

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

COMMERCIAL CASE NO. 105 OF 2015

DIAMOND TRUST BANK TANZANIA LIMITED PLAINTIFF

VERSUS

SANOL CASHIER FACTORY

KALPEHS JAYSINH ASHER } DEFENDANTS

AASHER JAYSINH ASHER }

27th & 28th 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.:

This suit was filed by the plaintiff Bank on 31.08.2015 under Summary Procedure. The record shows that the defendants were served on 25.09.2015 and 21 days have lapsed without any application for leave to defend the summary suit being filed by the defendants.

When the suit was called on for necessary orders on 27.10.2015, Mr. Magusu, learned counsel for the plaintiff prayed for a decree, interest and costs as indicated in the plaint. The prayer was made under Order XXXV rule 2 (2) (a)

of the Civil Procedure Code, Cap. 33 of the Revised Edition, 2002 (hereinafter "the CPC").

Mr. Magusu, learned counsel is right. Since the defendants have not filed any application to defend the summary suit as required by the law, then the provisions of Order XXXV rule 2 (2) (a) of the CPC must be brought into play. As was underscored 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 and to prevent such a defendant from employing delaying tactics and in the process, postpone the day of reckoning.

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 plaint with costs. That is to say;

1. The defendants, jointly and severally, should pay the plaintiff the sum of Tshs. 288,747,416/12;
2. The defendants, jointly and severally, should pay the plaintiff 21% interest per annum on the sum of Tshs. 288,747,416/12 commencing from 01.08.2015 to the date of this judgment;
3. The defendants, jointly and severally, should pay the plaintiff 7% interest per annum on the decretal sum commencing from the date of this judgment until satisfaction in full; and

4. The defendants, jointly and severally, should pay the plaintiff costs of this suit.

Order accordingly.

DATED at DAR ES SALAAM this 28th day of October, 2015.

J. C. M. MWAMBEGELE
JUDGE