

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM SUB DISTRICT REGISTRY**  
**AT DAR ES SALAAM**

**MISCELLANEOUS LAND APPLICATION NO. 6 OF 2022**

(Originated from Land Case No.29 of 2020 and Misc. Civil Application No.4 of 2022)

**AZANIA BANK LIMITED.....1<sup>ST</sup> APPLICANT**

**ATTORNEY GENERAL.....2<sup>ND</sup> APPLICANT**

**Versus**

**COSMOS DEVELOPERS LTD..... 1<sup>ST</sup>RESPONDENT**

**COSMOS PROPERTIES LIMITED.....2<sup>ND</sup> RESPONDENT**

**MARK AUCTIONEERS AND**

**COURT BROKERS COMPANY LTD.....3<sup>RD</sup> RESPONDENT**

Date of Last Order: 20<sup>th</sup> July, 2023

Date of Ruling: 28<sup>th</sup> July, 2023

**RULING**

**E.E. KAKOLAKI, J.**

Pursuant to section 95 and Order XII Rule 4 of the Civil Procedure Code [Cap 33 R.E 2019], and by way of chamber summons the applicants mentioned above have preferred this application for the following orders; **one**, that this court be pleased to enter Judgment on admission against the 1<sup>st</sup> and 2<sup>nd</sup> respondents in Land Case No. 29 of 2020 and Misc. Land Application No.4 of 2022 between the same parties and **two**, for any other order that this

court may deem fit to grant for the interest of justice. The application is supported by an affidavit dully sworn by Gabriel Paschal Malata, Solicitor General. The brief facts of this matter as gathered from the affidavit are going thus, on 21<sup>st</sup> December, 2020 the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein filed a Land Case No. 29 of 2020 against the applicants and the 3<sup>rd</sup> respondent in which the applicants filed WSD disputing the claims by the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein. On 8<sup>th</sup> July, 2021 the 1<sup>st</sup> and 2<sup>nd</sup> respondent vide Misc. Land Application No. 32 of 2021, applied for leave to amend the plaint, the application which was cordially granted on 23<sup>rd</sup> November, 2021. On 30<sup>th</sup> November, 2021, the court's order was complied with as the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed the amended plaint, followed by Misc. Land Application No. 4 of 2022, seeking for injunctive orders against the applicants pending determination of Land Case No. 29 of 2020. It is averred by the applicants in their affidavit that, the 1<sup>st</sup> and 2<sup>nd</sup> respondent in paragraphs 6, 7, 8 and 17 of their amended plaint in Land Case No. 29 of 2020 and paragraphs 8 and 14 their affidavit in support of the Misc. Land Application No. 4 of 2022, admitted to have secured loan totalling USD 2,681,000.00 from the 1<sup>st</sup> applicant on 31<sup>st</sup> July, 2017, under the credit facility agreement with repayment conditions arrangement. And the admission is further found in

paragraph (a) of the sought reliefs in the amended plaint for a declaratory order that, the 1<sup>st</sup> and 2<sup>nd</sup> respondents are liable to the tune of USD 2,681,000.00 only being outstanding sum to date arising from the loan advanced to them, the admission which the applicants allege were noted in their counter affidavit. It is due to the above background the applicants are moving this Court to enter Judgment in admission to the extent of admission and allow hearing to proceed on the disputed matters.

The application is strongly resisted by the respondents who filed the counter affidavit duly sworn by Festo Sylvester, principal officer to the respondents claiming that, the contents of paragraphs 5 and 6 of the affidavit and paragraphs 6,7 and 17 of the amended plaint, are matters which gave rise to cause of action and as such cannot be construed as an admission.

Hearing of the matter took the form of written submission as both parties were represented, except for the 3<sup>rd</sup> respondent who chose to absent herself. Applicants had representations of Ms. Vivian Method, Senior State Attorney, while the 1<sup>st</sup> and 2<sup>nd</sup> respondents enjoyed the services of Mr. Ambroce Menance Nkwera, learned counsel.

In support of the application, Ms. Method who prayed to adopt the applicants affidavit to form part of her submission relying on case of **Solvochem East Africa Limited vs Jielong Holdings Tanzania Limited**, Commercial Case No. 65 of 2020, HC- Commercial Division (Unreported) quoting with approval the case of **Nas Tyre Services Limited vs Anthony Seleman Kombe t/a Moshi Investment**, Commercial Case No. 175 of 2018, HC Commercial division -unreported, where the court explained the circumstances under which Order XII Rule 4 can come into play and submitted that, the applicants are duty bound to exhibit to this Court that, the 1<sup>st</sup> and 2<sup>nd</sup> respondents admitted to have secured the loan from the 1<sup>st</sup> applicant and that, such admission is truthful and apparent on pleadings. It was her argument that, the 1<sup>st</sup> and 2<sup>nd</sup> respondent admitted to have secured the loan totalling USD 2,681,000.00 from the 1<sup>st</sup> applicant on 31<sup>st</sup> July, 2017. She singled out that, the admission is made in paragraphs 6,7,8 and 17 of the amended Plaintiff in Land Case No 29 of 2020 and in paragraphs 8 and 14 of the affidavit in support of Misc. Land Application No.4 of 2020.

