

TANZANIA / JUDGMENT

# RULING ON JUDGMENT ON ADMISSION

## united group and nat group ltd

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT  
DAR ES SALAAM COMMERCIAL CASE No. 5005 OF 2024 UNITED GROUP  
LIMITED ..... PLAINTIFF VERSUS NATGROUP LIMITED  
..... 1ST DEFENDANT FIRST ASSURANCE COMPANY  
LIMITED ..... 2ND DEFENDANT

### RULING

Date of Last Order: 30/08/2024 Date of ruling: 18/10/2024. HON. GONZI, J. The Plaintiff on 14th day of February, 2024 filed this suit and claimed against the Defendants jointly and severally, among other orders and/or reliefs, for:

- (a) Payment of TShs. 2,896,963,760 (the Principal Sum) being value of petroleum products supplied by the Plaintiff to the 1st Defendant, payment of which was guaranteed by the 2nd Defendant; 1
- (b) Payment of TShs 281,273,165.73 being opportunity costs and/or loss of profit calculated from the date of first default to the date of filing and/or instituting the suit;
- (c) Payment of TShs. 579,392,752 being interest on the outstanding amount at the commercial rate of 20% at the date of filing of this instant suit. Upon being served with the Plaint, the first and second Defendants, separately, duly filed their Written Statements of Defence on 12th and 16th April 2024 respectively, in response to the Plaint. The Plaintiff considered the Written Statements of Defence by the first and second Defendants as constituting admissions to the claims made by the Plaintiff against them and, therefore, on 3rd day of May 2024, the Plaintiff filed a Notice to apply for Judgement on Admission against them pursuant to Order XII Rules 1 and 4 of the Civil Procedure Code, CAP 33, (R.E 2019). The Defendants objected to the Application for Judgment on Admission. The Defendants stated in court that the contents of their Written Statements of Defence were not meant to constitute an admission to the Plaintiff's claims against them. The Court called upon both sides to address the court as to whether or not in the circumstances, the Plaintiff was entitled to his application for judgment on admission against the Defendants. The application was heard by way of written submissions. The plaintiff was represented by Mr.

Simon Lyimo, Learned Advocate. The 2 first Defendant was represented by Mr. Denis Mwesiga, Learned Advocate while the second Defendant was represented by Ms. Regina Herman, Learned Advocate. Mr. Lyimo, Learned Advocate, submitted that the detailed particulars of the Plaintiff's claims were all averred under paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Plaint. He added that upon service of the Plaint to the Defendants, the 1st and 2nd Defendants filed their Written Statements of Defense separately and that the substance and contents of the Written Statements of Defence prompted the Plaintiff to apply for judgment on admission. He submitted that the powers of this Court to grant Judgment on admission can be found under the provisions of Order XII, Rules 1 and 4 of the Civil Procedure Code, [Cap 33, R.E 2019. He quoted the same thus: "(1) Any party to a suit may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

- (4) Any party may at any stage of a suit, where admissions of fact have been made either on the pleading, or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for determination of any other question between the 3 parties; give such judgment, as the court may think just." Mr. Lyimo, submitted that the provisions of Section 60 of the Evidence Act, Cap. 6 R.E of 2019 also vest this Court with powers to grant Judgment on admission where it finds that the other party has admitted by his/her pleading. He quoted the same that: - "(60) No fact need be proved in any civil proceeding which the parties thereto or their agents agree to admit at the hearing or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings..." Mr. Lyimo, Learned Advocate, referred the court to, Mulla in his book Code of Civil Procedure, Volume II, 14th Edition at page 1179, who quotes the decision of the Supreme Court of India in the case of: Bhawani Prasad versus Ram Deo (1074) 2 All IR 377 where it was held that: - "The Court may be moved for judgment on the admissions made by the other side and/or party and once the fact is admitted it becomes concluded and hence it is no longer open to the Court to reopen it and reappraise the evidence." Mr. Lyimo, Learned Advocate, submitted that the essence of the provision of Order XII, Rules 1 and 4 of the Civil Procedure Code, [Cap 33, R.E 2019], have well been elucidated in the case of: Mantrac Tanzania Limited versus Tanzania Building Agency and Another, Commercial Case Number 18 of 2021, High Court of Tanzania (Commercial Division) at Dar es Salaam (Reported in Tanzlii) where Hon. Magoiga, J. quoted with authority the observations made in the case of CRDB Bank Plc versus Francis Esau Mwinuka, Commercial Case No. 92 of 2020, (HCC- DSM) (Un reported) which at page 6 observed that: - "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." Mr. Lyimo, Learned Advocate for the Plaintiff, began with the statements contained in the Written Statement of Defence of the 1st Defendant which in his view constituted an admission. He referred the court to paragraphs:

