

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 79 OF 2016**

**DIAMOND TRUST BANK TANZANIA LIMITED ..... PLAINTIFF**

**VERSUS**

<b>1. MTENDA DISTRIBUTORS COMPANY LIMITED .....</b>	<b>1<sup>st</sup> DEFENDANT</b>
<b>2. GEORGE KARISTUS MTENDA .....</b>	<b>2<sup>nd</sup> DEFENDANT</b>
<b>3. SOSPETER MTENDA .....</b>	<b>3<sup>rd</sup> DEFENDANT</b>
<b>4. BESTER GEORGE MTENDA .....</b>	<b>4<sup>th</sup> DEFENDANT</b>
<b>5. ESTER KARISTUS MTENDA .....</b>	<b>5<sup>th</sup> DEFENDANT</b>
<b>6. SOPHIA GEROD MTENDA .....</b>	<b>6<sup>th</sup> DEFENDANT</b>
<b>7. CATHERINE GEORGE MTENDA .....</b>	<b>7<sup>th</sup> DEFENDANT</b>

**SUMMARY JUDGMENT**

*Date of the Last Order: 06/04/2018*

*Date of the Summary Judgment 09/04/2018*

**SEHEL, J.**

On 5<sup>th</sup> day of July, 2016 the Plaintiff herein filed a Summary Suit against the defendants jointly and severally claiming amongst other things for payment of Tanzanian Shillings 847,173,272.77 being the

principal amount of the outstanding overdraft facility and interest as of 26<sup>th</sup> May, 2016.

It is alleged by the plaintiff that on 12<sup>th</sup> December, 2014 the plaintiff availed to the 1<sup>st</sup> Defendant Credit Facilities for the aggregate sum of Tshs 860 million in the form of a term loan facility for Tshs. 260million; an overdraft facility of 200million; and a Bank Guarantee facility of Tshs. 400million. The Credit Facilities and the 1<sup>st</sup> defendant's repayment obligation were guaranteed by the 2<sup>nd</sup> ; 3<sup>rd</sup>; 4<sup>th</sup>; 5<sup>th</sup>; 6<sup>th</sup>; and 7<sup>th</sup> defendants and the secured by a mortgage on the 2<sup>nd</sup> defendant's immovable property on Plot No. 249 Block Q Mwanjelwa Area, Mbeya City comprised of Title No. 8258-MBYLR, which mortgage was duly consented by the 4<sup>th</sup> defendant as the 2<sup>nd</sup> defendant's spouse. Copies of the loan facility, guarantee, indemnity and mortgage deed are attached to the plaint.

It is further alleged that the defendants defaulted payment despite several demand notices issued to them. Copies of the notices are also attached to the plaint. Hence the present suit.

Having filed the summary suit, the defendants were dully served with summons. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants tried filed two applications for extension of time within which to seek leave to appear and defend the summary suit. The first application was struck out for being incompetent while the second application was dismissed for lacking merit. Likewise, the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> defendants tried to seek leave to appear and defend the summary suit. But their application was struck out for being incompetent they then filed an application for extension of time which was application was dismissed for lacking merit.

Following the dismissal of the applications, counsel for plaintiff invited this Court to enter summary judgment for the Plaintiff in terms of Order XXXV Rule 2 (2) (a) of the Civil Procedure Act, Cap. 33. He submitted that since there are no pending applications filed by defendants for leave to appear and defend the suit then summary judgment be entered in favour of the plaintiff.

It is trite law that where a summary suit is filed the defendant ought to obtain leave of the Court to defend the summary suit.

Failure to obtain leave then the allegation contained in the plaint shall be deemed to be admitted by the defendant and the plaintiff shall be entitled to the appropriate decrees specified under Order XXXV Rule 2 (2) (a) to (c) of the Civil Procedure Act, Cap. 33. The question that follows is whether the defendants failed to obtain leave.

I have stated herein that the defendants' applications for extension of time within which to seek leave to appear and defend the summary suit were dismissed for lacking merit. Therefore, at the moment there are no other pending applications for leave to appear and defend the summary suit before this Court from the defendants. As I stated above the summary suit was filed on 5<sup>th</sup> day of July, 2016 to date a good one year and some months have lapsed. Yet there is no application for leave to appear and defend a summary suit. It should be noted that the object of a "*Summary Suit 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" (See the **case of CRDB Bank Limited Vs. John Kagimbo Lwambagaza [2002] TLR 117**). In that respect, the Plaintiff herein is entitled to a summary judgment. I therefore proceed to enter summary judgment in favour of the plaintiff and it is hereby decreed that:-

1. The defendants shall jointly and severally pay the Plaintiff the outstanding amount of Tshs. 847,173,272.77 (Tanzanian Shillings Eight Hundred Forty Seven Million One Hundred Seventy Three Thousand Two Hundred Seventy Two and Seventy Seven Cents) being the principal amount of the outstanding Credit Facilities and interests as of 26<sup>th</sup> May, 2016;
2. The defendants shall jointly and severally pay the plaintiff contractual interest rate of 19% per annum on Tshs. 847,173,272.77 from 27<sup>th</sup> May, 2016 until the date of judgment;
3. The defendants shall jointly and severally pay the plaintiff interest at Court's rate of 7% per annum on the decretal

amount from the date of judgment to the date of full payment; and

4. Costs of the suit.

It is so ordered.

Dated at Dar es Salaam this 9<sup>th</sup> day of April, 2018.



B.M.A Sehel

JUDGE

9<sup>th</sup> day of April, 2018