

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO. 111 OF 2020

VODACOM TANZANIA PLC.....PLAINTIFF

VERSUS

TECH HUB LIMITED.....DEFENDANT

Date of Last Order: 02/09/2021

Date of Judgment: 08/09/2021

DEFAULT JUDGMENT

MKEHA, J

The plaintiff is a public limited company duly incorporated under the laws of Tanzania. On the other hand, the defendant is a limited liability company incorporated under the laws of Tanzania.

In terms of the plaint, the plaintiff's claim against the defendant is for payment of the sum of Tanzanian Shillings Three Hundred Fifteen Million, Five Hundred Sixty Nine Thousand, One Hundred and Twenty (TZS 315,569,120/=) being amount outstanding on account of charges for Bulk SMS Services provided by the plaintiff to the defendant under a Bulk SMS Service Agreement

entered by the plaintiff and the defendant. Further, the plaintiff claims interest on the amount plus costs of this suit.

Pleadings indicate that, on 08/ 10/ 2018 the plaintiff and the defendant entered into the Bulk SMS Service Agreement where the plaintiff agreed to provide bulk SMS services to the defendant in accordance with terms and conditions contained therein. That, in line with the terms of the Agreement, the plaintiff provided bulk SMS services to the defendant and issued various invoices to the defendant for settlement. Whereas invoices worth TZS 393, 569,120/= covering a period between October, 2018 to August, 2019 were raised, in breach of the Agreement, the defendant paid only TZS 78,000,000/=. That, despite the plaintiff's demand and follow-up, the defendant failed to pay the invoiced amount which stood at TZS 315,569,120/= when this case was instituted before this court.

When this case was registered, the court ordered a summons to file written statement of defence to be served upon the defendant. On 08/12/2020, Mr. Jonathan Wangubo learned advocate for the plaintiff notified the court that, the defendant had not been found. An affidavit regarding failure of service to the defendant was filed in court. Afterwards, a prayer for substituted service by way of publication was made by the learned advocate and granted by the

court. By way of publication, through the Citizen and Mwananchi newspapers dated 31/ 03/2021, the defendant was again ordered to file defence. Copies of the said newspapers have been filed in court. According to Ms. Natasha Mkangala learned advocate for the plaintiff, up to 04/08/2021, the defendant had not filed written statement of defence. Pursuant to Rule 22(1) of the High Court (Commercial Division) Rules, on 01/09/2021, the plaintiff filed an application praying that a default judgment and decree be entered against the defendant for reliefs prayed in the plaint.

From the background of the case hereinabove, it is not disputed that service was effected to the defendant by way of publication of a summons to file written statement of defence through newspapers when the first attempt to effect service proved futile. To date, written statement of defence has not been filed. Therefore, conditions for granting a default judgment are in existence. There remains a task upon this court to satisfy itself whether, relying upon the pleadings and documents relied upon by the plaintiff, though not tested through the usual evidentiary procedures, a default judgment should be issued.

In terms of the pleadings, it appears that the plaintiff`s claim against the defendant arises from an agreement signed by the parties on 08/10/2018.

Under the agreement, the plaintiff had to provide bulk SMS Services to the defendant in accordance with the terms and conditions of the agreement. It also appears that, the plaintiff provided the agreed services to the defendant. But, when the plaintiff issued various invoices worth TZS 393,569,120/= covering a period between October 2018 to August, 2019, the defendant merely paid TZS 78,000,000/=. Thus, up to the time when the present suit was instituted, TZS 315,569,120/= remained unsettled, irrespective of demand for payment from the plaintiff: Paragraphs 3, 4, 6, 7 and 8 of the plaint. The Agreement between the parties had been annexed as annexure Vodacom 1. For the foregoing reasons, prayer in paragraph (a) of the plaint is justified, i.e. payment of TZS 315,569,120/= by the defendant to the plaintiff, being outstanding amount on account of the services rendered under the Bulk SMS Service Agreement.

For the reasons hereinabove, default judgment is entered in favour of the plaintiff in the following terms:

- (i) The defendant to pay the plaintiff TZS 315,569,120/= (Tanzanian Shillings Three Hundred Fifteen Million, Five Hundred Sixty Nine Thousand, One Hundred Twenty) being the outstanding amount on

account of the services rendered under the Bulk SMS Service Agreement.

- (ii) The defendant to pay an interest on item (i) above at the Bank of Tanzania Commercial rate from 1st September, 2019 to the date of judgment.
- (iii) The defendant to pay an interest on the decretal amount at the court's rate of 7% per annum from the date of judgment to the date of full payment.
- (iv) The defendant is condemned to bear costs of the suit.

Execution of the decree in this case is subject to compliance of the provisions of Rule 22(2) of the Commercial Court Rules. It is so held.

Dated at DAR ES SALAAM this 8th day of September, 2021.


C. P. MKEHA

JUDGE

08/09/2021

Court: Judgment is delivered in the presence of Ms. Natasha Mkangala learned advocate for the plaintiff.




C. P. MKEHA

JUDGE

08/09/2021