2, 3, 4, 5, 7, 10, 11, 14, and 15. He submitted 5 that under those paragraphs, the 1st Defendant has legally admitted the claims made by the Plaintiff wholly and partly. He argued that in particular, under paragraph 7 of the 1st Defendant's Written Statement of Defense, where the 1st Defendant was making reply in respect of paragraphs 7, 8 and 9 of the Plaintiff, she admitted the same by stating that: - "That in regard to the averment of para. 7, 8 and 9 of the Plaintiff, the 1st Defendant join issues with the Plaintiff that the Petroleum Products supplied by the Plaintiff to the 1st Defendant was insured by the 2nd Defendant as a guarantor of which the 2nd Defendant shall pay for the same within a credit term of fourteen (14) days credit period." Mr. Lyimo, submitted that, on the other hand, the 2nd Defendant vide her Written Statement of Defense filed on 12th April 2024, through paragraphs 3, 4, and 5 also legally admitted the claims by the Plaintiff wholly and partly. He especially made reference to paragraph 3 of the Written Statement of Defense, where it was stated by the 2nd Defendant that: - "That, the contents of paragraph 5, 6, 7 of the Plaintiff Plaintiff are acknowledged only to the extent that the Plaintiff and the 1st Defendant entered in the supply Agreement for supplying petroleum and gasoline secured by the guarantee deed from the 2nd 6 Defendant to be supplied on credit subject to the credit limit set at TShs. 2,300,000,000/=." Mr. Lyimo, Learned Advocate, submitted that looking at the inception of the averments made by the 1st Defendant through paragraphs 2, 3, 4, 5, 7, 10, 11, 14, and 15 they clearly draw a general admission that, the 1st Defendant is not denying liability and the claims by the Plaintiff, but she is pointing the liability to the 2nd Defendant as the guarantor of the claim by the Plaintiff. He added that on the other hand, the averments made by the 2nd Defendant through paragraphs 3, 4, and 5 of her Written Statement of Defense also draw a general admission as well that the 2nd Defendant is not denying liability and the claims by the Plaintiff to the tune of TShs. 2,300,000,000/=. Mr. Lyimo, reproduced the contents of paragraph 3 of the 2nd Defendant's Written Statement of Defense that: - "...As the term of supply agreement signed and guaranteed by the 2nd Defendant allowed only monthly credit set at TZS. 2,300,000,000/= which had to be paid on demand upon issuance of invoice and delivery note to the 2nd Defendant as per payment terms and security under the supply agreement...". He submitted that in line with the said paragraphs, since the 1st Defendant is not denying the liability towards the Plaintiff, but he is directing the same to the 2nd Defendant as a guarantor; and on the other hand, the 7 2nd Defendant is not denying liability to the extent of TShs. 2,300,000,000/- , the Plaintiff is therefore entitled to Judgment on admission to be entered in favour of the Plaintiff to the extent of TShs. 2,300,000,000/=. Mr. Lyimo relied on the case of CRDB Bank Plc versus Francis Esau Mwinuka, Commercial Case No. 92 of 2020, (HCC- DSM) (Un reported), where the Defendant admitted to be advanced by the Plaintiff a total amount of TShs. 70,000,000/- as personal loan and not TShs. 72,079,815.59. The Court held that: - "This Court having gone through the pleadings and the law cited is satisfied that, this is a fit case to grant of the judgment on admission. On that note, thus this Court hereby order and enter judgment on admission on the admitted amount of TZS. 70,000,000/= as prayed. Other remaining claims in the Plaintiff are subject to proof in accordance to the laid down procedures." On the basis of the above authorities, the Learned Counsel for the Plaintiff, therefore, prayed that this Honourable Court be pleased to

