

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)**

AT DAR ES SALAAM

CIVIL CASE NO. 109 OF 2023

BANK OF AFRICA PLAINTIFF

VERSUS

SADICK KASUHYA.....1ST DEFENDANT

SALMA H. KASUHYA.....2ND DEFENDANT

JUDGMENT

02nd May & 27th June, 2024

BWEGOGGE, J.:

The plaintiff herein commenced civil proceedings against the aforementioned defendants alleging breach of contract and claiming for payment of the sum of TZS 135, 625, 182/= being the outstanding debt as of May, 2023, among others.

The defendants were traced for service of summons for order; however, the efforts were barren of fruit. And this court having allowed the plaintiff to publish the notice of pending matter through the Mwananchi newspaper of 19th July, 2023 granted the prayer for exparte proof of the claim herein.

The plaintiff case as gathered from the pleadings filed hereto and evidence adduced by a sole witness namely, Raymond Mwakasitu (PW1) is as follows:

The 1st defendant herein sought and obtained a loan of TZS 57, 000,000/= from the plaintiff. Among the terms of the said facility was that repayment would have been made within five years (60 months) with an interest of 18% per annum. The loan was guaranteed by the 2nd defendant herein who is the 1st defendant's wife.

Allegedly, the 1st defendant made periodic repayments of the loan and then lagged. Later on, the 1st defendant failed to meet his annual repayment schedule altogether. And the time to repay the loan has elapsed since June, 2021 and the plaintiff has not repaid the debt despite reminders issued to him. Hence, this suit.

The plaintiff was represented by Mr. Mbuga Jonathan, learned advocate.

The issue for determination by this court is whether the plaintiff, on the balance of probabilities, established her claims against the defendants herein.

In attending to this issue, I would revisit the evidence adduced by PW1 herein. The same is the employee of the plaintiff holding the position of legal manager in the recovery department. In substance, PW1 deponed that the 1st defendant herein was granted the loan facility of TZS 57, 000,000/= by the plaintiff on agreement repayment would have been made within five years (60 months). The loan attracted interest of 18% per annum; and was scheduled to be repaid from June, 2015 to June, 2021. During the processing of the loan, the 1st defendant's employer (The Gaming Board of Tanzania) issued a letter of comfort to the plaintiff assuring her that the 1st defendant was a permanent and pensionable employee, implying he was trustworthy. Likewise, the 1st defendant's spouse stood as guarantor to the loan agreement executed by the parties herein. The loan agreement, letter of comfort and guarantor's commitment were tendered and admitted in evidence as exhibit P1, P2 and P3 respectively.

Further, PW1 deponed that the agreed loan was deposited in the 1st defendant's bank account vide Account No.01533920028 in the plaintiff bank. The agreement stipulated that the 1st defendant would make monthly deposits to the tune of TZS. 1500, 000/= for consecutive 5 years. However, the same paid contractual amount for the period of 10 months only, whereas the last instalment was to the tune of TZS 500,000/. And until 31st December, 2018 the plaintiff opted to write off the debt at a sum of TZS. 69, 953, 960 as per the bank and financial regulations.

In tandem to the above, PW1 deponed that notwithstanding the established amount due to be paid by the plaintiff, interest of 18% on the principal sum continues to be charged throughout the period. Hence, at the time of filing of this suit, the principal sum to the tune of TZS. 69, 953, 960.96 from 2019 to May, 2023 (5yrs). Thus, the unpaid principal sum with agreed interest has accrued to a total of TZS 135, 625, 182/.

In the same vein, PW1 deponed that having issued the 1st defendant with demand notices which were unheeded, it came to light that the 1st defendant was dismissed from work by his employer and later secured employment with the Stamigold Co. Ltd. And the 1st defendant having secured the subsequent employment, he made a promise to abide by his covenanted

obligation to repay the entire outstanding loan despite the change of employment; however, the same failed to honour his promise. Hence, the plaintiff was constrained to commence the proceedings herein.

In light of the evidence adduced by PW1 above, it has been established that:

One, the loan application/agreement form (exhibit P1) speaks volumes of the facts that the 1st defendant sought a loan of TZS 70,000/= from the plaintiff and upon assessment of the 1st defendant's income, the duo executed loan agreement for grant of loan to the tune of TZS 56,000,000/.

