

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**CIVIL CASE NO. 112 OF 2019**

**BEDA Y. MGAYA t/a BEFCA TECHNICAL AND SUPPLIES..PLAINTIFF  
VERSUS  
THE HONOURABLE ATTORNEY GENERAL .....1<sup>ST</sup> DEFENDANT  
MINISTER FOR AGRICULTURE, FOOD  
SECURITY AND COOPERATIVES.....2<sup>ND</sup> DEFENDANT**

**RULING**

30<sup>th</sup> November & 15<sup>th</sup> December 2020

**MASABO, J.:-**

The ruling is in respect of an application for judgment on admission. The background to the application is that the plaintiff had sued the defendants for breach of a service agreement for renovation of the 2<sup>nd</sup> defendants' premises. He is jointly and severally claiming from them a sum of Tshs 11,163,149/= being outstanding consideration in respect of the work done and materials supplied and installed in the course of the said assignment. The Defendants filed a joint Written Statement of Defence (WSD) disputing the claims.

When the matter came for 1<sup>st</sup> PTC, the plaintiff represented by Mr. Julius Ndanzi who had prior to this date served the court with a notice of his intention to pray for judgment on admission, moved the court under Order VIII Rule 3,4 and 5 and Order XXII Rule 1 and 4 of the Civil Procedure Code

[Cap 33 RE 2019] here forth referred as CPC, praying for judgment on admission to enter judgment on admission.

Both parties were called upon to address the court in a hearing that proceeded orally. For the plaintiff, Mr. Ndazi argued that the WSD filed by the defendant in response to the plaint contains general denials in all allegation. He referred me to paragraph 3 of the written statement of defence and argued that, this paragraph which responds to paragraphs 4 to 15 of the plaint contains general denials hence it falls short of the requirement of Order VIII rule 3,4, and 5 of the CPC. Placing reliance further reliance on section 60 of the Evidence Act [Cap 6 RE 2019] and the decision of this court in **Fikirini Issa Kocho v Computer Logix and Others**, Civil Case No. 151 of 2012 (unreported) he invited me to enter judgement on admission.

In reply, Ms. Jenniffer Msanga, the learned State Attorney who appeared for the Defendants, sternly objected. She argued that the WSD does not contain elusive denials as it specifically refers to each paragraph of the plaint and puts the plaintiff to strict proof. She argued further that nowhere in the WSD did the defendants admit to the claim. Therefore, judgment on admission cannot issue as there are no admissions from the defendants which would entitle the court to enter judgment on admission as prayed.

Placing reliance in **Southern Highland Participatory Organisation v Wafanyabiashara, Njombe SACCOS**, Commercial case No. 122 of 2015

HC- Commercial Court (unreported) she argued that, Order VIII Rule 4 can only apply where the admissions are clear. She also cited the Indian case of **Raj Kumar Chawla v Lucas Indian Services**, AIR 2006 Delhi 266, where it was held that the courts have to be careful in passing decree on admission. That before passing such decree, the courts must be satisfied that all essential ingredients of admission are satisfied. She argued further that, judgment on admission cannot issue where there are triable issues as in the instant case where, the bill of quantities which is annexed to the plaint and referred to paragraph 5 of the plaintiff is disputed by the defendant.

I have carefully considered the submission by the parties. The only question awaiting my determination is whether the contents of the defendants WSD are violative of the above provisions and if so, whether a judgment on admission can issue. Order VIII Rule 3,4 and 5 states as follows;

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof or else set out how much he received. And if an allegation is made with diverse

circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: Provided that, the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

