

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

CIVIL APPEAL NO. 14 OF 2022

(Arising from the ruling of the Resident Magistrate Court of Morogoro in Civil Case
No. 22 of 2022 Before Hon. Lyatuu, SRM)

MATULI FARM - MUZOMO

SERVICES LIMITED.....APPELLANT

VERSUS

USHIRIKA WA WAFUGA KUKU MOROGORO

(UWAFUKUMO).....RESPONDENT

JUDGMENT

22.09.2022 & 05.10.2022

NDESAMBURO, J.

The Resident Magistrate Court of Morogoro entered judgment on admission in favour of the respondent for the payment of Tshs. 65,600,800/=. The appellant, being aggrieved by the ruling, filed the present appeal.

The brief facts of this case are as follows; on 13th September, 2021, the respondent instituted a civil matter claiming from the appellant a payment of Tshs. 65,600,800/= claimed as due balance for the performance of the contract for the supply of broiler chickens. Payments

were to be effected after every delivery. The respondent claimed to have supplied and delivered the broiler chickens worth the above amount but the appellant failed to effect payment as per terms of the contract. The parties held several meetings but the appellant failed to heed to his promise. Respondent therefore filed the civil suit praying among other reliefs, the recovery of the due amount.

Written Statement of the Defence (WSD), lodged by the appellant was disputed by the respondent for contravening the provisions of Order VIII Rule 3 of the Civil Procedure Code, Cap 33 R.E 2022 (CPC) which prompted the respondent's counsel to pray for the judgment on admission under Order XII Rule I & 4 read together with Order VIII Rule 3, 4 & 5 of (CPC) arguing that the appellant's WSD contained evasive denials of the alleged claims on the Plaintiff. The appellant's counsel objected the prayer made and contended that the WSD disputed all facts in the plaint and in particular para 3 of the WSD showed that the contract had been discharged.

Upon hearing of the counsels, the trial court was satisfied that the appellant's WSD felt short of the requirements set out under Order VIII Rule 4 of the CPC and entered judgment on admission.

Being aggrieved by the ruling, the plaintiff approached this court armed with one ground of appeal which is summarised as follows: *that, the learned trial Magistrate erred in law and in fact by entering judgment on admission against the appellant on the account that the appellant's WSD did not deny the respondent's allegations specifically and categorically.*

At the hearing of the appeal, the appellant had the service of Mr. Jovin Manyama, learned counsel while the respondent was being represented by Mr. Juma Mwakimatu, also a learned counsel.

Expounding the ground of the appeal, Mr. Manyama, appreciated the mandate of the Court under Order XII Rule 4 of the CPC to enter judgment on admission. However, it was his submission that, the court did not properly exercise its discretion. He argued that, the plaint stipulated that, the plaintiff was claiming a total of Tshs. 65,600,800/= arose from the contract entered on 22/05/2017. All facts were disputed in WSD particularly at para 3 where it was averred that the contract was discharged and automatically terminated on its expiration date.

It was his assertion that, para 3 exhibited a triable issue between the parties as to whether the contract was discharged or not. It was his argument that the trial Court failed to consider the statement

contained in the WSD as a whole and had it considered that, it would have not reached into that decision since there was no clear admission to warrant judgment on admission. To support his argument, Mr. Manyama invited the court to take an inspiration of the Indian decision of **R.K Markan vs Rajiv Kumar Markan & another**, 7 February, 2002 where it was held:

"For passing the decree on the basis of admission of the defendants in the pleadings, law is well settled that the admission has to be unequivocal and unqualified and the admission in the written statement should also be taken as a whole and not in part."

He concluded and implored the court to allow the appeal with costs.

In response to the submission, Mr Mwakimatu, pointed out Order VIII Rule 3 and 4 of the CPC require the defendant in WSD to specifically deny allegations of fact of which he does not admit the truth and in so doing, the defendant must be clear and not evasive. Further, where the allegation of facts has not been specifically denied in the WSD, that will amount to admission. Mr. Mwakimatu contended that, the WSD lodged by the appellant, did not specifically denied the alleged facts averred in the plaint but contained evasive denials which are contrary to Order VIII Rule 4 and 5. He supported his submission by the

decision of **Beda Y. Mgaya t/a Befta Technical & Supplies vs. The AG & another**, Civil Case No. 112 of 2019 when the Court was dealing with judgment on admission, held:

"...that for the purpose of Order VIII Rule 4, it is incumbent for the defendant to clearly deny every material allegation made against him".

He implored the court not to rely on the persuasive Indian judgment cited by his learned friend. He concluded that the trial court exercised its discretion judiciously and properly entered judgment on admission and finally prayed for the dismissal of appeal with costs.

In a brief rejoinder, Mr. Manyama reiterates his submission in chief.

Pursuant to Order VIII Rule 3, 4 and 5 relied upon by the respondent, the defendant who has not specifically denied the allegation raised in the plaint is taken to have admitted the alleged facts. For the sake of clarity, Order VIII Rule 3, 4 and 5 of the CPC provides that:

"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 complaint, 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 complaint, 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".

It is an argument by the respondent that, the appellant WSD did not specifically denied the alleged facts averred in the complaint instead it gave a general denial which is contrary to Order VIII Rule 3 and 4 and therefore, the trial court was right to enter judgment on admission. The appellant on his side, argued the opposite. To him, the main issue in dispute was the contract for Tsh. 65, 600,800/= which was disputed at para 3 of WSD where the contract was alleged to have been discharged.

Para 3 of the WSD to the counsel, brought a triable issue between the parties which called the court to hear and determine it. He further submitted that, there was no clear admission of facts. All these to him evidenced that the court failed to exercise its discretion judiciously and wrongly entered the judgment in admission.