Two, the bank statement (exhibit P5) speaks volumes in that on 16/06/2015, a deposit amounting to the tune of TZS 57,000,000/= was credited to the 1st defendant's personal account No. 01533920028 in the plaintiff's bank as agreed loan. And, the same statement entails that as of 16/04/2024, the remaining unpaid amount stands to the tune of TZS. 69, 953, 960.96. And, the unpaid principal sum with agreed interest has accrued to a total debt of TZS 135, 625, 182/.

It is the law of this land that parties to the contract are under obligation to perform their contractual obligations. The provision of section 37 (1) of the Law of Contract [Cap. 345 R.E.2019] in no uncertain terms provides viz:

"37. -(1) The parties to a contract must perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act or of any other law." See also the case of **Tanzania Sewing Machine vs. Njake Enterprises Ltd** (Civil Appeal 15 of 2016) [2016] TZCA 2041 in this respect.

In view of the foregoing, it is my considered opinion that the 1st defendant breached the agreement entered with the plaintiff for failure to repay the loan within the contractual period notwithstanding the reminder issued urging him to abide by what he covenanted to discharge. Therefore, the issue raised above is hereby answered in the affirmative.

I would now consider the relief prayed for by the plaintiff herein. **First**, the plaintiffs prayed for payment of TZS 135, 625, 182/= being the unpaid principal amount of the loan advanced to the 1st defendant plus the accrued interest. It is needless to point out that no excuse has been furnished by the 1st defendant for his failure to repay the loan he sought and obtained from the plaintiff. Therefore, the same is obliged to discharge the agreement he freely entered with the plaintiff by repaying the claimed debt. This prayer is duly granted. The 1st defendant is liable to pay TZS 135, 625, 182/= being the unpaid principal amount plus the accrued interest.

Secondly, the plaintiff prayed for an agreeable interest of 18% per annum on the outstanding sum from the date of instituting the case to the date of full payment. If I apprehended well the key witness (PW1) herein, the same deponed that the plaintiff opted to write off the debt at a sum of TZS. 69, 953, 960/= as per the bank and financial regulations. The same amount was pleaded in the pleadings filed hereto. Hence, to date, the debt stands to the tune of TZS 135, 625, 182/= being the unpaid principal amount of the loan advanced to the 1st defendant plus the accrued interest. I am of the settled opinion that the amount above should remain as the final judgment debt as pleaded in the plaint filed herein. I would decline this prayer.

Thirdly, the plaintiff prayed for interest of 12% on the decretal sum from the date of judgment to the date of full satisfaction of the same. I would grant interest at the court rate of 7% on the decretal sum from the date of judgment to the date of full satisfaction of the same.

Fourthly, the plaintiff prayed for general damages as assessed by this court. It is settled law that the award of general damages is intended to restore the successful party to the same position he would have been if the wrong complained of had not occurred. It is the law that the general damages are awarded by the trial court after consideration and deliberation on the

evidence on record. And the trial judge is obliged to assign reasons in awarding the same. See the cases; **Anthony Ngoo & Another vs. Kitinda Kimaro** (Civil Appeal No. 25 of 2014) [2015] TZCA 269 and **Vidoba Freight Co. Limited vs Emirates Shipping Agencies T. Ltd & Another** (Civil Appeal 12 of 2019) [2022] TZCA 740.

Upon scrutiny of the documents herein, I apprehended that the amount of TZS 1, 157,100/= was debited from the 1st defendant's bank account as insurance for the loan advanced to cater for foreseeable risks. Hence, considering that the loan granted to the 1st defendant was insured against foreseeable risks, I would grant general damages of TZS 5,000,000/= only.

Lastly, the plaintiff prayed for the costs of this suit. It is a trite law that the successful party in the suit is entitled to costs of litigation unless the court instructs otherwise. I find no cogent reason(s) to deny the plaintiff her costs of litigation.

Given the foregoing reasons, I find that the plaintiff has succeeded in proving the claims on the balance of probabilities. It is hereby ordered as under.

- 1. The defendants to pay the plaintiff herein a total of TZS 135,625, 182/= being the unpaid principal amount plus the accrued interest.*
- 2. Interest at the court rate of 7% shall lie on the decretal sum from the date of judgment to the date of full satisfaction of the same.*
- 3. The defendants to pay general damages of TZS 5,000,000/ for breach of contract.*
- 4. The defendants to shoulder the litigation costs.*

So ordered.

DATED at DAR ES SALAAM this 27th day of June, 2024.



O.F. BWEGOGI
JUDGE