

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 122 OF 2015

SOUTHERN HIGHLANDS PARTICIPATORY  
ORGANISATION.....PLAINITFF

*VERSUS*

WAFANYABIASHARA NJOMBE SACCOS LIMITED  
BRANCH, UWEMBA SACCOS.....DEFENDANT

RULING

**Mansoor, J:**

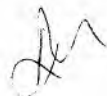
**Date of Ruling- 29<sup>TH</sup> APRIL 2016**

The plaintiff filed a suit for recovery of THz 227,524,000 from the Defendants. Out of this amount THz 77,524,000 is the specific amount of the loan remained unpaid, and THz 150,000,000 is the amount of general damages.



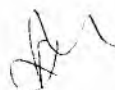
The defendants have filed a written statement of defence and it is contended by the plaintiff in its Notice of Admission of Facts filed in Court on 26<sup>th</sup> February 2016 that the defendants have admitted the principal loan in paragraph 2 of the written statement of defence, which reads as follows:

*“the contents of paragraph 2 is partly admitted to the extent that the defendant is admitting the principal loan but the plaintiff denies to the extent of the act of the defendant not being ready to pay interest of 3% as it was agreed in paragraph 3.7 of the contract which makes the suit to be of commercial nature as it was insisted by the defendant. The Ruling of the Njombe district court is hereto attached to form part of this Reply as Annexure G and further the plaintiff insists to be paid the general damages by the defendant so that to foot the loss incurred by the plaintiff for losing donors, not revolving the fund to other Saccos and all troubles suffered by the plaintiff.”*



The plaintiff contends that the Notice to Admit facts raised by it, was served upon the defendants, and the defendants, have refused or neglected to respond, either to refuse or admit the facts contained in the Notice, within six days after the service of the Notice to them as required by Order 12 Rule 3 of the C.P.C.

On the Notice to admit the facts in this case I must say that ,the purpose of O.12 R.4 C.P.C is to avoid waiting by the plaintiff for part of the decree when there is a clear, unequivocal, unambiguous and unconditional admission of the defendant in respect of the claim of the plaintiff. The rule only secures that if there is no dispute between the parties, and if there is on the pleadings or otherwise such an admission as to make it plain that the plaintiff is entitled to a particular order or judgment he should be able to obtain it at once to the extent of admission. But the rule is not intended to apply where there are serious questions of law to be asked and determined.



In this case I have seen that firstly, there is no proof that Notice to admit facts was served upon the defendant as required by Order 12 Rule 3 of the CPC, and secondly, having gone through paragraph 2 of the written statement of defence, I would say that in spite of admission on the part of the defendants regarding the outstanding principal sum of the loan, the defendants denied the amount of interest charged and the amount claimed as general damages. Further, the defendant denied in paragraph 3 and 4 of the written statement of defense being the agent of the plaintiff for collecting the return of the loans from the individuals who belongs to the defendants SACCOS. Therefore the plaintiff would be bound to lead evidence on those issues and prove the same before he becomes entitled to decree and the plaintiff in that event cannot have a decree by virtue of provision of O.12 R.4 C.P.C without proving those issues."

Again, although Rule 4 of Order 12, CPC is couched in wide terms but it can be acted upon only when admission(s) are clear, unambiguous and unequivocal. It is not intended to be



put into operation where there are serious questions of fact or law to be determined, like in the instant case. It is well settled that a judgment on admission by the defendant under Order 12 Rule 4, CPC is a matter of discretion and not a matter of right and when a case involves questions which cannot be conveniently disposed of on an application, under the rule, the Court may, in the exercise of discretion, refuse the application.

I therefore refuse to give the judgment on admission since the admission is not clear, the admission is ambiguous as it is not clear whether the defendant as a SACCOSS admits liability as to being an agent for collecting the payments to the plaintiff from all the individuals. Again, the Court cannot invoke the provisions of Order 12 Rule 4 of the CPC, if the requirements of Order 12 Rule 3 have not been satisfied.

For the above reasons, the Application for judgment on admission is hereby refused, and dismissed. Costs to follow the events in the case.



DATED at DAR ES SALAAM this 29<sup>TH</sup> day of APRIL, 2016

*Mansoor*

**MANSOOR**

**JUDGE**

**29<sup>TH</sup> APRIL 2016**

