

**IN THE HIGH COURT OF TANZANIA**  
**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 1 OF 2017**

**NATIONAL BANK OF COMMERCE LIMITED       .....       PLAINTIFF**

**VERSUS**

**JAQUELINE MICHAEL KIMARO       .....       1<sup>st</sup> DEFENDANT**  
**YOHAN ABRAHAM MWAKALINGA       .....       2<sup>nd</sup> DEFENDANT**

**SUMMARY JUDGMENT**

*Date of the Last Order: 28/02/2018*

*Date of the Summary Judgment 01/03/2018*

**SEHEL, J.**

On 2<sup>nd</sup> January, 2017 the Plaintiff herein filed a Summary Suit against the defendants jointly and severally claiming amongst other things for payment of Tanzanian Shillings 110,762,564.11 being the principal amount of the outstanding overdraft facility and interest as of 6<sup>th</sup> December, 2016.

It is alleged by the plaintiff that on 19<sup>th</sup> October, 2009 the plaintiff approved an overdraft facility in favour of the 1<sup>st</sup> defendant amounting to Tshs. 60,000,000/= (Tanzanian Shillings Sixty Million only) that was secured by guarantee by the 2<sup>nd</sup> defendant supported by a legal mortgage over the property on CT No. 70318, LO. No. 232538, Plot No. 166 Block "15" Bunju Area, Kinondoni Municipality; Dar es Salaam. Copies of the loan facility and mortgage deed are attached to the plaint.

It is further alleged that the defendants defaulted payment despite several demand notices issued to them. Copies of the notices are also attached to the plaint. Hence the present suit.

Having filed the summary suit, the defendants were duly served with summons. The 1<sup>st</sup> defendant was duly served on 13<sup>th</sup> day of February, 2017 at 1242 but defaulted appearances while the 2<sup>nd</sup> defendant made his first appearances on 14<sup>th</sup> day of February, 2017 and he did file an application for leave to appear and defend a summary suit. The said application was dismissed on 28<sup>th</sup> day of February, 2018 for several non-appearances of the 2<sup>nd</sup> defendant.

Following the dismissal of the application, counsel for plaintiff invited this Court to enter summary judgment for the Plaintiff in terms of Order XXXV Rule 2 (2) (a) of the Civil Procedure Act, Cap. 33. She submitted that since there are no pending applications filed by defendants for leave to appear and defend the suit then summary judgment be entered in favour of the plaintiff.

It is trite law that where a summary suit is filed the defendant ought to obtain leave of the Court to defend the summary suit. Failure to obtain leave then the allegation contained in the plaint will be deemed to be admitted by the defendant and the plaintiff shall be entitled to the appropriate decrees specified under Order XXXV Rule 2 (2) (a) to (c) of the Civil Procedure Act, Cap. 33. The question that follows is whether the defendants failed to obtain leave.

I have stated herein that the 1<sup>st</sup> defendant neither entered appearance nor made an application for leave to appear and defend a summary suit, despite being dully served on 13<sup>th</sup> day of February, 2017. The 2<sup>nd</sup> defendant's application for leave to appear and defend the summary suit was dismissed on 28<sup>th</sup> February, 2018

for failure to appear on several occasions. At the moment there is no other pending application for leave to appear and defend the summary suit before this Court from the defendants. As I stated above the summary suit was filed on 2<sup>nd</sup> day of January, 2017 to date a good one year and a month has lapsed and yet there is no application for leave to appear and defend a summary suit. It should be noted that the object of a *"Summary Suit is to enable a Plaintiff to obtain judgment expeditiously where the defendant has in effect no substantial defence to the suit and to prevent such a defendant from employing delaying tactics and in the process, postpone the day of reckoning"* (See the **case of CRDB Bank Limited Vs. John Kagimbo Lwambagaza [2002] TLR 117**). In that respect, Plaintiff herein is entitled to a summary judgment. I therefore proceed to enter summary judgment in favour of the plaintiff and it is hereby decreed that:-

1. The 1<sup>st</sup> and 2<sup>nd</sup> defendants breached overdraft facility agreement and contract of guarantee respectively by their

failure to discharge their duties and obligations in accordance with the agreements;

2. The defendants shall jointly and severally pay the Plaintiff the outstanding amount of Tshs. 110,762,564.11 (Tanzanian Shillings One Hundred Ten Million Seven Hundred Sixty Two Thousand Five Hundred Sixty Four and Eleven Cents) being the principal amount of the outstanding overdraft facility and interests as of 6<sup>th</sup> December, 2016;
3. The defendants shall jointly and severally pay the plaintiff default interest rate of 24% per month to be charged from the date of breach of the terms and conditions of the overdraft facility agreement, that is 30<sup>th</sup> September, 2010 to the date of judgment;
4. The defendants shall jointly and severally pay the plaintiff interest rate of 7% per annum on the decretal amount from the date of judgment to the date of full payment; and
5. Costs of the suit ~~shall~~

For avoidance of doubt other prayers are declined. It is so ordered.

Dated at Dar es Salaam this 1<sup>st</sup> day of March, 2018.



B.M.A Sehel

JUDGE

1<sup>st</sup> day of March, 2018