

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 31 OF 2018**

**COMMERCIAL BANK OF AFRICA (T) LTD ..... PLAINTIFF  
VERSUS**

**ESTHER JAPHET MHAYE t/a**

**ESTHER AGRO AND GENERAL SUPPLY ..... 1<sup>ST</sup> DEFENDANT**

**JAPHET BARTHOLOMEO MHAYE ..... 2<sup>ND</sup> DEFENDANT**

**SUMMARY JUDGMENT**

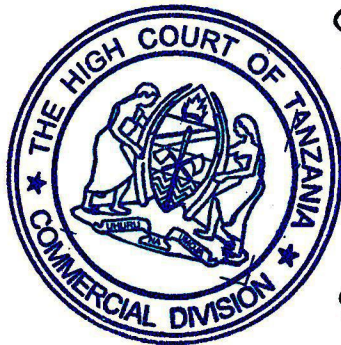
The Defendant have defaulted in obtaining leave to appear and defend the suit. Counsel for the Plaintiff has prayed for a summary judgment under Rule 68 of the High Court (Commercial Division) Procedure Rules. While I agree with her that where the Defendant does not obtain leave to appear and defend, the Plaintiff is entitled to a summary judgment, I do not however, agree with her that such judgment can be passed under Rule 68 of the High Court (Commercial Division) Procedure Rules.


A summary judgment in a summary suit brought under Order XXXV of the Civil Procedure Code can only be passed under Order

XXXV Rule 2 (2)(a) of the Civil Procedure Code – where a suit is a suit for recovery a money under a mortgage.

Accordingly summary judgment is hereby entered for the plaintiff and against the Defendants jointly and severally for the sum of Tshs. 110,103,947.63/= The decretal sum shall carry interest at the rate of 16% per annum from the date of filing the suit to the date of judgment and further interest at court's rate of 3% per annum from the date of this judgment to the date of full payment of the decreed sum.

The Plaintiff is also awarded costs of the suit.



  
A. R. Mruma,

Judge

9<sup>th</sup> July, 2017