

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

COMMERCIAL CASE NO. 286 OF 2004

**MANSOOR INDUSTRIES LTD.....PLAINTIFFS
VERSUS
CRDB BANK LIMITED.....DEFENDANTS**

JUDGMENT

KALEGEYA, J:
HON. ASSESSORS

- **MR. KULUCHUMILA**
- **MR. KOMU**

The Plaintiffs represented by Mr. Maira, Advocate, pray for judgment and decree against the Defendants represented by Mr. Mwakipesile, Advocate, as follows:-

- “(a) A declaration that the 2002/2003 overdraft agreement is void and null since the terms of agreement are unfair and in breach of the existing agreement.....”*
- (b) An order that the Defendant bank are liable to the extend(?) of 50% of the loss arising out of the demolition of the mortgaged building as pleaded in para 7 & 8 hereinabove.*
- (c) That Plaintiff should be discharged from the obligations under the overdraft agreement which expired and the Defendant should be ordered to return the Title Deeds in their possession and the mortgage deeds duly discharged.*
- (d) General damages for breach of Contract as may be assessed by the Court on evidence.*
- (e) All interests and costs by the Defendants up to and including 21 June 2001 be credited to the Plaintiff.*

- (f) *Costs.*
- (g) *Interest on (b) (d) and (e) at the commercial rate of 25% per annum from the date of the cause of action till judgment and thereafter at the Court rate till full and final payment.*
- (h) *Any such other relief(s) as the Court deems fit and equitable to meet the justice of the situation."*

In support of their respective cases, each party called one witness. The Plaintiffs called one Shanif Jamal (PW1), their Managing Director, who also tendered 6 documentary Exhibits (Exh.P1 – 5 and P7. No. 6 was inadvertently skipped). The Defendants called one Robert Paschal (DW1) who introduced himself as their Senior Relationship Manager.

Issues framed during the Final pretrial and scheduling conference are:

1. *Whether the Defendants were bound to grant the 2nd overdraft facility on similar terms and conditions as the 1st overdraft facility.*
2. *Have the Plaintiffs failed to run their overdraft facility as alleged in para. 3 of the written statement of defence or at all?*
3. *Has the demolition of the Plaintiffs' building on plot No. 78, Kirumba, by the Government, which was Mortgaged to the Defendants', anything to do with the Defendants' imposition of the terms which are being contested?*
4. *If the answer is in the affirmative, whether the Defendants were justified in so acting?*
5. *What remedies, if any, are the parties entitled to?*

Parties are agreed on the following.

Vide Exh.P1 dated 15/3/2001, parties executed an overdraft Agreement by which the Defendants granted an overdraft facility of shs.350 million to the Plaintiffs. This facility expired on 28/2/2002. The Plaintiffs then applied for renewal. The Defendants obliged. They drew up Exh.P2, a new overdraft Agreement. The facility was to be secured by, among others, property on Plot No. 78, Block A, Kirumba, Mwanza, same property that had earlier on been mortgaged to secure the first facility. In terms of Exh.P7, valuation Report, as of 3/7/2001, this property was worth shs.490 million at market value and shs.351 million on forced sale value.

Meanwhile, the government issued an order for demolition of the structure on the said Plot No. 78 Block A, Kirumba, Mwanza. Hearing this over news media, the Defendants, vide Exh.P5, a letter dated 29/6/2001, inquired from the Principal Secretary, Ministry of Lands and Human Settlement, what would be their fate as the property had been mortgaged to them.

As regards the 2nd overdraft offer, the overdraft Agreement (Exh.P2) however, contained new terms and conditions which did not exist in Exh.P1 and which Plaintiffs considered unacceptable.

The Plaintiffs refused to sign the Agreement which, among others, prompted Defendants to call upon Plaintiffs to act soonest, first vide Exh.P3, a letter dated 30/10/2002 whose contents run as under:-

*“30th October, 2002
The Managing Director*

*Mansoor Industries Ltd
P.O. Box 2860
Mwanza*

Sir,

RE: AGREEMENT FOR OVER DRAFT FACILITY

We acknowledge receipt of your letter dated the 25th October, 2002.

We regret that you are taking too long to sign the legal documents taking into account the fact that the documents were availed to you early this month. You should have by now ironed out any difficulties encountered.

In view of this anomaly we are obliged to do the following:-

- i. You are given up to 1st November, 2002 to submit the signed documents to CRDB.*
- ii. Draw downs on your overdraft account are immediately stopped until you sign the legal documents.*

You are therefore advised to complete documentation of the overdraft facility if you want to avoid further inconveniences, However you are welcome for any clarifications concerning the documents.