The provision has been a subject of numerous decisions in our jurisdiction, the two decisions cited by the parties herein inclusive. In **Fikirini Issa Kocho** (supra) placing reliance on Mulla, Indian Code of Civil Procedure, 1st Ed, Vol II, P 1197, as cited by the Supreme Court of India in **Bhawani Prasad v Ram Deo** (1974) 2 ALL IR 337, TWAIB J, held that it is insufficient for the defendants to simply say “puts the plaintiff to proof of several allegations in the plaint”. Another relevant case is **Amir Sundeerji v J.W Ladwa (1977) Limited**, Misc. Civil Application No. 820 of 2016, HC at Dar es Salaam (unreported). In this case, Mlacha J stated that:

[Order XII rule 4 of the CPC] gives the court power to enter judgment on admitted facts without waiting for the determination of other questions. It means that the court, in its discretion, may enter judgment by admission on the amount admitted and leave what is not admitted to be resolved during trial.

Turning to the pleadings in the present case, the plaint is constituted of 16 paragraphs. Out of these, the 4<sup>th</sup> to 15<sup>th</sup> contain specific factual averments

as to the plaintiff's claim. The 4<sup>th</sup> , 5<sup>th</sup> and 6<sup>th</sup> paragraphs which constitute the main claims are reproduced below for easy of reference:

4. that the plaintiff claim against the defendants jointly and severally is for payment of a sum of shillings Eleven Million One Hundred Sixty-Three Thousand One Hundred Forty-Nine only (Tshs 11,163, 149/=) being costs for the work done also for the materials supplied and installed by the plaintiff in the 2<sup>nd</sup> Defendant Building. The plaintiff also claims interest, general damages and costs of this suit.
  
5. that sometimes in January, 2015, the plaintiff and the 2<sup>nd</sup> Defendant entered into an agreement for renovation of toilets in the 2<sup>nd</sup> Defendant building known as KILIMO I, whereby it was agreed between the parties that the plaintiff performs the said works at consideration of shillings Nine Million, Three Hundred Twenty one Thousand and one Hundred Sixty Nine Only (Tshs 9,321,169/=).
  
6. that following the said contract, the plaintiff duly performed his tasks and completed the same in February, 2015. Thereafter, the plaintiff handed over the completed works to the 2<sup>nd</sup> Defendant who apart from acknowledging receipt of the same commented that the work was "well done accordingly."

These and other claims contained in the plaint were answered in a single paragraph, paragraph 3 of the WSD which states as follows:

"the contents of paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12,13,14 and 15 of the plaint are strongly disputed and the plaintiff is put to strict proof'.

With great respect to the learned State Attorney, the paragraph entertains no doubt that, the defendants joint WSD is violative of the above provisions as it constitutes general and evasive denials to which the plaintiff is entitled to judgment on admission as held by this Court in **Fikirini Issa Kocho** (supra).

I have had the opportunity to read the decision in **Southern Highland Participatory Organisation v Wafanyabiashara, Njombe SACCOS** (supra) whose circumstances, I must say, are sharply distinguishable. Unlike in the instant case, the defendant in **Southern Highland Participatory Organisation v Wafanyabiashara, Njombe SACCOS** had partially accepted some of the facts and denied the rests. Thus, the issue before court was not one of general or evasive denial as in instant case. The issue in controversy was whether the partial admission by the defendant sufficiently warranted a judgment on admission.

It need not be overemphasized that, as stated above, for purposes of Order VIII Rule 4, it is incumbent for the defendant to clearly deny every material allegation made against him. This being an action on a liquidated sum of money a mere denial of the debt is insufficient and inadmissible as it falls short of the requirement of Order VIII Rule 4 and entitles the plaintiff for judgement on admission under Order XII rule 4

This being said, judgment on admission is entered in favour of the plaintiff as follows:

- i. payment of a principal sum of Tshs 11,163,149/=;
- ii. interest on the above sum at a commercial rate of 12% per annum from 1<sup>st</sup> July 2015 to the date of judgement;
- iii. interest on the decretal sum above at court rate of 7% per annum
- iv. Costs of the suit.

DATED at DAR ES SALAAM this 15<sup>th</sup> December 2020.



  
**J.L. MASABO**  
**JUDGE**