

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

CIVIL CASE NO 9 OF 2023

SHINYANGA MUNICIPAL COUNCIL.....1ST PLAINTIFF

THE ATTORNEY GENERAL2ND PLANTIFF

VERSUS

KEPHLEN N. MANG'URA.....1ST DEFENDANT

SUZANA KIJA KAYANGE.....2ND DEFENDANT

JECKA JONATHAN.....3RD DEFENDANT

FLORA J KAMULI.....4TH DEFENDANT

DOTTO J KAMILI.....5TH DEFENDANT

LETISIA G. SENI.....6TH DEFENDANT

MOYOSAFI HEKIMA.....7TH DEFENDANT

STELLA ALIAS.....8TH DEFENDANT

FAHARI HEKIMA.....9TH DEFENDANT

NEEMA ABDAL.....10TH 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. 13,400,000/=
- (3) That the defendants to pay the plaintiffs general damages sum of Tshs. 5,000,000/=
- (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 Mafanikio Ndembezi group which are entrepreneurs engaged in mushroom cultivation and poultry farming business (kilimo cha uyoga na ufugaji wa kuku) which conducting its business at Butengwa street Ndembezi Ward within Shinyanga Municipality with Registration SMC 1028. The plaintiff claims against the defendants for the repayment of a total of Tshs. 13,400,000 being outstanding balance of the total secured loan which they were advanced through the revolving fund contrary to the loan agreement entered between the parties. Defendants and plaintiffs executed a loan agreement on 29/6/2017 for sum of Tshs. 14,550,000/= which was deposited to defendants CRDB bank account No. 30710023766 for the

purpose of carrying a mushroom cultivation and poultry farming business (kilimo cha uyoga na ufugaji wa kuku) with condition to repay the same in twelve months' instalments from 30/10/2017 up to 30th September, 2018 as shown under the loan agreement after the expiration of grace period of three months. The mode of payment was for each month of the first two months the sum of Tshs. 1,300,000/= and for the first two months and for the second ten months the sum of Tshs. 1,195,000/= to be paid to the account of the 1st plaintiff CRDB account No. 0150464089000 named women, Youth and people with disability and later, defendants 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 wellbeing 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 for redress.

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. In complying the same before hearing of this case plaintiff tried to summon the defendants but they failed to appear until

when the plaintiff prayed to this court to issue summons through substituted service which they were granted and the same was served through Mwananchi Newspaper dated on 17/5/2024.

In the hearing of this case Ms. Amina Mkuya State Attorney represented the plaintiff while the defendants were absent. 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 because this case was filed under summary suit under Order XXXV Rule 1 (e) of CPC .She added that the plaint endorsed under summary procedure and they did not receive any prayer of leave to defend under Order XXXV Rule 2 of CPC which the same directs that if defendant default to pray for leave to appear and defend the allegation against him in the plaint shall be deemed admitted. Ms. Amina cemented her submission with the case of **Hamisi Maganga Kilongozi vs. Bahati Moshi Masabile**, Civil Case No 26 of 2021 and stated that in this case the court entered the summary judgment as the defendants' default to pray for the leave to defend. Again Ms. Amina stated that the defendants were aware of this case as on 29/11/2023 4th defendant appeared once and they 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 defendants 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 plaintiffs' counsel and perused the court records this court find out that this case was filed on 8/6/2023 under the summary suit 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 29th November, 2023 defendants after been summoned, 4th defendant appeared and since then he never appeared to court nor his fellows, so this court is in support of Ms. Amina submission that the defendants were aware of existing of this case and that it was filed under summary suit because the summons which issued to them were attached with the plaint endorsed under summary procedure but they choose not to appear. And it was because of their absence the plaintiff 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 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 which falls under order XXXV Rule 1(e) of the Civil Procedure Code but they choose not to appear and defend their case. This has proved with the facts that 4th defendant appeared to the court on 29th November, 2023 and he never appeared again, 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’s claim the same shall be deemed to be admitted and the plaintiffs shall be entitled to the reliefs sought in their claim 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. 13,400,000/=
- (iii) The defendants to pay the plaintiffs general damages sum of Tshs. 5,000,000/=
- (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