Having considered the submission from both sides, the trial court record and in the light of ground of appeal fronted by the appellant, the determinable issue is whether or not the WSD contravene provisions of Order VIII Rule 4 and 5 and whether the court exercised its discretion judiciously.

In order to address the first issue, I will visit the pleadings filed by the parties. They are as follows:

"3. That, the plaintiff claims against the Defendant herein for a payment of Tshs, 65,600, 800/= being the due balance for deliberate default and refusal to pay the defendant after performance of the contract in full...

4. That, on 22nd March, 2017 the plaintiff entered into a contract with the defendant to supply of broiler chickens on the terms set out in the contract...

5. That, the plaintiff on 15th June, 2017 started to supply and deliver chickens to the defendant as per agreement.

6. That on several date and time, the plaintiff supplied and delivered to the defendant chicken worth Tshs. 65,600,800/=

7. That the amount owed was to be paid after every delivery but the defendant did not pay as was agreed.

10. That, despite the written demands, the defendant as to date has not paid the plaintiff the said amount."

The above, averments were replied as follows in the WSD:

"2. That the contents of para 3 are vehemently disputed and the plaintiff shall be put under strictly proof.

3. That the contents of para 4 and 5 are well noted. Further, the defendant states that obligations in the stated contract was successfully discharged and the same automatically terminated at its expiration date. As such no claims lies from the said contract.

4. That, the contents of para 6,7,8,9 and 10 are disputed and the plaintiff shall be subjected to strict proof."

The above paras from the plaint can be summarised as follows; that parties had entered into a contract for supply of broiler chickens; the broiler chickens worth Tsh, 65,600,800/= were supplied to the appellant; despite several demand, the appellant did not honour his promises. On the side of the WSD, the following can be reduced from it, that the obligation under the contract was discharged and automatically

terminated on its expiration and hence no claim and the contents of other paras are disputed.

To my understanding, the key issue adduced from the pleadings is the contentious issue of non-payment of Tshs. 65,600,800/=. Although the WSD did not specifically deny each para of the plaint as submitted by Mr. Mwakimatu, but the appellant did not admit the claim and in particular para 3 of the WSD, the appellant came out clear and raised an issue of discharge and termination of the contract. With that, it cannot safely be said that the WSD was evasive. Therefore, the WSD did not contravene provisions of Order VIII Rule 4 and 5 of the CPC.

As far as the second issue is concern, it is undisputable that Order XII Rule 4 of the CPC gives a discretionary power to the court to enter judgment on admission where admissions of fact have been made without waiting for determination of any other question between the parties. It has been so held in various decisions including the High Court decision rendered in the case of **Amir Sundeerji vs J. W. Ladwa**, Misc Civil Application No. 820 of 2016, Court held that, Order XII Rule 4:

"Gives the court power to enter judgment on admitted facts without waiting for the determination of other questions".

However, in passing the judgment on admission, Court came up with standards to be observed when invoking Order XII rule 4 of the CPC. These were given in the case of **Southern Highlands Participatory Organization V. Wafanyabiashara Njombe Saccos Ltd**, High Court, Commercial Case No. 112/2015 these are; alleged admission must be clear, unambiguous and unequivocal.

It is understandable that, an appellate court can only interfere with court's discretionary power, where it is shown that the discretion was not judiciously exercised. The question is whether in the present appeal the court failed to exercise its discretion judiciously when it entered the judgment on admission.

To my observations, just as what Mr. Manyama submitted, the trial court did not exercise its discretion judiciously when it enter judgment on admission since **one**, there was no clear, unambiguous and unequivocal admission in the WSD, **two**, para 3 of the WSD raised a determinable issue between the parties, therefore, the trial court was not expected to enter judgment on admission, and **three**, in reaching its decision, the trial court relied on the case of **Chui Security Ltd vs AI Outdoor (T) Ltd**, High Court, Commercial case no 141 of 2018 and **Beda Y. Mgaya t/a Befta Technical & Supplies** (supra), while facts

in the two cases are different from the current case, as denials given in those WSD were quite different from the denial given by the appellant in the case at hand. For instance, in the case of **Beda Y. Mgaya** (supra), the WSD which was at stake, the claims contained in the plaint were answered in a single paragraph which stated that, "*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*". Certainly, this is totally different from the appeal at hand.

It is my conclusion that, the WSD lodged by the appellant did not contravene the provisions of Order VIII Rule 4 and 5 of the CPC and furthermore, Court did not exercise its discretion judiciously and ultimately erred in law and in fact to enter judgment on admission against the appellant. I, therefore, find merits on the appeal and it is accordingly allowed. The ruling of the trial court is quashed and the subsequent orders are hereby set aside. It is directed that the case file be remitted to the trial court for the continuation of the case before another magistrate with competent jurisdiction. Costs to follow the events.

It is so ordered.

DATED at **MOROGORO** this 5th day of October, 2022



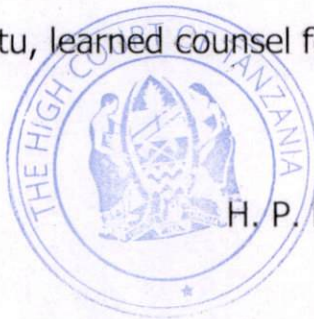
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H. P. NDESAMBURO

JUDGE

05.10.2022

Court: Judgment delivered on 5th October, 2022 in the presence of Mr. Jovin Manyama, learned counsel for the Appellant and Mr. Juma Mwakimatu, learned counsel for the Respondent.



A handwritten signature in blue ink, appearing to be "H.P. Ndesamburo".

H. P. NDESAMBURO

JUDGE

05.10.2022