grant a judgment on admission to the extent admitted by the Defendants under the law. Mr. Denis Mwesiga, Learned Advocate for the 1st Defendant submitted in reply that no admission of liability was ever made by the 1st Defendant on those paragraphs as the Plaintiff would like this Court to believe. He submitted that much as the 1st Defendant is afraid to go deep on the 8 pleadings of each party to the suit because of the preliminary stages of this case, but all parties to the suit agree that there was a contact for the supply of petroleum products, and that all parties agree that the products were to be insured by the 2nd Defendant as a guarantor. However, the matters of liability from these facts need to be corroborated by evidence that should be adduced at the bearing stage. He pleaded with this Court to hold on granting the judgment on admission until the case is determined on its merit. It was argued further by Mr. Mwesiga, Learned Counsel for the 1st Defendant, that reading between the lines, the contents of paragraph 7 of the 1st Defendant's Written Statement of Defense, it is correct to say that the 1st Defendant joined issues with the Plaintiff that the Petroleum Products supplied by the Plaintiff to the 1st Defendant was insured by the 2nd Defendant as a guarantor of which the 2nd Defendant (under the Credit Guarantee Agreement) was under the obligation to pay the Plaintiff within a credit term of fourteen (14) days. Mr. Mwesiga submitted that if the Plaintiff's basis of the alleged admission by the 1st Defendant emanates from paragraph 7 as he wants this court to believe, the averments needs to be corroborated with evidence during the hearing of witnesses whereby parties to the suit will have equal time to cross examine the witnesses. Mr. Mwesiga, submitted that in the event this Court decides to grant a judgment on admission as prayed by the Plaintiff, then that same should only be against the 2nd Defendant and not the 1st Defendant as no admission of facts was made by the latter. He submitted that the 2nd Defendant vide her Written Statement of Defense made some admission specifically under 9 paragraph 2, 3, 4 and 5. He submitted that as per the Credit guarantee Deed entered for the Supply of Petroleum Products by the Plaintiff to the 1st Defendant, it was mandatory that the same should be covered by the insurance company i.e. 2nd Defendant. He submitted that under the insurance contract, the insurer is under an obligation to indemnify the insured only against his actual loss in terms and conditions of the policy. He submitted that if the court awards the Plaintiff judgment on admission at this stage, the same will have no logic because the facts of the case have to be determined during the hearing of the main case, which is yet to be determined by this Court. The second Defendant did not file reply written submissions. The Plaintiff filed rejoinder submissions in response to the 1st Defendant's Reply submissions only. Mr. Lyimo, Learned Advocate, reiterated their submissions in chief and submitted that since the 1st Defendant is not denying the liability towards the Plaintiff, but is directing the same to the 2nd Defendant as a guarantor, and on the other hand, since the 2nd Defendant is not denying liability to the extent of TShs. 2,300,000,000/=-, then the Plaintiff is entitled to Judgment on admission being entered in favour of the Plaintiff to the extent of TShs. 2,300,000,000/=-. That marked the end of the submissions by the Learned Counsel. I thank them for their insightful arguments. The Application was brought under Order XII of the Civil Procedure Code. The only issue for determination is whether the 1st and 2nd Defendants have made admissions to the claims made by the Plaintiff against them,

either in full or in part? The crux of the Plaintiff's application is that in 10 paragraphs 5, 6, 7, 8 and 9 of the Plaintiff, the Plaintiff has advanced her claim against the 1st and 2nd Defendants who in their Written Statements of Defence admitted the same. There is a need therefore to ascertain what the Plaintiff had averred and what the Defendants had responded in their respective Written Statements of Defence under paragraph 7 of the 1st Defendant's Written Statement of Defence and Paragraph 3 of the 2nd Defendant's Written Statement of Defence. The Plaintiff in the Plaintiff under Paragraphs 5, 6, 7, 8 and 9 had averred that:

5. On various dates between 4th November 2022, and 19th June 2023, the 1st Defendant entered into various supply agreements (Supply Agreements) for the supply of/Petroleum products (Gas Oil (AGO) and Gasoline (PMS)) (the Products), with the Plaintiff.
6. Under the Supply Agreements it was agreed that, subject to monthly credit limit set forth in the terms of the agreements, the Plaintiff shall supply the 1st Defendant with the Petroleum Products on credit, subject to the following credit limits:
  - i. On November 4th, 2022, monthly credit limit set at Tshs. 450,000,000.00.
  - ii. On May 4th 2023, monthly credit limit set at Tshs. 450,000,000.00.
  - iii. On May 11th 2023, monthly credit limit set at Tshs. 700,000,000.00.
  - iv. On June 19th 2023, monthly credit limit set at Tshs: 2,300,000,000.00.
7. Further, it was a mandatory term of the agreements, included to ensure that payment for the Petroleum Products supplied is secured, that payment for the Products will be secured under a credit guarantee provided by the 2nd Defendant - First Assurance Company Limited as guarantor, for an amount limited to agreed monthly credit amounts, as stated in paragraph 6 above.
8. That the Plaintiff and the 1st Defendant agreed, and the 2nd defendant guaranteed payment within a credit term of fourteen (14) days credit period (the Credit Period) from the date of demand by the Plaintiff. That is, within the Credit Period; each consignment of the Products ordered by the 1st Defendant and supplied by Plaintiff, shall be paid by the 1st Defendant, failure of which the 2nd Defendant shall pay for the same.
9. Accordingly, the 2nd Defendant provided the Plaintiff with guarantees for the payments for the Products mentioned above, in accordance with the terms outlined in the Supply Agreements and the Guarantee Deeds (the Guarantees). The Guarantees were established as irrevocable commitments with the following financial limits:
  - i. Guarantee for the period between 5th December 2022, to 4th December 2023, for Tshs. 450,000,000.00.
  - ii. Guarantee for the period between 6th June 2023, to 5th June 2024, for Tshs. 450,000,000.00.
  - iii. Guarantee for the period between 13th June 2023, to 12th June 2024, for Tshs. 700 000,000.00.
  - iv. Guarantee for the period between 19th June 2023, to 18th June 2024, for Tshs. 2, 300,000,000.00.The Response to the above paragraphs 7, 8 and 9 by the 1st Defendant is seen under Paragraph 7 of the 1st Defendant's Written Statement of Defense. The 1st Defendant in making reply to paragraphs 7, 8 and 9 of the Plaintiff stated that: - "That

