b) Payment of TZS 185,360,298.78/=  
being outstanding amount arising from

unpaid installment arrears, remaining principal amount arising from the vehicle lease agreement.

- (c) Payment of interest at the commercial rate prevailing at the date of judgment, or such rate as the Honourable court may deem fit and just, accruing and computed from the date of the judgment of this suit;
- (d) Payment of general damages as may be assessed by this Honourable Court.
- (e) Payment of the costs of this suit: and
- (f) Any other relief(s) that the Honourable Court may deem fit and just to grant.

Before I proceed further, I will briefly narrate the facts constituting this case. The Plaintiff is a corporate entity with its registered office in Dar es salaam, Tanzania.

On 21<sup>st</sup> September 2017, the Plaintiff and the Defendant concluded a Vehicle Lending Agreement,

**(VLA)**. Under the VLA, the Defendant agreed to lease equipment, namely "Golden Drahgon Bus" from the Plaintiff for a monthly payment of **TZS 11,220,566.55**.

According to the Plaintiff, the Defendant went on with the payment of the agreed monthly installment payments until September 2019 when he started to encounter difficulties in payments. He approached the Plaintiff and requested for a reduction of the amount payable from **TZS 11,220,566.55** to **TZS 9,399,066.14/=**.

As a condition for the reduction, it is averred that the Defendant surrendered his Motor Vehicle, Scania Model F94-Body Type Bus, with registration Number **T273 AHV** as collateral and signed an Agreement with the Plaintiff to that effect. He went

on paying the agreed amount till June 15<sup>th</sup>, 2020 when he stopped paying.

On that account, the Plaintiff proceeded and seized the leased equipment. The Defendant promised to settle out the difficulties encountered and issued cheques to the Plaintiff which turned out to be dishonored.

Although the Plaintiff had sent several invoices and demands to the Defendant, they were not attended by the latter. Following the continued breach of the agreement, the Plaintiff instituted this suit, claiming from the Defendant, payment of **TZS 185,360,298.78/=** being an outstanding amount arising from unpaid installment arrears, remaining principal amount and late fees penalties arising from a vehicle leasing agreement dated 21<sup>st</sup> September, 2017.

On 18<sup>th</sup> March 2021, Ms Esther Peter the counsel for the Plaintiff appeared in Court. The Defendant was absent.

Ms Peter told the Court that, it had been difficult to serve the Defendant since, although they used to communicate with the Defendant through email, the Defendant has not shown up, and could not be traced. She prayed for a substituted service mode to be employed.

This Court granted the application for a substituted service to be a preferred mode of service. The Court ordered the Plaintiff to make a publication through Mwananchi Newspaper. The Plaintiff did so and a publication in that Newspaper dated 10<sup>th</sup> April 2021, at page 25, was made.

However, up to 20<sup>th</sup> May 2021, no defence was filed. The Plaintiff has, therefore, moved this Court

pursuant to Rule 22 (1) of the High Court (Commercial Division) Procedure Rules, 2012, GN. NO. 250 of 2012, as amended by GN. No. 107 of 2019 (the Rules) for a default judgment.

This Court granted the prayer and ordered the Plaintiff to file Form No.1 with its requisite annexure. I have looked at the Form No.1 filed in this Court. The same was filed together with an accompanying affidavit of Mr. Yohane Sunguya, the Principal Officer.

I have, as well, looked at the affidavit regarding proof of claim and the *annexure AH-1, AH-2, AH-3, AH-4, AH-5, AH-6, AH-7, AH-8, AH-9 and AH10* attached to the affidavit. I have also looked at the original documents which were availed to this Court. The issue which I am suppose to determine in this case is whether the Plaintiff is entitled to the prayers and reliefs sought in form No.1 filed in this court.

The filing of Form No.1, seeking for a Default Judgment in favour of Plaintiff in a case, comes to play where the Defendant has declined to defend his case. Such particular right is provided for under Rule 22(1) of the High Court (Commercial Division) procedure Rules, 2012 (as amended, 2019). The said Rule 22(1) provides as follows;

“Where any party required to file written statement of defence fails to do so within the specified period or where such period has been extended accordance with sub rule (2) of rule 20, within the period of that extension, the court may, upon proof of service and on application by the plaintiff in form No. 1 set out in the schedule to these Rules accompanied by an affidavit in proof of claim, enter judgment in favour of the Plaintiff.”

As it has been established herein above, the Plaintiff did file Form No.1, following the failure by the Defendant to file a Written Statement of Defence. In this case the Defendant was given ample time to file his Written Statement of Defence but never showed up and never filed a defence.

The Plaintiff went further and published a summons in Mwananchi Newspaper dated 10<sup>th</sup> April 2021. Even after doing so, still the Defendant did not file his defence nor appear in court.

It is also a cardinal principle that, the one who alleges must prove. Likewise in this default judgment the plaintiff has to prove his case as provided under sec.110, 111 and 112 of the Tanzania Evidence Act, Cap 6 R.E 2002 (the Evidence Act).

In the instant case at hand, the Plaintiff entered into an agreement to lease a motor vehicle for



consideration of **TZS 11,220,566.55/=** paid monthly by the defendant. The Defendant proceeded with monthly installment until 15<sup>th</sup> June, 2020 where the payment stopped, hence the breach.

In his affidavit the Plaintiff annexed to it the necessary documents to prove his case as required by law. Looking at the evidence, I am satisfied that the Defendant defaulted in paying monthly installment as were agreed. The default meant as well that the Plaintiff suffered damages.

In my view, looking at the evidence and the circumstances surrounding the case, an award of **TZS 5,000,000 /=** as general damages will suffice to mitigate the breach. The issue I raised earlier herein above, therefore, is responded in the affirmative.

In view of the above reasoning, and in terms of Rule 22(1) of the High Court (Commercial Division)

procedure Rules, 2012 (as amended, 2019), this Court do hereby enters judgment in default in favour of the Plaintiff and order as follows, that:

- (a) It is hereby declared that, the Defendant breached the Vehicle Lease Agreement dated 21<sup>st</sup> September 2017;
- (b) The Defendant shall, without failure, pay the Plaintiff **TZS 185,360,298.78/=** being outstanding amount arising from unpaid installment arrears, and the remaining principal amount arising from the vehicle lease agreement;
- (c) Defendant shall pay interest at the commercial rate of 14% from the date of judgment, to the date of final payment thereof;

- (d) The Defendant shall pay the Plaintiff **TZS 5,000,000** as general damages;
- (e) The Defendant shall pay interest at the court rate of 7% of the decretal amount from the date of this judgment, to the date when the decree is fully satisfied;
- (f) The Defendant shall pay costs of this suit.

**Further orders:**

That, in terms of Rule 22 (2) (a) and (b) High Court (Commercial Division) Procedure Rules, 2012 (as amended, 2019), the Plaintiff is ordered to ensure that, the decree emanating from this suit is not be executed unless the decree holder has, within a period of ten (10) days from the date of this default judgment, publish a copy of it (the decree) in at least two (2) widely

circulated newspapers in the country and after a period of twenty one days (21), from the date of expiry of the said ten (10) days, has elapsed.

**It is so Ordered**



DAK-ES-SALAAM, this 13<sup>th</sup> JULY 2021

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**HON. DEO JOHN NANGELA**  
**JUDGE**