

IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR ES SALAAM

COMMERCIAL CASE NO.280 OF 2001

NATIONAL BANK OF COMMERCE LTD....PLAINTIFF  
VERSUS  
SHILLAM HOLDINGS LTD.....1<sup>ST</sup> DEFENDANT  
MSEMO ABMAR.....2<sup>ND</sup> DEFENDANT

9/4/2003

Coram: N.P.Kimaro, J.

For the Plaintiff – Mr. Mujuli’s

For the 1<sup>st</sup> Defendant ]

For the 2<sup>nd</sup> Defendant] Mr. Zakey/Mr.Rweyongeza.

CC: Ngonyani.

Mr. Zakey:

Yesterday we tried to make negotiations on the mode of payment but we have failed. The defendant now prays that judgment on admission be entered. By the time of entering judgment on admission the court under the provision of Order 20 rule II (3) of the Civil Procedure Code, 1966 be pleased to order the decretal sum to be paid by instalments. The defendant prays to be heard on the payment of the decretal sum by instalments.

Mr. Mujulis:

I would have no objection on entering judgment on admission.

Order: Judgment is entered for the plaintiff on the defendants admission with costs.

N.P.Kimaro,

Judge

9/04/2003

Mr. Zakey:

Madam judge we pray that the decretal sum be paid by instalment. The defendant has all along proposed to pay the decretal sum by instalment. He proposed to pay by equal instalment to cover the sum of 179,818,783 on monthly instalments to start in July 2003. The defendant has declined the proposal. It was anticipated that the house which was constructed through the loan be sold to repay the loan. This has not worked. I submit further on behalf of the defendant that the defendant does not dispute the fact that the houses were constructed and the loan used for the purpose for which it was obtained, yet there have been problems facing the marketing of the houses. Failure to sell the houses drives the defendant to look for other means to repay the loan. These other means can realize the collection of the debt from time to time but it can easily liquidate, the debt.

Madam Judge, the security offered by the defendant if sold can not off set the debt even by one third. Real estate today is saturated with sale of houses by parastatals now under privatization. There are also a lot of mortgaged properties put under sale daily in open market. The market value is low today.

Your Ladyship, the defendant, a limited liability company has struck up debts amounting to 80,000,000/= which if realised will reduce the decretal sum considerably. The defendant prays that his prayer be granted. It is further prayed that to enable the defendant prepare himself, the payment be ordered to commence on 31<sup>st</sup> July 2003. That is all.

Reply by Mr. Mujulis:

Madam Judge the decree holder would not object to payment by instalments. However, we have the following grounds for consideration by the court.

Madam Judge the judgment debtor is a limited liability company. If it has failed to honour its debt as given, the reasons given show that the company is not running on sound financial base. No reasons given to support the prayer that they can pay by instalment. That does not give guarantee to the judgment debtor that payment will be honoured.

To our knowledge, the judgment debtor is also indebted to STANBIC BANK and there is another case pending in this court. The judgment debtor is highly indebted. In the absence of the list of creditors, even the T.shs 80,000,000/= owed to the company will satisfy not only the decretal sum, but if other creditors could go for liquidation our client is not assured that there is reasonable surety for payment of our debt.

Thirdly, if the judgment debtor were to be allowed the prayer, it will take them 31 months to liquidate the decretal

amount. There is interest, costs and other incidental amount. It can not be realized in the 31 months proposed.

The security referred to can not operate as relief because the security referred to is subject to a separate judgment of this court. That security can only be addressed by the second defendant. It is not for him to mention on the price of the security.

The company has no means of settling the debt. We pray that if instalments are going to be allowed, the company and its Directors be required to furnish sufficient security. Order 20 rule 11 (2). Regarding the properties built from the loan, the titles can be submitted as security. Directors of the first defendant should be called upon for personal guarantee.

As for the time of starting repayment why should it start on July. If it is 20 then it should be 30% of the decretal sum. The balance can then be settled in equal monthly instalment and in a period of 24 months. Two years for repayment of the loan with sufficient security will serve the interest of both parties. That is all.

Reply by Mr. Zakey:

Madam Judge, reference to other securities means that the security given is not enough. The defendant does not have other securities. The houses constructed are not in the name of the defendant. This will not enable the defendant to pay the decretal sum. This also explains the problem of paying the 30% of the decretal sum and the balance to be paid in instalments of 24 months. As for personal

guarantee, the Managing Director is not a party to the suit. No order can be made against him. That is all.

Order: Ruling on 15/04/2003.

N.P.KIMARO,

JUDGE

9/04/2003