

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUB - REGISTRY OF SHINYANGA)
AT SHINYANGA**

CIVIL CASE NO 19 OF 2023

SHINYANGA MUNICIPAL COUNCIL.....1ST PLAINTIFF

THE ATTORNEY GENERAL2ND PLANTIFF

VERSUS

CHRISTINA MAYEGA.....1ST DEFENDANT

UPENDO J. MAGULU.....2ND DEFENDANT

GRACE WILLIAM.....3RD DEFENDANT

HIDAYA HAMISI.....4TH DEFENDANT

SESILIA SAMWELI.....5TH DEFENDANT

SUZANA DANIELY.....6TH DEFENDANT

MARIAM JAFARI.....7TH DEFENDANT

SUMMARY JUDGMENT

3rd & 12th June, 2024

MASSAM, J.:

The plaintiffs therein instituted a suit by way of summary procedure under order XXXV Rule 1(e) of CPC (CAP 33 R.E 2019) against the defendants for the judgment and decree on the following orders that

- (1) That the court declare the defendants breached the loan agreement.

- (2) That the defendants to pay the plaintiffs the principal sum of Tshs. 7,700,000/=
- (3) That the defendants to pay the plaintiffs general damages sum of Tshs. 3,000,000/=
- (4) Costs of this suit
- (5) Any other reliefs this Honourable court may deem fit and just to grant.

Briefs facts of this matter was that all defendants are members of Ushindi group which is youth group entrepreneurs engaged in business of making and selling batik and soap (biashara ya kuuza batik na sabuni) which conducting its business at Kambarage Street in Kambarage ward within Shinyanga Municipality with Registration SMC 770. Defendants and plaintiffs executed a loan agreement on 31/12/2021 for sum of 8,000,000 /= which was deposited to defendants CRDB bank account No 0133607805300 for the purpose of carrying a business of making batik and soap with condition to repay the same in sixteen (16) months and mode of payment under the said loan agreement was by way of twelve instalment for each month to pay Tshs. 500,000/= to be paid to the account of 1st plaintiff CRDB account No 0150464089000 named women, youth, and

people with disability and later on payment agreed to be made via group control number 98890000517, defendant breached the loan agreement as they failed to pay the full amount of the loan which made a 1st plaintiff fail to promote the social welfare and economic well being of the other persons within its area of jurisdiction. The 1st plaintiff loan facility committee took necessary steps trying to claim from defendants the said loan by issuing them some notices and demands without success, plaintiffs remained with no option than to institute this matter.

In the hearing of this case Ms. Amina Mkuya State Attorney represented the plaintiff while the defendants were absent. This is a summary suit which requires summons to be sent to the defendants and leave to defend required if not the decision will be given against him/her /them. Ms. Amina in her submission stated that they tried to serve defendants several times but refused to appear it's when they decided to serve them through substituted service through Mwananchi Newspaper dated on 17/5/2024. She added that defendants are aware of this case as 1st defendant appeared once. Ms. Amina also said that defendants failed to brought application for leave to defend to this court no offer concerning the claim which is before this court. According to order XXXV Rule 2(2) of

CPC directs that default of the defendant to comply with the said order the allegation against defendants shall be taken to be admitted. So according to the defendant's failure to comply with this order she prayed to this court to enter summary judgment.

This court after heard the submission from the plaintiff counsel perused the court records and find out that this case was filed on 3/7/2023 under the summary suit which was under order XXXV Rule 2(1) of the CPC, and the summons was issued and the gist of the said summons was to inform defendants that until they got leave to this court to defend and the failure for that the allegation against them will be taken to be admitted. Again this court finds out that on 16th October, 2023 after the defendants summoned, 1st defendant appeared and since then she never appeared to court nor her fellows, so this court is in support of Ms. Amina submission that the defendants were summoned to appear but they refused until when the plaintiffs on 3/4/2024 prayed to this court to summon them by way of substituted service and succeeded to serve them through Mwananchi Newspaper dated on 17/5/2024 but still they did not show up. According to that this court ask itself whether the summons issued by the plaintiff met the legal requirement and if the defendants were aware of the existence of

the this case, According to the evidence and proof which brought to this court, this court finds out that defendants were aware of existence of this summary suit against them that's why defendant 1 appeared to the court on 16th October, 2023 and she never appeared again. According to that this court is in support with the submission of Ms. Amina State Attorney that defendants were aware of the case against them, which falls under order XXXV Rule 1(e) of the Civil Procedure Code but they choose not to appear and defend their case. According to that this court remained with one issue what reliefs the plaintiffs are entitled to? this case being the summary suit based on summary procedure it is settled that the reliefs prayed must be reliefs available under the summary procedure, and Ms. Amina prayed to this court to enter summary judgment as per order XXXV Rule 1 of CPC this means that this court required to grant reliefs which sought in the plaint according to the loan agreement between defendants and plaintiffs as elaborated in the case of **Tanzania Agricultural Development Bank and another vs. Nyarusai Limited and another**, Civil Case No. 23 of 2023 Mahimbali J in page 10 held that in default of the defendants obtaining such leave to defend or of his appearance -----
---- the allegation in the plaint shall be deemed to be admitted -----

“And because in this case also defendants’ default to obtain leave to defend the allegation in the plaintiff plaint the same shall be deemed to be admitted and the plaintiffs shall be entitled to the reliefs sought in their plaint as per order XXXV Rule 1(e) of CPC and this court has no option that to grant them as follows:-

- (i) The defendants breached the loan agreement
- (ii) The defendants to pay the plaintiffs the principal sum of Tshs. 7,700,000/=
- (iii) The defendants to pay the plaintiffs general damages sum of Tshs. 3,000,000/=
- (iv) Costs of the case.

It is so ordered.

Dated at **Shinyanga** this 12th day of **June, 2024**.



A handwritten signature in blue ink, appearing to read "R.B. Massam".

**R.B. Massam
JUDGE**