

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO. 295 OF 2002

THE TANZANIA REVENUE AUTHORITY...PLAINTIFF
VERSUS

ZEIN MOHAMED BAHROON]
T/A NEW PATTAYA HARDWARE].....DEFENDANT

R U L I N G

KIMARO, J.

ZEIN MOHAMED BAHROON T/A NEW PATTAYA HARDWARE is the defendant. He is being sued by the TANZANIA REVENUE AUTHORITY under a summary suit (Order XXXV of the Civil Procedure Code, 1966) for recovery of T.shs 118, 787,519.00 plus interest on the said amount, being income tax to the plaintiff, under the Income Tax Act, 1973 for the years 1998 and 2000.

He has filed an application under Order XXXV rule 2 and 3(1)(b) of the Civil Procedure Code, 1966 seeking for unconditional leave to appear and defend the suit. Reasons supporting the application are contained in his affidavit dated 18th February, 2003. He is mainly challenging the circumstances under which the assessment by the respondent has been made. According to him consideration has not been given on shipping costs, storage facilities, depreciation, commission paid to agents and transportation. He is also challenging the profit margin which has

been put up to 55 percentum as being unrealistic to real business conditions. The applicant has also raised concern why the plaintiff rushed to court while he has raised an objection to the assessment.

The applicant is being represented by Mr. Msirikali, Learned Advocate and the respondent/plaintiff by Mr. Prim, Learned Advocate.

The application was argued by written submissions. The efforts made by the advocates from both sides is acknowledged.

Having gone through the reasons for and against the application together with the submissions, I am satisfied that the applicant has sufficient reasons justifying the granting of unconditional leave to appear and defend.

First, the applicant is disputing the assessment and questioning the circumstances which were considered while making the assessment.

Secondly, he made an objection to the assessment. In my recent decision concerning the same issue (application for leave to appear and defend) in Commercial Case No.291 of 2002) I quoted the case of **M/S Mechalec Engineers & Manufactures V M/S Basic Equipment Corporation 1977 IR 577**. The authority lists

down the conditions under which leave to appear and defend may or may not be granted.

One of the circumstances under which the court may grant leave to appear and defend is where the defendant discloses such facts as may be deemed sufficient to entitle him/her to defend. That is to say although the affidavit does not positively and immediately make it clear that he/she has a defence, yet show such a state of facts as leads to the inference that at the trial of the action he/she may be able to establish a defence to the plaintiffs claim.

The facts raised by the defendant on the circumstances under which the assessment was done as well as the objection in respect of the assessment are matters sufficient to entitle the defendant to defend the suit.

The defendant is granted unconditional leave to appear and defend the suit.

N.P.KIMARO,

JUDGE

15/04/03

I Certify that the signature and Correct
of the on named Judge are during
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Commercial Court
Dar es Salaam
Dated 17/4/2003