in regard to the averment of para. 7, 8 and 9 of the Plaint, the 1st Defendant join issues with the Plaintiff that the Petroleum Products supplied by the 1st Plaintiff to the 1st Defendant was insured by the 2nd Defendant as a guarantor of which the 2nd Defendant shall pay for the same within a credit term of fourteen (14) days credit period..." I think, there is a need to examine this paragraph right away before going on to the 2nd Defendant's Written Statement of Defence. The 1st Defendant in this paragraph started by joining issues with the Plaintiff. Not admitting liability but disputing his own liability to pay the Plaintiff the claimed amounts. In addition, the 1st Defendant proceeded to shift the liability to the 2nd Defendant, thereby indirectly admitting that the 2nd Defendant is obliged to pay the Plaintiff. Here the 1st Defendant was not admitting his own liability towards the Plaintiff but was acknowledging liability of the 2nd Defendant towards the Plaintiff for the same claim. Did the 1st Defendant have the mandate to admit for and on behalf of the 2nd Defendant? I think not. This was not a Joint Written Statement of Defence. It was a Written Statement of Defence by the 1st Defendant unilaterally without representing the 2nd Defendant. One Defendant in a suit which is against several defendants who have been sued severally and have defended the same severally and independently, cannot admit the claim for and on behalf of the other Defendant without showing that he possessed mandate to admit for and on behalf of that other Defendant. It will be very unfair if one defendant is to be allowed to simply shift the blame or liability to another Defendant in the suit and the court were to take that as an admission of liability by the other defendant who has not so admitted on his own nor 14 authorized the other defendant to admit the claim on his behalf. Therefore, it is clear that what comes out from paragraph 7 of the 1st Defendant's Written Statement of Defence, the 1st Defendant simply denied his own liability towards the plaintiff and joined issues with the Plaintiff. I find that the purported admission by the 1st defendant on behalf of the 2nd defendant, without authorization by the 2nd Defendant, was of no effect and constituted no admission at all by the 2nd Defendant. I will now look at the alleged admission by the 2nd Defendant. The response of the 2nd Defendant was with respect to paragraphs 5, 6 and 7 of the Plaint and is seen at paragraph 3 of the 2nd Defendant's Written Statement of Defence. Under Paragraph 3 of the 2nd Defendant's Written Statement of Defense, it was stated that: - "That, the contents of paragraph 5, 6, 7 of the Plaintiff Plaint are acknowledged only to the extent that the Plaintiff and the 1st Defendant entered in the supply Agreement for supplying petroleum and gasoline secured by the guarantee deed from the 2nd Defendant to be supplied on credit subject to the credit limit set at TShs. 2,300,000,000/=...." Was the above statement an admission by the 2nd Defendant as the guarantor for the 1st Defendant to pay the Plaintiff the amounts claimed under the supply agreement? I find that is not the case. The admission was only an acknowledgment of the fact that the Plaintiff and the 1st Defendant had entered into the supply Agreement for supplying petroleum and gasoline 15 to the extent secured by the guarantee deed from the 2nd Defendant to be supplied on credit subject to the credit limit set at TShs. 2,300,000,000/=. In other words, the 2nd Defendant was acknowledging the existence of the supply agreement between the Plaintiff and the 1st Defendant. Also, the 2nd Defendant was acknowledging that the supply agreement on credit was secured by guarantee deed from the

