

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 175 OF 2021**

**THE GAMING BOARD OF TANZANIA.....1<sup>ST</sup> PLAINTIFF**

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

**VERSUS**

**SADICK SUDI KASUHYA.....DEFENDANT**

**SUMMARY JUDGMENT**

***Date of last order: 25/10/2023***

***Date of judgment: 27/10/2023***

**A.A. MBAGWA, J.**

The plaintiffs, by way of summary procedure under Order XXXV Rule 1 (e) of the Civil Procedure Code, instituted this suit against the defendant praying for judgment and decree as follows;

- (a) A declaration that the defendant owes the plaintiff a sum of Tanzania Shillings Twenty-Seven Million Eighty Hundred Seventy-Four Thousand (TZS 27,874,000/=) only.



- (b) An order for payment of a sum of Tanzania Shillings Twenty-Seven Million Eighty Hundred Seventy-Four Thousand only as an outstanding liability with the Gaming Board of Tanzania.
- (c) Interest of unpaid sum at 22% from the first date of the remainder letter to the full payment.
- (d) An order for payment of general damages to a tune of Tanzania Shillings Ten Million Shillings (TZS 10,000,000/=) only.
- (e) Payment of interest at the court rate of 7% from the date of judgment to full payment.
- (f) Costs of this suit.
- (g) Any other relief(s) this court deems fit and just to grant.

The material facts of the suit as gleaned from the pleadings may briefly be told as follows; The 1<sup>st</sup> plaintiff is body corporate established under section 4 (1) of the Gaming Act. No. 41 of 2003 whose main duties, among others, are promotion and protection of gaming industries in Tanzania whereas the 2<sup>nd</sup> plaintiff is the legal advisor of the government and representative of the government in all the suits for and against the government as per the provisions of the Government Proceedings Act. On the other hand, the defendant is individual person and former employee of the 1<sup>st</sup> plaintiff.



The plaintiff's basic claim against the defendant is for payment of Tanzania Shillings Twenty-Seven Million, Eight Hundred Seventy-Four Thousand (TZS 27,874,000/=) only being the outstanding loan amount. It was stated that the defendant was employed by the Gaming Board as Procurement Officer from 12<sup>th</sup> March, 2012 up to July, 2015 when he voluntarily resigned from employment. Copies of employment and resignation letters were attached to the plaint and collectively marked as annexure TGB-1. During his employment tenure, on the 11<sup>th</sup> June, 2013 the defendant applied for personal loan to the tune of Tanzania Shillings Nine Million (TZS 9,000,000/=) and the same was granted by the 1<sup>st</sup> plaintiff via payment voucher No. 006378 dated 12<sup>th</sup> June 2013. Copies of application for loan and payment voucher No. 006378 were attached to the plaint and collectively marked as annexure TGB-2. It was further stated that on the 1<sup>st</sup> April 2014, the defendant applied for another personal loan amounting to Tanzania Shillings Eleven Million Nine Hundred Thousand (TZS 11,900,000/=) only and the same was granted by the plaintiff through payment voucher No.0007515 dated on 2<sup>nd</sup> April 2014. Copies of application letter and payment voucher No. 0007515 were attached to the plaint and collectively marked as annexure TGB-3.



Subsequently, on 15<sup>th</sup> October 2014 and 11<sup>th</sup> May 2015 the defendant applied for loans and was granted salary advance loan amounting to Tanzania Shillings Twelve Million (TZS 12,000,000/=) only through payment voucher No. PAY 00294 and Tanzania Shillings Thirteen million (TZS 13,000,000/=) only through payment voucher No. PAY 00784 respectively. Copies of application letters and payment vouchers were attached and collectively marked as annexure TGB-4 and TGB-5 respectively.

Moreso, it was the plaintiffs' contention that, on 2<sup>nd</sup> July 2015, the defendant was issued with imprest in the sum of Tanzania Shillings Five Million (TZS 5,000,000/=) only for preparation of the 39<sup>th</sup> exhibition of the International Trade Fair which was scheduled from 29<sup>th</sup> June to 8<sup>th</sup> July, 2015 and Tanzania Shillings Eight Hundred Seventy-Four Thousand (TZS 874,000/=) only for renovation of the 1<sup>st</sup> plaintiff's fence. However, the defendant did not return the said money. Copies of the ledger account of SADICK SUDI KASUHYA dated 22<sup>nd</sup> February 2014 to 29<sup>th</sup> June, 2015 and letter dated 29<sup>th</sup> February, 2016 from the defendant to the Director General of the Gaming Board were attached to the plaint and marked as annexure TGB-6 collectively.

