

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT MWANZA

COMMERCIAL CASE NO. 12 OF 2019

BANK OF AFRICA TANZANIA LIMITED.....PLAINTIFF

VERSUS

TITUS ANDREW MUSHI.....DEFENDANT

JUDGMENT

B. K. PHILLIP, J

This is a default judgment. A brief background to this case is that by virtue of the facility letters dated 2nd of April 2013 and 15th of October 2013, the plaintiff granted to the defendant a loan to a tune of Tshs. 120,000,000/= and an overdraft facility to a tune of Tshs. 40,000,000/=, respectively. All of the aforesaid credit facilities were for the purpose of financing the defendant's working capital in his business for acquisition of electronic equipment's. The plaint reveals that the defendant managed to clear the first credit facility which was to tune of Tshs. 120,000,000/=. By another facility letter dated 18th June 2014, the plaintiff granted to the defendant term loan to a tune of Tshs. 100,000,000/= which was to run for twenty four months (24) up to June 2016, repayable in equal monthly installment of Tshs. 5,141,185.31 with interests at 23.5% per annum, that is, 1.2 interests on the Overdraft and 22% on the term loan. The same combined

the outstanding Tshs. 40,000,000/= in respect of the 2nd credit facility which was not yet cleared.

It is the plaintiff's case that the defendant failed to repay the credit facility granted unto him as agreed and by 31st August 2019, the total of outstanding amount on the aforesaid credit facility was Tshs. 178,257,762.58. Thus in this case the plaintiff prays for judgment and decree against the defendant as follows;

- i. Payment of Tshs. 178,257,762.58 being the outstanding amount resulting from the defendant's default to repay the facility.*
- ii. Contractual interest of 23.5% per annum on the outstanding amount from 18th June, 2014 to the date of judgment.*
- iii. Interest on the decretal amount at the court's rate of 12% per annum from the date of judgment to the date of full and final satisfaction.*
- iv. Payment of general punitive damages to be ascertained by the court.*
- v. Costs of this suit.*
- vi. Any relief that this court shall deem just to grant.*

The defendant was dully served with the summons to appear in court but did not enter appearance. Consequently, the plaintiff filed an application for default judgment pursuant to rule 22 (1) of the High Court (Commercial Division) Procedure Rules 2012 as amended by GN. No. 107 of 2019.

The application for default judgment is supported by two affidavits. The first one is sworn by the legal counsel for the plaintiff, Ms. Elizabeth Muro.

The facility letters for the credit facilities granted to the defendant are annexed to the said affidavit as annexures BEA1 and BEA-2. The second affidavit is sworn by Ms. Rose Tarimo, the plaintiff's officer and the defendant's Bank statement is annexed to the affidavit as annexure BEA-3. The plaintiff's advocate submitted in court the original copies of the Credit facility letters and the electronic copies of the defendant's bank statements.

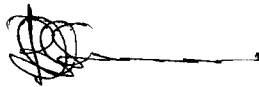
Having perused the affidavits in support of this application and the documents attached thereto, I am satisfied that the plaintiff has proved his claims against the defendant to the standard required by the law. Accordingly, in terms of rule 22 (1) of the High Court (Commercial Division) Procedure Rules, 2012 as amended by the High Court Commercial Division Procedure (Amendment) Rules GN. No. 107 of 2019, I hereby enter a default judgment against the defendant as follows:-

- i. That the defendant shall pay the plaintiff Tshs. 178,257,762.58 being the outstanding amount.
- ii. The defendant shall pay interest on the decretal sum in item (i) herein above at the rate of 23.5%, per annum from 26th September 2019, to the date of judgment.
- iii. The defendant shall pay interest on the decretal amount at the court's rate of 7% per annum from the date of judgment to the date of full and final payment of the decretal amount.
- iv. Costs of this suit shall be borne by the defendant.

And in terms of rule 22 (2) (a) and (b) of the High Court (Commercial Division) Procedure Rules, 2012, I further direct that the decree in this

case shall not be executed unless the decree holder has within a period of ten (10) days from the date of this judgment, published a copy of the decree in at least two (2) newspapers of wide circulation in the Country and after a period of twenty one (21) days from the date of expiry of the said period of (10) days has lapsed.

Dated at Mwanza this 22nd day of July, 2020.

A handwritten signature in black ink, appearing to be 'B.K. PHILLIP', with a horizontal line extending to the right.

B.K. PHILLIP

JUDGE