2nd Defendant. The third fact being admitted was that of the credit limit for the guarantee deed being TZS. 2,300,000,000/=. There is nowhere the 2nd Defendant was thereby accepting to pay the Plaintiff the claimed TZS. 2,300,000,000/= or more. Admitting existence of the guarantee deed in favour of the Plaintiff does not constitute an admission of an automatic obligation to pay the Plaintiff under it. Existence of a guarantee deed does not impose an automatic duty upon the 2nd Defendant to pay the Plaintiff under it. The 2nd Defendant may allege, and indeed is alleging in this suit, that the 1st Defendant had not fulfilled certain preconditions for the 2nd Defendant to be obliged to pay the Plaintiff the guaranteed amounts for and on behalf of the 1st Defendant. Therefore, this calls for the need for trial of the issues as to the obligations of the parties towards each other. A Judgment on admission cannot be issued where the alleged admitted facts are not actually admitted but disputed. In this case, there is another development which the Plaintiff did not take into account in making the application for judgment on admission. The lack of admission by the second Defendant is further accentuated by the fact that in this matter the second Defendant prior to the application for Judgment on admission being determined, had successfully applied for and obtained leave to present a Third-Party Notice against the 1st Defendant. The 16 second Defendant in the Third-Party Notice against the 1st Defendant is denying his liability to pay the Plaintiff the amounts claimed by the Plaintiff in total or in part, for and on behalf of the 1st Defendant, on the basis of the Guarantee Deed. The 2nd Defendant in the Third-Party Notice claims that in case the court finds the 2nd Defendant liable towards the Plaintiff, the 2nd Defendant should be reimbursed by the 1st Defendant. With all those facts obtaining in the same case file, how can it be said that the 2nd Defendant has admitted the liability to pay the amounts claimed by the Plaintiff? Lastly, I should say that in my view, the Plaintiff has misconceived the matter at hand by erroneously combining the responses made by the 1st and 2nd Defendants separately and treating them as if they were made by one person or by both the 1st and 2nd Defendants jointly. That is not the case. There is no joint Written Statement of Defence in this case. Therefore, the averments by one defendant cannot be taken cumulatively with those of the other defendant as to culminate into a common conclusion. The two defendants in their Defences are telling two independent stories not one conjoined story. Whatever the 1st Defendant stated in her Written Statement of Defence is extraneous to the 2nd Defendant's Written Statement of Defence. Whatever the 2nd Defendant stated in her Written Statement of Defence is also extraneous to the 1st Defendant's Written Statement of Defence. There was no joint Written Statement of Defence by the 1st and 2nd Defendant advancing a common defence. It was therefore wrong for the Plaintiff to take the cumulative effect of the Statements contained in two different Written Statements of Defence made by each Defendant independently, as if the same constituted a joint admission. This erroneous 17 generalization by the Plaintiff is seen in the submissions by the Plaintiff's counsel who submitted that: "since the 1st Defendant is not denying the liability towards the Plaintiff, but is directing the same to the 2nd Defendant as a guarantor, and on the other hand, the 2nd Defendant is also not denying liability to the extent of TShs. 2,300,000,000/-, then the Plaintiff is entitled to Judgment on admission being entered in favour of the Plaintiff to the extent of TShs. 2,300,000,000/=" The above argument by the

Plaintiff is clear that if taken separately, neither the 1st Defendant's nor the 2nd Defendant's statements would amount to an admission of liability. Since there was no Joint Written Statement of Defence, the approach by the Plaintiff of combining the statements by the two defendants, made independent of each other, was erroneous. Taken separately and independently, as indeed they are, neither the Written Statement of Defence by the 1st Defendant nor of the 2nd Defendant constitutes an admission under Order XII Rules 2 and 4 of the Civil Procedure Code. None of the authorities cited by the Plaintiff provides that one defendant can admit on behalf of the other defendant or that un-related written statements of defence by different defendants should be treated cumulatively as to impute upon each defendant in the suit ownership of what was said by the other defendant or defendants. In fine, I find that the matters allegedly admitted in the 1st and 2nd Defendants' Written Statements of Defence, taken independently as they are, do not constitute an admission to the claims by either Defendant. These are disputed factual allegations which still remain subject of proof by evidence. No Judgment in admission can be granted in those circumstances. 18 I therefore dismiss the application for Judgment on admission. I make no order as to costs since parties are still engaged in trial in this matter. It is so ordered. A. H. GONZI JUDGE 18/10/2024 COURT: Ruling is delivered in Court this 18th day of October, 2024 in the presence of Esther Nyalada, Advocate for the 1st Defendant also holding brief for Regina Herman Learned Advocate for the 2nd Defendant. A. H. GONZI JUDGE 18/10/2024 19

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