She contended further that, in paragraphs 5,6, and 8 of the amended plaintiff in Land Case No. 29 of 2020, the 1<sup>st</sup> and 2<sup>nd</sup> respondents averred to have secured loan under the credit facility agreement with repayment conditions

agreement. In her view, as intimated by the 1<sup>st</sup> and 2<sup>nd</sup> respondents in their amended plaint, the loan was secured by the landed properties situated within Ilala municipality in Dare es Salaam region.

Ms. Method argued further that, apart from admitting to have secured the said loan amount in Land case No.29 of 2020 the 1<sup>st</sup> and 2<sup>nd</sup> respondent are praying inter alia for a declaratory order that the total amount due owing and outstanding from the 2<sup>nd</sup> respondent to the 1<sup>st</sup> applicant in respect of banking facilities advanced to the 2<sup>nd</sup> respondent is USD 2,681,000.00. And that, the 1<sup>st</sup> applicant on her part does not dispute to have advanced that loan amount totalling USD 2,681,000.00 to the 1<sup>st</sup> and 2<sup>nd</sup> respondent on 31<sup>st</sup> July, 2017 as reflected at paragraph 8 of the amended joint written statement of defence filed on 16<sup>th</sup> August, 2022 in respect of Land Case No.29 of 2020. And further that, in the same vein, on 31<sup>st</sup> March, 2022 the applicants filed joint counter affidavit in respect of Misc. Land Application No. 04 of 2022 noting the same admission. She took the view that, this confirms the truthfulness of the admission by the 1<sup>st</sup> and 2<sup>nd</sup> respondent.

Ms. Method was insistent that, the admission is plain and clear from the pleadings and truthful hence meeting the requirement of the provision of Rule 4 Order XII of CPC. She referred the court to the case **TIB**

**Development Bank and Another Vs. Houses and Homes Limited and 6 others**, Misc. Commercial Case No. 72 of 2021, HC- Commercial Division unreported, where this court when faced with a situation akin to the present one proceeded to enter judgment on admission as prayed after satisfying itself that, the admission was admission of truth and was made in writing as reflected in the pleadings. She also implored the Court to be guided by the position of the High Court in the case of **CRDB Bank Plc Vs. Francis Esau Mwinuka**, Commercial Case No. 92 of 2020, (HC-unreported) which underscored the rationale behind the provision of Order XII Rule 4 of the CPC to be serving time and costs in determination of uncontested fact in the suit between parties. In further view of Ms. Method, since it is not disputed that the 1<sup>st</sup> applicant advanced the loan totalling 2,681,000.00 to the 2<sup>nd</sup> respondent in 2017, it will be a wastage of time and resources for the court to determine the issue in respect of that fact while parties are at one as judgment on admission is sought only to the extent of the admission by the 1<sup>st</sup> and 2<sup>nd</sup> respondents so as to pave way for disputable matters to be determined in accordance with the prescribed procedures.

In response Mr. Nkwera while referring to the provisions of Order XXI Rule 4 of the CPC argued that, the law is straight forward regarding judgment on

admission, as the Court has to satisfy itself that there is an admission on a particular fact and that, the party has prayed for the order. He said, the admission alone does not suffice the court to enter a judgment on admission, as it must be clear on the particular facts, unambiguous and unequivocal as it was held in the famous case of **Southern Highlands Participatory Organization Vs. Wafanya Biashara Njombe Saccos Ltd Branch Uwemba Saccos**, Commercial Case No. 112 of 2015 (HC-unreported). He was of the view that, this Court should ask itself whether the alleged admission in the claimed paragraphs in amended plaint in Land Case No 29 of 2020 and Misc. Land Application No 4 of 2022 amount to true admission and whether it is clear, unequivocal, unambiguous and unconditional one. It was his response in respect of the claimed paragraphs that, they explain about the money borrowed sometimes in 31<sup>st</sup> July 2017 from the 1<sup>st</sup> applicant to be at the tune of USD 2,681,000 and that, a banking facility letter was signed to that effect and not admission that the 1<sup>st</sup> and 2<sup>nd</sup> respondents owe the 1<sup>st</sup> applicant herein that claimed amount of money as in their defence denied to have defaulted in servicing the said loan.

