

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

COMMERCIAL CASE NO. 92 OF 2020

CRDB BANK PLC PLAINTIFF

VERSUS

FRANCIS ESAU MWINUKA DEFENDANT

Date of Last Order:04/04/2021

Date of Judgement: 16/04/2021

JUDGEMENT ON ADMISSION.

MAGOIGA, J.

The plaintiff, CRDB BANK PLC by a plaint instituted the instant suit against the above named defendant praying for judgement and decree in the following orders, namely:

- a. Payment of the principal sum of TZS.72,079,815.59;
- b. Payment of interest at 17% on item (a) above from 30th August, 2020, till judgement date;
- c. Payment of interest on decretal sum at the rate of 15% from the judgement to the date of full satisfaction of the decree;
- d. Costs of this suit; and
- e. Any other relief (s) as the court deem fit and just.



Upon being served with the plaint, the defendant filed written statement of defence admitting the claim of TZS.70,000,000/= being principal sum as personal loan in paragraph 3 of the written statement of defence by stating that, **“that the contents of paragraph 3 are noted to the extent that the plaintiff did advance to the defendant the total sum of TZS.70,000,000/= as personal loan and not the sum of TZS.72,079,815.59 as alleged.”** The defendant, nevertheless, disputed paragraphs 7 and 8 of the plaint for reason of illness. More admission was well stated in paragraphs 4, 5 and 6 of the written statement of defence. This triggered the learned counsel for plaintiff to make oral application when this suit was called on for orders on 06th April, 2021 under the provisions of Order XII rule 4 of the Civil Procedure Code [Cap 33 R.E.2019] praying for this honourable court be pleased to award a judgement on admission in favour of the plaintiff to such extent of admission of facts as made by the defendant in her written statement of defence filed in court on 25th March,2021 to wit: TZS. 70,000,000/=.

The brief facts of this suit as gathered from the pleadings are that, on 16th day of November, 2018, the defendant applied and was granted a loan facility of TZS.70,000,000/= on terms that the defendant will repay the

loan to the plaintiff on monthly installments basis of TZS.1,557,229.18 at the interest of 17% per annum. Further facts were alleged that, on cessation of defendant employment contract the entire loan facility shall fall due and become immediately repayable by the defendant. The plaintiff alleged that the defendant failed and refused to adhere to the terms and conditions of the said credit facility by not repaying the loan as agreed, hence, this suit claiming several reliefs as contained in the plaint.

The defendant in his written statement of defence, admitted almost everything save for the amount of TZS.72,079,815.59 on reason that he was sick, and called the plaintiff to prove the amount of TZS.2,079,815.59.

It was against the above background that moved the learned advocate for the plaintiff Mr. Mbagati Nyarigo upon being served with the written statement of defence, on 06th April, 2021 orally moved this court to enter judgement on admission against the defendant without necessarily waiting to any further prove. Mr. Nyarigo's prayer was made under Order XII Rule 4 of the Civil Procedure Code, [Cap 33 R.E 2019] for judgement on admission of TZS.70,000,000/= which the defendant admits in his written statement of defence. The said prayer was not contested by the defendant,



who told the court that it is true he was advanced TZS.70,000,000/= and no more.

The provisions of Order XII Rules 4 which the learned counsel plaintiff moved this Court provides the following:

Rule:4. Any party may at stage of a suit, where admission of any fact have been made either on pleading or otherwise, apply to the Court for such judgement or order as upon such admission he may be entitled to, without waiting for determination of any other question between parties; and the Court may upon such application made such order, or give such judgement as the Court may think just.

This court faced with similar situation in the case of NAS TYRE SERVICES LIMITED vs. ANTHONY SELEMAN KOMBE t/a MOSHI INVESTMENT, COMMERCIAL CASE NO 175 OF 2018 (HCCD) DSM (UNREPORTED) had this to say in interpretation of Order XII Rule 4 of the Civil Procedure Code, [Cap 33 R.E. 2019]:

“the plain language of the above provisions of Rule 4 demonstrates that in order for rule 4 of Order XII to come into play, ***the admission must***



be in writing embodied in pleading or otherwise and must be an admission of truth as alleged in the plaint." (emphasis mine)

In my considered opinion, therefore, with respect, I add that, the essence of the provisions of Order XII Rule 4 of the CPC are meant to save time and costs in the determination of a fact in a suit which is not contested between parties, in particular, when admitted in writing or otherwise and there is an application to that effect for the court to enter judgement or order as for such admission.

Guided by the above position, and back to the instant suit, the defendant in his written statement of defence, in particular, paragraphs 3 4, 5, and 6 of the plaint which forms the basis of the plaintiff's claims are very loud and clear that apart from disputing the claimed figure of TZS.72,079,518.59 but in plain language and at paragraph 3 admitted that the amount due in the following language **"that the contents of paragraph 3 are noted to the extent that the plaintiff did advanced to the defendant the total sum of TZS.70,000,000/= as personal loan and not the sum of TZS.72,079,815.59 as alleged."**



In this suit, therefore, there is no dispute that the defendant made an admission under paragraph 3 in writing. Equally important to note, the plaintiff through his learned advocate has made oral application to this Court to enter judgement on admission on the admitted amount. This Court having gone through the pleadings and the law cited is satisfied that, this is a fit case to grant of the judgement on admission. On that note, thus this Court hereby order and enter judgement on admission on the admitted amount of TZS.70,000,000/= as prayed. Other remaining claims in the plaint are subject to proof in accordance to the laid down procedures.

It is ordered.

Dated at Dar es Salaam 16th this day of April, 2021.



S. M. MAGOIGA

JUDGE

16/04/2021