

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

CIVIL CASE NO 12 OF 2023

SHINYANGA MUNICIPAL COUNCIL1ST PLAINTIFF

THE ATTORNEY GENERAL2ND PLANTIFF

VERSUS

SIKUDHANI OMARY.....1ST DEFENDANT

HENERICO MASASI.....2ND DEFENDANT

EMANUEL MAIGE.....3RD DEFENDANT

VENERANDA BUJIMU.....4TH DEFENDANT

JOYCE WILLY.....5TH DEFENDANT

UPENDO MGETA.....6TH DEFENDANT

JORAM BWIRE.....7TH DEFENDANT

FRANSISCA PETER.....8TH DEFENDANT

ROSE JILALA.....9TH DEFENDANT

JOSEPH ELIAS.....10TH DEFENDANT

SUMMARY JUDGMENT

19th & 24th 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 5,662,000/=
- (3) That the defendants to pay the plaintiffs general damages sum of tshs 2,000,000/=
- (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 Sauti group which is youth group entrepreneurs engaged in Cattle fattening business (kunenepesha Ng'ombe) which conducting its business at Nhelegani Village in Kizumbi ward within Shinyanga Municipality with registration No. SMC 1246. Defendants and plaintiffs executed a loan agreement on 2/4/2020 for sum of 6,452,000 /= which was deposited to defendant CRDB Bank Account No. 013348 009 8400 for the purpose of carrying a business of cattle fattening, and they made an agreement that the said loan shall be paid in twelve months' instalment from 1st July, 2020 up to 1st June, 2021. Also they agreed for each month of the first eleven months the sum of Tshs. 538,000/= and for the twelfth month the sum of

Tshs. 534,000/= to be paid to the account of the 1st plaintiffs with Account No 0150464089000 named women, youth and people with disability and later on payment agreed to be made via group Control No 988950000515. The said agreement expired on 1/6/2021, defendants breached the loan agreement as they failed to pay the full amount of the loan as scheduled but also failed to pay the instalment in full 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. The plaintiffs served the defendants to appear and seek the leave to defend but for the reasons best known to themselves they choose not to appear and to seek for leave to defend themselves.

In the hearing of this case Mr. Musa Mpogole appeared for plaintiffs while the defendants No. 2 and 3 appeared but with no leave to defend themselves. In the hearing of this case Mr Musa Mpogole addressed this court that the case before this **court 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 them. Mr. Mpogole added that this case

was filed on 5/6/2023 until on 26/6/2023 defendants did not file any application for leave to appear and defend and in their side, they tried to serve defendants several times but refused to appear and have a proof of service. So according to their failure he is praying to this court to enter summary judgment and decree prayed to the plaint as it is. He supported his prayers with Civil Case No 175 of 2021 **The Gaming Board of Tanzania and Attorney General Vs Sadik Sudi Kasuhya** High Court of DSM pg. No. 6 which it was held that it is a settled position that where a suit is brought under the summary suit procedure and no leave to appear and defend has been granted, the allegations in the plaint are deemed to be admitted. Coming to this court because the defendants seek no leave to appear and defend so the allegations in the plaint are deemed to be admitted as per order XXXV Rule 2(2) of CPC.

This court after heard the submission from the plaintiff counsel perused the court records and find out that this case was filed on 5/6/2023 under the summary suit which was under order XXXV Rule 1(e) of the CPC, CAP 33 R.E 2019 and the summons was issued to the defendants, 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 6th

September 2023 after the defendants summoned, 3rd defendant appeared and since then he never appeared to court nor his fellows, so this court is in support of Mr. Musa Mpogole submission that the defendants were summoned to appear but they refused to appear. According to that this court ask itself whether the summons issued by the plaintiffs 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 finds out that defendants were aware of existence of this summary suit against them that's why 3rd defendant appeared to this court once 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 Mr. Mpogole 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 -----"

As per the facts and evidence which brought to this court show that 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 than to grant them as follows:

- (i) The defendants breached the loan agreement
- (ii) The defendants to pay the plaintiffs the principal sum of Tshs. 5,662,000/=
- (iii) The defendants to pay the plaintiffs general damages sum of Tshs. 2,000,000/=
- (iv) Costs of the case.

It is so ordered.

Dated at **Shinyanga** this 24th day of **June, 2024**.



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

R.B. Massam
JUDGE