According to him, the claimed paragraphs simply provide elaboration of 1<sup>st</sup> and 2<sup>nd</sup> respondents' cause of actions against the applicants herein and

added that, paragraph 17 of the amended plaint elaborates and was intended to clear the doubt concerning the loan secured by the 2nd respondent as USD 2,681,000.00 and not USD 3,265,528.64 as claimed in default notice. He maintained that, the said paragraphs neither directly nor indirectly amount to admission by the 1<sup>st</sup> and 2<sup>nd</sup> respondents of the claimed loan amount USD 2,681,000.00.

He argued that, had the respondents clearly admitted to be indebted to the tune of the claimed amount, supported by bank statement with interest or otherwise, then those material facts would make a judgment on admission inevitable, but in this matter that is not the case. In his view, judgment on admission cannot be issued merely on the statement by the 1<sup>st</sup> respondent acknowledging the fact that the company took a loan which was secured by the 2<sup>nd</sup> respondent as submitted by the applicants. He held the view that, the submission by the applicant is absurd and ambiguous, which is contrary to order XII Rule 4 of the CPC.

It was his further submission that, paragraph 7 of the amended plaint in Land Case No. 29 of 2020 expounds the claims against the defendant/applicants whereas among other orders sought is a declaratory order to the effect that the 1<sup>st</sup> plaintiff/respondent had never defaulted



repaying of loan to the 1<sup>st</sup> applicant and further that, the loan banking facilities that was advanced to the respondent was USD 2,681,000.00. To him, such averment wanted to make clear and pray the court for the declaration of the actual amount the 1<sup>st</sup> plaintiff/respondent borrowed from the 1<sup>st</sup> applicant was to the tune of USD 2,681,000.00 as they never defaulted on repaying such loan. In other words he submitted, the only thing that the respondent admitted is the fact that they borrowed money from the 1<sup>st</sup> applicant to the tune of 2,681,000.00 and they have never defaulted on paying such loan. He supported his stance by citing the case of **Matuli Farm-Mazomo Services Limited vs Ushirika wa Wafuga kuku Morogoro (UWAFUKUMO)** Civil Appeal No.14 of 2022 (HC-unreported) and submitted that, there is no unequivocal admission as gathered by the above cited paragraphs of the amended plaint, hence the present application neither falls under the ambit of the provision of Order XII Rule 4 of the CPC nor under the precincts of case of **Southern Highlands** (supra) for want of admission in the entire alleged 1<sup>st</sup> and 2<sup>nd</sup> respondent's pleadings. He therefore implore the court to dismiss the application with costs.

In rejoinder submission, Ms. Method while reiterating applicants' submission in chief attacked the respondents' submission on the assertion that the

pleaded facts in the amended plaint were restricted to the admission of borrowed money which they never defaulted to repay. It was her take that, while there is no dispute from the amended plaint that, loan advanced to them was to the tune of USD 2,681,000.00, another clear evidence of admission of the same is obtained in the reliefs sought in Land Case No. 29 of 2020, in particular paragraph (2) where the 1<sup>st</sup> and 2<sup>nd</sup> respondents are inviting this court to declare that they owe the 1<sup>st</sup> applicant USD 2,681,000.00 only from the loan secured, the admission which is clear, unequivocal, unambiguous and unconditional, thus meeting the requirements of Rule 4 of Order XII of the CPC.

The learned State Attorney also attacked the case of **Matuli- Muzomo Services Limited** cited by M. Nkwera, and submitted that, the same is distinguishable from the scenario at hand, since in that case the admission was not clear from the pleadings unlike the present case where 1<sup>st</sup> and 2<sup>nd</sup> respondents' admission on secured loan from the 1<sup>st</sup> applicant amounting to USD 2,681,000.00 which its payment was defaulted, is clearly seen in the pleadings. Otherwise, she reiterated her submission in chief and the prayers there to.

I have prudently examined the affidavit, counter affidavit and reply to counter affidavit filed in support and against the application, the referred amended plaint in Land Case No. 29 of 2020 and Misc. Land Application No. 4 of 2022 as well as the contending submission which I have accorded the deserving weight. The pivotal point for determination is whether applicants are entitled to Judgment in admission as prayed in terms of the provision of Order XII Rule 4 and section 95 of the CPC. For better determination of this issue, I find it imperative to reproduce the provisions of Rule 4 of order XII of CPC which reads:

*4. Any party may at **any 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 make such order, or give such judgement as the Court may think just.*

The above provision has been given interpretation by this court in the case of **Nas tyre Services Limited vs. Anthony Seleman Kombe t/a Moshi Investment**, (supra) the position which I subscribe to where the Court had this to say:

*"...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.***

That aside, in another case of **CRDB Bank Plc Vs. Francis Esau Mwinuka**, Commercial Case No. 92 of 2020, (HC-unreported) this Court faced with similar situation had this to say on the purpose of judgment in admission:

