

**IN THE HIGH COURT OF UNITED REPUBLIC OF
TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO. 132 OF 2022**

TRISTARS INVESTMENT COMPANY LTD.....PLAINTIFF

VERSUS

CITECHEM GROUP TANZANIA LIMITED....DEFENDANT

22/03/2023 & 28/04/2023

SUMMARY JUDGMENT

NANGELA, J.

This judgment is in respect of a plaint filed in this Court by the Plaintiff on 16th December 2022 under Order XXXV of the Civil Procedure Code, Cap 33 R.E 2019 (Summary Procedure). In that Plaint, the Plaintiff prays for Summary Judgment and Decree against the Defendant as follows:

- (a) A declaratory order that the Defendant's act of not heeding to its contractual obligation is a breach of contract.
- (b) Payment of TZS 101,023,000/- being the outstanding payment

from the Contract the Defendant owes the Plaintiff.

- (c) Payment of TZS 649,000/- being Bank charges on bounced cheques
- (d) An order for payment of general damages as may be assessed by this Honourable Court.
- (e) Costs of the suit: and;
- (f) Any other relief(s) that the Honourable Court may deem fit to grant.

I will briefly narrate the facts constituting this case. The Plaintiff alleges that, in 29th March, 2021 she entered into a six (6) months contract with the Defendant. In that contract, the Plaintiff was to supply the Defendant with certain chemicals worth **TZS 146,733,000.00**, the payment of which was to be made to the Plaintiff not later than sixty (60) days after the supply and delivery to the Defendant of the said chemicals.

It is alleged that, although the Plaintiff managed to supply the chemicals ordered by the Defendant, the Defendant failed to

make a full payment thereof as agreed. However, the Defendant is said to have issued cheques worth TZS 101,023,000/- to the Plaintiff which, upon presentation at the Defendant's bank, the same were dishonored.

Despite such inconveniences caused by the Defendant, still the Plaintiff gave the Defendant enough time to heed to its obligation but with no avail. With such a failure, the Plaintiff made and issued demand letters to the Defendant who ignored such demands, failed, neglected and, or refused to repay the amount due to the Plaintiff, hence the present case.

Having filed the present suit under the summary procedure as stipulated in the CPC, Cap 33 R.E 2019, the Defendant was dully served through substituted service mode following the initial inability to serve her. The summons was published on *the Citizen* and *Mwananchi Newspapers* dated 11th February 2023. However, despite such efforts, the Defendant never entered appearance in Court nor did she file any application to the Court to be allowed to defend the suit.

On 6th March 2023, Mr. Elia Rioba, the learned counsel for the Plaintiff, moved this Court, pursuant to Order XXV Rule 2 (a) of the Civil Procedure Code, Cap. 33 R.E 2019, applying for a ‘summary judgment’ and prayed further to be allowed to furnish this court with proof of the Plaintiff’s case. This Court granted the prayer and set the 22nd March 2023, a day when the Plaintiff shall furnish such proof of its case.

On the material date, the learned counsel for the Plaintiff appeared in Court. He availed this Court with original documents of the annexures annexed to the plaint and which form the basis of the claim. I have examined the plaint, and its annexures to find out if at all the claims are supported with such evidential materials. I have also looked at the Plaint.

Under Order XXXV Rule 2(1) of the Civil Procedure Code, Cap.33 R.E 2019, it is trite that, the Plaintiff must endorse the word “Order XXXV: Summary procedure” on the Plaint where the suit is one filed under Order XXXV of the Civil Procedure Code. As the Plaintiff did so in the present suit, it is clear, therefore, that, the Plaint is compliant with the law.

Besides, it is clear that the Defendant herein was served by way of substituted summons but the Defendant has failed to enter appearance and, or apply for leave to defending the suit. As a matter of law, once a suit is filed under Order XXXV, appearance to defend the suit is not automatic.

The law is very clear that, if the Defendant intends to appear and defend the suit against him, he must lodge an application to the court. No such application was filed by the Defendant having been served with the summons on 11th February 2023, which summons informed the Defendant what she is supposed to do. Unfortunately, the Defendant failed to take up the requisite steps.

According to Order XXXV Rule 2(2) of the Civil Procedure Code Cap,33 R.E 2019, failure on the part of the Defendant to obtain leave to defend, make it possible for the allegations contained in the plaint to be deemed as having been admitted by the Defendant. In light of that, the Plaintiff is entitled to an appropriate decree as specified under Order XXXV Rule 2 (a) (b) (c) of the Civil Procedure Code, Cap 33 R.E 2019.

In our present case, the Plaintiff is entitled to the relief sought as it was stipulated under Order XXXV Rule 2(2) (a) of the CPC Cap, 33 R.E 2019. Therefore, the question that follows here is whether the Defendant obtained leave to defend the suit or not. As I stated earlier hereabove, although the Defendant was served, she neither enter appearance nor made an application for leave in order to defend the summary suit filed in this court by the Plaintiff.

In the case of **CRDB Bank Limited vs. John Kagimbo Lwambagaza** [2002] TLR 117, this Court Nsekela, J (as he then was) held a view that:

“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 prevent the Defendant from employing delaying tactics and, in the process, postpone the day of reckoning. I am of the settled view that Order

XXXV is self contained in so far as it relates to suits stipulated there-under.”

The above cite case applies equally to this case. Since the Defendant has not been able to give heed to the summons served upon him on 11th February 2023 through *Mwananchi* and *the Citizen* Newspapers, this Court is entitled to deem it that, the claim contained in the plaint filed by the Plaintiff in this Court has been admitted, and the Plaintiff is entitled to judgment.

In the upshot, this Court grants Judgment to the Plaintiff and makes the following orders that:

- (a) The Defendant is ordered to pay the Plaintiff a sum of TZS 101,023,000/=being the outstanding balance claimed by the Plaintiff
- (b) That the Defendant is hereby ordered to pay the Plaintiff TZS 649,000/= being charges of Bounced cheques.

(c) That the Defendant is hereby ordered to pay interest on the decretal amount at the Court's rate of 7% from the date of judgment till the date of full payment.

(d) That the Defendant is condemned to pay costs of this case.

It is so ordered.

**DATED AT DAR-ES-SALAAM ON THIS 28th DAY OF
APRIL 2023**



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**DEO JOHN NANGELA
JUDGE**

RIGHT OF APPEAL EXPLAINED