

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

CIVIL CASE NO 8 OF 2023

SHINYANGA MUNICIPAL COUNCIL.....1ST PLAINTIFF

THE ATTORNEY GENERAL2ND PLAINTIFF

VERSUS

ELIZABETH KISHIWA.....1ST DEFENDANT

SABINA ALEXANDER.....2ND DEFENDANT

ELENI KUTAMIKA.....3RD DEFENDANT

REGINA CHALO.....4TH DEFENDANT

DEBORA KUTOKA.....5TH DEFENDANT

MARY MLOKOZI.....6TH DEFENDANT

MARY JAMES.....7TH DEFENDANT

MARY ROBERT.....8TH DEFENDANT

SALOME MPINA.....9TH DEFENDANT

SPORA ELIAS.....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 30,936,419/=
- (3) That the defendants to pay the plaintiffs general damages sum of tshs 10,000,000/=
- (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 Angel food products group which is women's group entrepreneur engaged in honey processing business (Uzali shaji wa asali mbichi) which conducting its business at Majengo Mapya Street in Ngokolo ward within Shinyanga Municipality. Defendants and plaintiffs executed a loan agreement on 18/8/2020 for sum of 42,526,419/=which was deposited to defendants CRDB bank account No 0133492692400 for the purpose of carrying a honey business with condition to repay the same in twelve months (one year) instalment from 18/11/2020 to 18/10/2021, but the said agreement expired without defendants paid the said loan, plaintiffs tried 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.

By starting, there is no doubt that 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. Defendants in this case filed an application for leave to defend which was application no 19/2023 but they did not appear to the court on the hearing date and the matter was dismissed for want of prosecution. In this case the defendants were summoned to appear but they refused until when the plaintiffs on 18/3/2024 prayed to this court to summon them by way of substituted service. Plaintiffs succeeded to serve them through Mwananchi newspaper dated on 17/5/2024 but still they did not show up. On 3/6/2024 when the matter came for hearing Ms. Amina Mkuya S/A represented the plaintiffs and defendants were absent. Ms. Amina in her submission said that they tried to summons defendants for long time but they refused to appear until when they got a leave of the court to serve them through substituted service through Mwananchi newspaper dated on 17/5/2024. She also said that the case was filed under summary suit under order XXV Rule 1 (e) of

CPC and the plaint is endorsed under summary procedure and the summons was served to them which was summons in summary suit which is under order XXXV Rule 2 (1) of CPC, the gist of that summons was to inform defendants that until they got leave to this court to defend failure for that the decision will be given against them. She added that the said order directs how the said application required to be conducted. Again, she said that defendant no 3 and 7 filed application no 19/2023 in order to obtain leave to appear and defend but the said application was dismissed for want of prosecution for their non-appearance. Ms. Amina stated that plaintiff until now has never receive any offer from defendants and she cement her submission with the case of **Tanzania Agricultural Development Bank and Another vs Nyarusai Co Ltd and Another** which is Civil Case No 23 of 2023, she said that in this case the defendants were aware that the said case was filed under summary suit and the court depart from that summons and enter summary judgment. Coming to this case Ms. Amina said that the defendants No 7 and 3 knew the same that's why they filed application for leave to defend which was dismissed for want of prosecution after failed to appear on the hearing date. Their fellow was aware of this case too but they did not file leave to defend, so according to

Order XXXV Rule 2 (2) of CPC unless the defendant granted leave to defend but in default the allegation against them shall be deemed to be admitted, so she prayed this court to enter summary judgment.

This court after heard over the submission from the plaintiff 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 that's why defendant No 3 and 7 did filed an application for leave to defend which was application No 19/2023 before this court and the same was dismissed for want of prosecution. 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. And because defendants' default to obtain leave to defend the allegation in the 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 I hereby grant them as follows:

- (i) The defendants breached the loan agreement
- (ii) The defendants to pay the plaintiffs the principal sum of Tshs. 30,936,419/=
- (iii) The defendants to pay the plaintiffs general damages sum of Tshs. 10,000,000/=
- (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