

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO.316 OF 2022

KISUGE MARWA MAGIGE.....PLAINTIFF

VERSUS

JOVITUS JOVIN RUTAKINIWIWA.....1ST DEFENDANT

MAYASA OMAR KIGHUU.....2ND DEFENDANT

ABUU SALUM.....3RD DEFENDANT

JOSEPH KADURURU.....4TH DEFENDANT

NOEL ROJAR MATERU.....5TH DEFENDANT

KINONDONI MUNICIPAL COUNCIL.....6TH DEFENDANT

THE ATTORNEY GENERAL.....7TH DEFENDANT

RULING

Date of Last Order: 01.06.2022

Date of Ruling: 19.06.2023

T.N.MWENEGOHA -J

Following filing of an amended Written Statement of Defense by the 6th and 7th defendants, the counsel for the plaintiff, Mr. Francis Mgare, on the 1st June 2023, moved the Court with a prayer to grant a Judgment on Admission against them. The reasons advanced by Mr. Mgare were that, looking at paragraphs 2,4 and 5 of the amended Written Statement of Defense by the 6th and 7th defendants have admitted to the claims by the

plaintiff against them. Therefore, Counsel for the plaintiff prayed for a Judgment on Admission under **Order XII Rule 1&4 of the Civil Procedure Code, Cap 33 R.E 2019** against the the 6th and 7th defendants.

On the other hand, Advocates Hermes Mutatina for the 1st, 2nd, 4th and 5th defendants, and Mathew Fuko, learned State Attorney for the 6th and 7th defendants, objected the prayer by the plaintiff's Advocate on Judgment on Admissions. Their reasons were that, there are five remaining defendants in this suit and giving a Judgment on Admission against the 6th and 7th defendants will dispose entirely the whole suit, hence denying the remaining defendants their rights to be heard. That, above all, the circumstances leading to the joining of the 6th and 7th defendants are clear that, they are the allocating authorities, therefore, their presence in this case is vital. Mr. Mutatina went further to argue that, even the so-called admissions by the 6th and 7th defendants are ambiguous.

In his brief rejoinder, Mr. Mgare reiterated his arguments in favour of the Judgment on Admissions and insisted that, the 6th and 7th defendants have admitted and the Court should enter a Judgment for the admitted facts.

Having considered the arguments for and against this prayer; I now have to determine the merits or otherwise of the same.

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:

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."

The above quoted provision was well interpreted in the case of **NAS Tyre Services Limited vs. AAnthony Seleman Kombe t/a Moshi Investment, Commercial Case No. 175 OF 2018, High Court Commercial Division, at Dar Es Salaam, (unreported)**, where it was observed that:

"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."

Guided by the two provisions quoted above, it is no doubt that where a claim is admitted, the Court may enter a Judgment and pass a Decree on admitted claim. Admissions, if true and clear are by far the best proof of the facts admitted.

It is imperative to note here that the purpose of entering Judgment on Admission is to avoid waiting by the plaintiff for a Decree when there is a clear, unequivocal, unambiguous and unconditional admission of the defendant in respect of the claim of the plaintiff. See **CRDB Bank PLC vs. Francis Esau Mwinuka, Commercial Case No. 92 of 2020, (HCCD) Dar es salaam (unreported)**. 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. See **CRDB Bank PLC vs. Francis Esau Mwinuka, Commercial Case No. 92 of 2020, (HCCD) Dar es salaam (unreported)** and **Mantrac Tanzania Limited Versus Tanzania Building Agency and the Attorney General of Tanzania, Commercial Case No. 18 of 2021, (HCCD) Dar es salaam (unreported)**

However, such discretion of the Court to pass Judgment on Admission needs to be exercised cautiously in circumstances such as of this Case where there are five more defendants remaining who have a right to defend their case and who will indeed be affected if such Judgment is pronounced at this stage. It is therefore prudent that the prayers of Judgment on Admission advanced by the plaintiff against the 6th and 7th defendants, and objected by the said defendants be determined at the same time when determining and passing a Judgment on the main suit. Hearing of the suit shall proceed and prayers on Judgment on Admission will be determined in the main Judgment.

No order as to costs.





T.N MWENEGOHA

JUDGE

19/06/2023