

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

**MISC. COMMERCIAL CASE NO.72 OF 2021**

**(ARISING FROM COMMERCIAL CASE NO.120 OF 2020)**

**TIB DEVELOPMENT BANK ..... 1<sup>ST</sup> PLAINTIFF**  
**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**HOUSES AND HOMES LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**SIMBA MOTORS (T) LIMITED ..... 2<sup>ND</sup> DEFENDANT**  
**BHAVESH CHANDULAL LADWA ..... 3<sup>RD</sup> DEFENDANT**  
**JAYANTALAL WALJI LADWA ..... 4<sup>TH</sup> DEFENDANT**  
**NILESH JAYANTAILAL LADWA ..... 5<sup>TH</sup> DEFENDANT**  
**AATISH DHIRAJILAL LADWA ..... 6<sup>TH</sup> DEFENDANT**  
**JITESH JAYANTILAL LADWA ..... 7<sup>TH</sup> DEFENDANT**

**Date of Last Order and Judgement: 11/03/2022**

**JUDGEMENT ON ADMISSION.**

**MAGOIGA, J.**

The plaintiffs, TIB DEVELOPMENT BANK AND THE ATTORNEY GENERAL by a  
plaint instituted the instant suit jointly and severally against the above  
named defendants praying for judgement and decree in the following  
orders, namely:



- a. Payment of TZS.5,515,901,330.37(USD.2,358,230.58) stood up to November, 2020 being the total sum of loan facility plus accrued interest, penalties and other charges;
- b. Payment of interests, penalties and other charges from 14<sup>th</sup> November, 2020 to the date of full payment of the outstanding amount at the rate of 24%as per Credit Facilit Agreement;
- c. Payment of TZS.2,700,000,000/= being general damages as claimed in paragraph 22 of the plaint;
- d. Interest on TZS.5,515,901,330.37(USD.2,358,230.58) amount at the rate of 7%from the date of pronouncement of judgement and decree until full and final payment;
- e. Sell of mortgaged properties itemized in paragraph 12 which secured the outstanding loan;
- f. Defendants be condemned to the costs of this suit;
- g. Any other relief (s) as the court deem fit to grant.

Upon being served with the plaint, the 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants who are directors and shareholders of the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a joint written statement of defence for themselves and the for 1<sup>st</sup> and 2<sup>nd</sup> defendants. In their defence the said defendants in writing admitted principal claim of

TZS.3,955,906,566.26 (USD.1,500,000.00) being the principal amount constituting the Credit Facility and seriously disputed the rest of the claims and threw blames to the 7<sup>th</sup> defendant.

The 7<sup>th</sup> defendant, who is the director and shareholder of the 1<sup>st</sup> and 2<sup>nd</sup> defendant, upon being served with the plaint, equally filed a joint written statement of defence for the 1<sup>st</sup>, 2<sup>nd</sup> and for himself disputing all claims by the plaintiffs. While the suit was pending, it was reported that the 7<sup>th</sup> defendant is no more and the 7<sup>th</sup> defendant was appointed the administrator of estate of the 4<sup>th</sup> defendant and as such filed a separate written statement of defence for 4<sup>th</sup> defendant.

The above state of affairs in this suit necessitated this court having two written statements of defence to make a finding which defence has to stand. Following my ruling today on the point and having the joint written statement of defence jointly filed by the 7<sup>th</sup> defendant, I am certain the 7<sup>th</sup> defendant defence is to be filed afresh on the main suit just for himself.

The learned Solicitor General immediately prayed that since this application has been pending for almost a year prayed that he allowed to proceed with its hearing because it remained unopposed. His prayer was opposed by both



counsel for defendants for reasons that Mr. Rutaiwa wants to file a counter affidavit to state the exact amount admitted and for Mr. Musyangi granted and determined will prejudice the 4<sup>th</sup> and 7<sup>th</sup> defendants. This court find out that all the reasons were not tenable and allowed the learned Solicitor General to proceed with hearing and will give them an opportunity to respondent on any point of law, if any.

It is against the above background, the plaintiffs preferred Misc. Commercial Application No.72 of 2021 against all respondents under the provisions of Order XII Rule 4 of the Civil Procedure Code, [Cap 33 R.E 2019] praying for judgement on admission, hence, this judgement. However, when this application was called on for hearing the application as against the 4<sup>th</sup> and 7<sup>th</sup> defendants was withdrawn.

The gist of this application for judgement on admission was triggered by what the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants in their joint written statement of defence stated, particularly, in paragraphs 5 had this to say:

**"5. That, paragraph 10 of the plaint is partially noted to the extent of the principal amount constituting the debt only. ... as of 8<sup>th</sup> September, 2018 ... the amount claimed was to the tune of**



**Tshs.3,955,906,566.26 well below the current claimed amount which has risen due to interest and penalties.**

More admission was well stated in paragraph 11 of the written statement of defence.

Based on the above facts the plaintiffs are praying for this honourable court to be pleased to award a judgement on admission in favour of the plaintiffs to the extent of admitted amount and of facts as made by the defendants in their written statement of defence filed in this court on 4<sup>th</sup> day of January, 2021 to wit TZS.3,955,906,566.26.

The brief facts of this suit as gathered from the pleadings are that, on 16<sup>th</sup> December, 2014, the 1<sup>st</sup> defendant entered into Credit Facility Agreement for USD.1,500,000.00 from the 1<sup>st</sup> plaintiff. The said facility was secured by debenture, first class legal mortgage of the 4<sup>th</sup> defendant, 3<sup>rd</sup> defendant, specific assignment to deposit annual rental, first rank legal mortgage of the 2<sup>nd</sup> defendant and personal guarantees of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants. The loan was to be paid within three years with a grace period of 12 months. Despite the 1<sup>st</sup> plaintiff doing her obligations as agreed in the Facility Letter, the 1<sup>st</sup> defendant and her guarantors failed, neglected and



declined to service the loan, hence this suit claiming the reliefs as contained in the plaint.

