

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 243 OF 2023
GABRIEL EMMANUEL KOLOWA PLAINTIFF
VERSUS
HOUSES AND HOMES LIMITED DEFENDANT**

Date of last Hearing: 26/09/2023

Date of Judgment: 26/09/2023

JUDGMENT ON ADMISSION

I. ARUFANI, J.

The plaintiff filed in this court the suit at hand praying for judgment and decree against the defendant as follows: -

- 1. The honourable court be pleased to make an order declaring the plaintiff is the lawful owner of the 6 apartments being apartment No. B1, B2, B3, B4, B5 and B6 located at Plot No. 78/1-4 Kawe Area, Kinondoni Municipality in Dar es Salaam having lawfully exchanged the same with Plot No. 2402/5 Sea View area, Kimara Street, Dar es Salaam.*
- 2. The honourable court be pleased to make an order restraining and baring the defendant, her directors, employees or whoever claims to derive title or instructions from the defendant from making interference to the plaintiff's right of ownership, occupation and use of the apartments.*
- 3. The honourable court be pleased to make an order against the defendant for immediate payment of USD 100,000 as agreed under the exchange agreement.*

4. *The honourable court be pleased to make an order compelling the defendant to make payment of all rental collections from October, 2021 when the defendant unlawfully took control of the plaintiff's apartments to the date of return and possession thereof.*
5. *The honourable court be pleased to order payment of general (sic) as the court shall assess.*
6. *The honourable court be pleased to make an order for payment of costs and*
7. *The honourable court be pleased to grant any other relief it shall deem fit and proper to grant in the interest of justice.*

After the defendant being served with the claims of the plaintiff, he filed in the court her written statement of defence as required by the law. When the matter was called today the counsel for the plaintiff namely, Mr. Paul Happe told the court that, he has been served with the written statement of the defence of the defendant and after going through the same he has found the defendant has admitted all of the plaintiff's claims. The counsel for the plaintiff prayed the court to enter judgment on admission against the defendant and in favour of the plaintiff as provided under Order XII Rule 4 of the Civil Procedure Code, Cap 33 R.E 2019.

Mr. Paulo Mtui, learned advocate who appeared in the court for the defendant told the court that is the position of the matter. He told the court they have no objection for the judgment on admission to be entered

in favour of the plaintiff as prayed save for the prayer of costs which he urged the court to order each party to bear his own costs. The counsel for the plaintiff did not contest the prayer of the counsel for the defendant for each party to be ordered to bear his own costs.

Having heard the counsel for the parties the court has gone through the pleadings filed in the instant matter and find as rightly stated by the counsel for the plaintiff and without being disputed by the counsel for the defendant, the defendant has admitted the claims of the plaintiff as claimed in the plaint. That being the position of the matter the court has found Order XII Rule 4 of the Civil Procedure Code, Cap 33 R.E 2019 allows the court where defendant has admitted facts pleaded by the plaintiff to make such order, or give such judgment as it may think just.

The court has found the issue of the court to enter judgment on admission was clearly stated in the case of **National Bank of Commerce & Another V. Ahmed Abderhaman**, [1997] TLR 250 and **Colour Print (Tanzania) Limited V. The Open University of Tanzania**, Commercial Case No. 27 of 2008, HC Com. Div at DSM (unreported) that, under such circumstances plaintiff is entitled to have judgment on admission entered in his favour.

After going through the reliefs sought in the plaint as listed at the outset of this judgment, the court has found some of the reliefs claimed

by the plaintiff are not justifiable where the defendant has decided to admit the claims of the plaintiff at the very beginning of the conduct of the matter. The court has found the claim like general damages which has not been substantiated cannot be granted as there is no material fact upon which the court can rely upon to gauge how much general damages can be awarded to the plaintiff. It is because of the above stated reasons the court has found proper and justifiable to enter judgment and decree on admission in favour of the plaintiff as follows: -

- i. The plaintiff is declared is the lawful owner of the 6 apartments being apartment No. B1, B2, B3, B4, B5 and B6 located at Plot No. 78/1-4 Kawe Area Kinondoni Municipality in Dar es Salaam having lawfully exchanged the same with Plot No. 2402/5 Sea View area Kimara Street Dar es Salaam.
- ii. The court is restraining and barring the defendant, her directors, employees or whoever claims to derive title or instructions from the defendant from making interference to the plaintiff's right of ownership, occupation and use of the apartments.
- iii. The court is making an order against the defendant for immediate payment of USD 100,000 as agreed under the exchange agreement.

- iv. The court is making an order compelling the defendant to make payment of all rental collections from October, 2021 when the defendant unlawfully took control of the plaintiff's apartments to the date of return and possession thereof and.
- v. Each party to bear his own costs.

It is so ordered.

Dated at Dar es Salaam this 26th day of September, 2023



I. Arufani

I. Arufani
JUDGE

26/09/2023

Court:

Judgment delivered today 26th day of September, 2023 in the presence of Ms. Paul Happe, learned advocate for the plaintiff and in the presence of Mr. Paulo Mtui, learned advocate for the defendant. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

I. Arufani
JUDGE

26/09/2023