*"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."*

What is congregated from the above exposition of the law and decisions of this Court is that for the judgment on admission to be issue the following conditions must be met. **One**, a party must apply for the same. **Second**, the application must be based on the admitted facts as pleaded in the pleading or otherwise stated. **Third**, the alleged admitted facts must be truthful. It is also settled now as held in the case of **Francis Esau**

**Mwinuka** (supra) that, the purpose of applying and grant of judgment on admission is to save time and costs which would have been unnecessarily consumed for engaging the Court to determine the undisputed issue, including reduction of numbers of witnesses and exhibits in proving the case. Guided by the above position and back to the instant application, after subjecting into thorough scrutiny the averments in paragraphs 6,7,8 and 17 of the respondents' amended plaint in Land Case No. 29 of 2022 and paragraphs 8 and 14 of the affidavit in support of Miscellaneous Land Application No. 4 of 2022, forming the basis of the 1<sup>st</sup> and 2<sup>nd</sup> respondents' claims, I am persuaded that they speak loudly, clearly, unequivocally and unambiguous terms that, the loan amount advanced by the 1<sup>st</sup> applicant to the 1<sup>st</sup> respondent secured by the 2<sup>nd</sup> respondent's properties was to the tune of USD 2,681,000.00. I am further convinced that, apart from the prayer in paragraph (b) of the reliefs sought, for declaration that the respondents/plaintiffs have never defaulted to pay the said loan advanced to them, there nowhere it is pleaded that, they were servicing the said loan hence the finding of this Court that, all those facts constitute an admission by the 1<sup>st</sup> and 2<sup>nd</sup> respondent which admission I find to be nothing but the truth. In find solace in sub-paragraph (a) of the reliefs sought in the

amended plaint and paragraph 14 of the respondents' affidavit in support of the application in Misc. Land Application No. 4 of 2022, where the admitted amount due is put in the language which is straight, clear, unambiguous and unequivocal terms. Sub-paragraph (a) of the relief paragraph in the amended plaint reads:

*The plaintiff prays for judgment and decree against the defendant for*

*(a) a declaration that the total **amount due, owing and outstanding** from the 2<sup>nd</sup> plaintiff to the 2<sup>nd</sup> defendant in respect of banking facilities advanced to the 2<sup>nd</sup> plaintiff **is US Dollars two Million, Six hundred, eight one thousand only. (US \$ 2,681,000.00) only. (Emphasis supplied)***

And paragraph 14 of the respondents' affidavit Misc. Land Application No. 4 of 2022, goes thus:

*14. That in the facility letter dated 27<sup>th</sup> September, 2017, the amount **due as debt was US \$ Dollars two million, six hundred, eighty-one thousand only. (USD 2,681,000.00)** contrary to the amount stated/claimed in the default notices issued. (Emphasis supplied)*

From the above excerpts I entertain no doubt that the admission of the debt of *USD 2,681,000.00* by the 1<sup>st</sup> and 2<sup>nd</sup> respondents was made in

writing and the same is nothing but the truth hence proof of second and third conditions for issue of judgment on admission as alluded to above. As to the first condition, it is undisputed fact the applicants made a written application to this Court for judgment on admission on the said admitted amount basing on the respondents' own pleadings.

In totality this Court after consideration of the pleadings, evidence and the law cited is satisfied that, this is a fit case for grant of judgment on admission as the contention by the respondents that they did not admit to have defaulted repayment of the loan is defeated by averment in paragraph 14 of the affidavit in Misc. Land Application No. 4 of 2022 and the prayer in sub-paragraph (a) of the prayed reliefs in Land Case No. 29 Of 2020. It is on that note this Court hereby proceed to enter judgment on admission against the 1<sup>st</sup> and 2<sup>nd</sup> respondents in Land Case No. 29 of 2020 on the admitted amount of USD 2,681,000.00 as prayed.

Other remaining claims in the plaint are to be proved in accordance to the laid down procedures and law.

I order each party to bear its own costs in this application.

It is so ordered.

Dated at Dar es Salaam this 28<sup>th</sup> July, 2023.



E. E. KAKOLAKI

**JUDGE**

28/07/2023.

The ruling has been delivered at Dar es Salaam today 28<sup>th</sup> day of July, 2023 in the presence of Mr. Francis Wisdom, State Attorney for the applicant Mr. Ibrahim Malekela, advocate for the 1<sup>st</sup> and 2<sup>nd</sup> respondents and Mr. Oscar Msaki, Court clerk and in the absence of the 3<sup>rd</sup> respondent.

Right of Appeal explained.



E. E. KAKOLAKI

**JUDGE**

28/07/2023.