It was against the above background that, Mr. Gabriel Pascal Malata, learned Solicitor General, with formal application moved this court upon being served with the written statement of defence, on 08<sup>th</sup> June, 2021 for an order to enter judgement on admission against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants without necessarily waiting to any further prove. Mr. Malata's prayer was made under Order XII Rule 4 of the Civil Procedure Code, [Cap 33 R.E 2019] read together with Rule 2(2) of the High Court (Commercial Division) Procedure Rules 2012 as amended by G.N. 107 of 2019. To bolt up his prayer the learned advocate for the plaintiff cited the case of SOLVOCHEM EAST AFRICA LIMITED vs. JIELONG HOLDINGS TANZANIA LIMITED, COMMERCIAL CASE NO.65 OF 2020, in which it was held that the admission must be in writing embodied in pleading or otherwise and must be admission of truth as alleged in the plaint.

The learned Solicitor General implored this court to be guided by the provisions of Order XII Rule 4, Order XV Rule 2 of the Civil Procedure Code and Rule 4 of the High Court (Commercial Division) Procedure Rules, 2012 as amended by G.N. 107 of 2019 and proceed to grant the amount admitted

of Tshs.3,955,906,556.26 be adjudged against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, and 6<sup>th</sup> respondents with costs.

Mr. Robert Rutaihua, learned counsel for the defendants never bothered to file counter affidavit, and has been at all material time informed this court that they don't oppose this application. However, the only legal point he asserted was the court to take into account the provisions of section 80 of the Law of Contract Act,[Cap 345 R.E. 2019]. As to costs he left it to the court to decide at this stage.

Mr. Msyangi had nothing to submit save that he left it to the court to decide.

Mr. Malata had nothing to rejoin.

This court has noted that, none of the defendants complied with the requirement of Rule 25(1) and (2) of this court's Rules in a situation like this where admission of amount claimed is done.

Therefore, for better understanding of the importance of the provisions of Rule 4 of Order XII of the Civil Procedure Code,[Cap 33 R.E.2019] its production hereunder is imperative. The said Rule provides as follows:

**Rule:4. Any party may at stage of a suit, where admission of any fact have been made either on pleading or otherwise, apply to the**

**Court for such judgement or order as upon such admission he may be entitled to, without waiting for determination of any other question between parties; and the Court may upon such application made such order, or give such judgement as the Court may think just.**

This court faced with similar situation in the cases of NAS TYRE SERVICES LIMITED vs. ANTHONY SELEMAN KOMBE t/a MOSHI INVESTMENT, COMMERCIAL CASE NO 175 OF 2018 (HCCD) DSM (UNREPORTED) and SOLVOCHEM EAST AFRICA LIMITED vs. JIELONG HOLDINMGS TANZANIA LIMITED, COMMERCIAL CASE NO.65 OF 2020, HC (DSM) (Unreported) had this to say in interpretation of Order XII Rule 4 of the Civil Procedure Code, [Cap 33 R.E. 2019]:

“the plain language of the above provisions of Rule 4 demonstrates that in order for rule 4 of Order XII to come into play, ***the admission must be in writing embodied in pleading or otherwise and must be an admission of truth as alleged in the plaint.***” (emphasis mine)

Yet in another case of CRDB BANK PLC vs. FRANCIS ESAU MWINUKA, COMMERCIAL CASE NO. 92 of 2020, (HCCD) DSM (unreported) this court





faced with similar situation had this to say **"with respect I add that, the essence of the provisions of Order XII Rule 4 of the CPC are meant to save time and costs in the determination of a fact in a suit which is not contested between parties, in particular, when admitted in writing or otherwise and there is an application to that effect for the court to enter judgement or order as for such admission."**

Guided by the above position, and back to the instant suit, the defendants in their written statement of defence, in particular, paragraphs 5 and 11 of the written statement of defence which was replying to paragraphs 10 and 16 of the plaint forming the basis of the plaintiff's claims are very loud and clear that apart from disputing the claimed interests and penalties but in plain language, and, in particular, at paragraph 5 the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants admitted that the amount due and not disputed is TZS.3,955,906,556.26.

In this suit, therefore, there is no dispute that the defendants made an admission under paragraph 5 in writing. Equally important to note, the plaintiff through her learned Solicitor General has made formal application to this Court to enter judgement on admission on the admitted amount.



This Court having gone through the pleadings and the law cited is satisfied that, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, and 6<sup>th</sup> defendants are not in issue with the plaintiff in any question of law and fact on TZS.3,955,906,566.00 as correctly pointed out by the Solicitor General when cited Order XV rule 2. In the circumstances, therefore, I find this is a fit case to enter judgement on admission on the admitted amount. It is on that note this Court hereby order and enter judgement on admission on the admitted amount of TZS.3,955,906,566.00 and not TZS.5,515,901,330.37 as prayed in the application.

Other remaining claims in the plaint are to be proved in accordance to the laid down procedures against all defendants.

It is so ordered.

Dated at Dar es Salaam 11<sup>th</sup> this day of March, 2022.



A handwritten signature in blue ink, appearing to read 'S. M. Magoiga', written over a horizontal line.

**S. M. MAGOIGA**

**JUDGE**

**11/03/2022**