

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO. 64 OF 2015

NATIONAL BANK OF COMMERCE LIMITED PLAINTIFF

VERSUS

JOMO KENYATTA TRADERS LIMITED

MOI KASHIGO KIVARIA

MICHAEL KIMWAGA

WILLIAM GEOFLREY KIMWAGA

MONICA KIMWAGA

MWANAIIDI SALUM BUSHIR

..... DEFENDANTS

28th & 29th October, 2015

SUMMARY JUDGMENT

**(Under Order XXXV rule 2 (2) (a) of the Civil Procedure Code, Cap.
33 of the Revised Edition, 2002)**

MWAMBEGELE, J.:

After the application for leave to defend this summary suit was struck out on 28.10.2015 for being incompetent, Mr. Linda Bosco, the learned counsel for the plaintiff who appeared for the plaintiff prayed that summary judgment be entered in favour of the plaintiff. The prayer was made under Order XXXV rule 2 (2) (a) of the Civil Procedure Code, Cap. 33 of the Revised Edition, 2002.

Ms. Bosco, learned counsel is right to present the prayer. Since the defendants' application to defend the summary suit as required by the law has been struck out, then the provisions of Order XXXV rule 2 (2) (a) of the CPC must be brought into play. As was articulated in ***CRDB Bank Limited Vs John Kagimbo Lwambagaza*** [2002] TLR 117, 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.

The allegations by the plaintiff Bank in the plaint are therefore adjudged to be admitted and the Bank is entitled to Judgment. In the premises, I do hereby enter judgment for the plaintiff Bank as prayed in the first limb of the prayers plaint with costs. That is to say;

- (a) Payment of the sum of Tanzania Shillings One Billion Thirty Two Million Six hundred Ten thousand ninety and Cent Twenty one (Tsh. 1,032,610,099/21) being the total outstanding amount on account of the Multi Option Facility Commercial Terms and the Term Loan Commercial Terms granted to the 1st Defendant as at December 31, 2014;
- (b) Interest on the above at the contractual rate from December 31, 2014 to be the date of judgment;
- (c) Interest on the decretal amount at the rate of 7% from the date of judgment to the date of full and final payment; and
- (d) Costs of the suit to be borne by the Defendants.

The alternative prayers in the plaint will have to be pursued under relevant circumstances and avenue according to the law upon failure by the defendants to pay the outstanding amount.

Order accordingly.

DATED at DAR ES SALAAM this 29th day of October, 2015.

J. C. M. MWAMBEGELE
JUDGE