CRDB BANK LIMITED

Sgd:
C.A.N. Meseyeck
BRANCH MANAGER

cc: Director of Credit
Head Office – Dar es Salaam

DIBIC
Head Office – Dar es Salaam”,

subsequently followed by Exh.P4 in the following wording:

*“21st November, 2002
Mr. Shanifa Jamal,
Managing Director,
Mansoor Oil Industries Limited,
P.O. Box 2860,
Mwanza.*

Dear Mr. Shanifa,

Re: Signing of the overdraft facility agreement

Kindly refer to the above heading and your letter dated 31st October, 2002. This is to inform you that the bank has declined your request to sign Banks previous loan agreements in respect of a new overdraft credit facility.

Therefore, you are advised to expressly sign the new overdraft facility agreement sent to you since August, 2002 latest 26th November, 2002 otherwise the Bank will be at liberty to cancel the offer and call the loan.

We request you to sign the overdraft agreement at soonest to enhance our business relationship.

Yours Sincerely,

*Sgd:
Dr. Charles S. Kimei (Phd)
Managing Director”*

Fully convinced that the Defendants would not shift from their stand, on 25/11/2002, just four days after the authorship of Exh.P4, the Plaintiffs filed the present suit.

The matter was tried with the assistance of Hon. Assessors, Mr. Komu and Mr. Kuluchumila.

Unfortunately, Hon. Assessor Komu left the proceedings midway as he had to go on a long safari abroad and we proceeded in his absence.

Having carefully considered the matter, Mr. Kuluchumila opined that the Plaintiffs were liable on the former overdraft facility, and, that regarding the 2nd proposed overdraft, acceptance or otherwise was entirely in Plaintiffs' discretion. He impressed,

"It was the duty of the plaintiff to carefully read the terms of that agreement and choose to sign or not. It was the duty of the plaintiff to identify the terms of agreement whether they were fair or not fair so as to decide to sign or not."

On the claim for sharing the costs of the demolished structure, the Hon. Assessor observed,

"I can not see how the defendant should bear half of the loss after the demolition of the Plaintiff's property, so this claim is not maintainable. The Defendant neither ordered the demolition, nor was he the Government agent that executed the demolition."

He concluded that the claims were not proved hence should be dismissed.

I am on all fours with the Hon. Assessor.

Issue 2 is no longer relevant as during the trial parties informed the Court that the Plaintiffs had already discharged the liability on the 1st overdraft facility. That notwithstanding however, I should observe as did Assessor Kuluchumila, that Plaintiffs had not fronted any spec of justification to run away from their obligation.

Turning to issue one, I must confess that all along I have strenuously been asking myself the basis of the claim without landing on an answer. The Plaintiffs' running of reasoning is this,

“You gave me the 1st overdraft facility. I am applying for renewal of the facility. This facility should attract same terms and conditions as the former”

With respect, this is not easily comprehensible. As rightly submitted by the Defendants, the Lender/borrower relationship is contractual. And the lender is not obliged to lend as much as the borrower is not obliged to borrow.

That is why, once a customer presents an application, if the Banker decides to oblige, an offer letter detailing the terms and conditions for the facility is drawn up by the Banker and presented to the borrower. If the borrower accepts the conditions only then does he sign and other procedural aspects follow suit. If the borrower finds the terms unfavourable he is not bound to accept the offer as did the Plaintiffs in the instant case. If it reaches that point then there is no contract whatsoever between the parties which one can seek to enforce. In the instant case, the Defendants presented an offer to

the Plaintiffs who did not accept it and that was the end of the deal. The final long submissions on this aspect by the Plaintiffs Counsel, with respect, did not advance any positivity.

That disposed we turn to issue three. This too should not waste our time. Yes, the demolished structure may have been one of the securities for the 1st facility but what befell it, as rightly impressed by the Hon. Assessor, is not attributed in any way to Defendants. As was the case on the 1st issue, I failed to comprehend the Plaintiffs' reasoning on this aspect as well. Are the Plaintiffs saying that destruction of the security reduces or brings the borrower's liability to an end? In any case, having held that there was no 2nd facility contract as such as it was not executed upon Plaintiffs' refusal to sign the offer letter, the answer to issue three should naturally be negative.

Treading on the above, the fourth issue collapses.

In conclusion, we are satisfied that the Plaintiffs' claims have not been established and thus stand dismissed in entirety, with costs.

L.B. KALEGEYA

JUDGE

Delivered

L.B. KALEGEYA

JUDGE

3/11/2004

1,604 words

I Certify that this is a true and correct
of the original order Judgement Rulling
Sign Heemul
Registrar Commercial Court Dsm.
Date 3/11/04