Consequently, the total amount advanced to the defendant as loan facility, imprest and salary advance stood at Tanzania Shillings Forty-Five Million Nine Hundred Thousand (TZS 45,900,000/=) only but the defendant managed to repay only Tanzania Shillings Twenty-Three Million Nine Hundred Thousand (TZS 23,900,000/=) only thus leaving the outstanding sum of Tanzania Shillings Twenty-Seven Million Eight Hundred Seventy-Four Thousand (TZS 27,874,000/=). Copies of ledger account of SADICK SUDI KASUHYA from 17<sup>th</sup> June, 2013 to 22<sup>nd</sup> March, 2016 and July 2010 up to November 2017 were attached to the plaint and marked as annexure TGB-7 collectively.

In addition, the plaintiffs attached copies of letter dated 28<sup>th</sup> June, 2017 with Ref. No. GBT/SK/PF/009/VOL.1/60 from Gaming Board of Tanzania to SADICK SUDI KASUHYA and a letter dated 10<sup>th</sup> July, 2017 with Ref. No. SBN/SK/380/2017/2018/01 from SADICK SUDI KASUYA to Gaming Board of Tanzania and the same were marked as annexure TGB-8. It was the plaintiff's contentions that the defendant admitted the outstanding debt in his letter dated 10<sup>th</sup> July, 2017 with Ref. No. SBN/SK/380/2017/2018/01.



On the basis of the allegations in the plaint along with the supporting documents, the plaintiffs prayed for judgment and decree against the defendant through summary procedure as herein above indicated.

Upon service, the defendant filed in this Court Misc. Civil Application No. 376 of 2023 seeking leave of the court to appear and defend his suit. However, after hearing the parties, the application was, on 25<sup>th</sup> day of October, 2023, dismissed for want of triable issues hence this judgment.

It is a settled position that where a suit is brought under summary procedure and no leave to appear and defend has been granted, the allegations in the plaint are deemed to be admitted. See Order XXXV Rule 2(2) of the Civil Procedure Code.

Expounding on the objectives of summary suits, this Court in the case of **CRDB Bank Limited vs John Kagimbo Lwambagaza** [2002] TLR 117, had the following to say;

*'The purpose of Order XXXV: Summary Procedure "is to enable a Plaintiff to obtain Judgment expeditiously where the Defendant has in effect no substantial defence to the suit and prevent the Defendant from employing delaying tactics and, in the process, postpone the day*



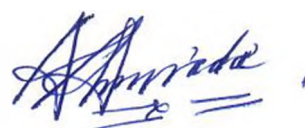
*of reckoning. I am of the settled view that order XXXV is self-contained in so far as it relates to suits stipulated there-under.'*

In view thereof, considering that the allegations in the plaint together with its annexures are deemed to be admitted, I enter judgment and decree against the defendant.

The plaintiffs prayed for general damages to a tune of Tanzania Shillings Ten Million (TZS 10,000,000/=) among other reliefs. It is the law that damages are awarded at the discretion of the court. See **Anthony Ngoo and Another vs Kitinda Kimaro**, Civil Appeal No. 25 of 2014, CAT at Arusha and **Ashraf Akber Khan vs Ravji Govind Varsan**, Civil Appeal No. 5 of 2017, CAT at Arusha.

In the case at hand, having considered the circumstances obtaining in this case, I do not find it fit to grant general damages. This is due to the fact that there is nowhere in the plaint, the plaintiffs allege to have suffered general damages apart from prayer.

All that said and done, judgment and decree are entered against the defendant with the following orders;



1. It is hereby declared that the defendant owes the 1<sup>st</sup> plaintiff a sum of Tanzania Shillings Twenty-Seven Million Eighty Hundred Seventy-Four Thousand (TZS 27,874,000/=) only.
2. The defendant is hereby ordered to pay the 1<sup>st</sup> plaintiff a sum of Tanzania Shillings Twenty-Seven Million Eighty Hundred Seventy-Four Thousand (TZS 27,874,000/=) only being outstanding liability with the Gaming Board of Tanzania.
3. Payment interest at the court rate of 7% from the date of judgment to full payment.
4. Costs of this suit.

It is so ordered

The right of appeal is explained.

  
**A. A. Mbagwa**

**JUDGE**

**27/10/2023**