

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 121 OF 2023**

**AZANIA BANK PLC..... PLAINTIFF**

**VERSUS**

**RAISA ABDALLAH MUSSA..... DEFENDANT**

**JUDGEMENT**

**Date of last Order: 07/03/2024**

**Date of Judgement: 24/04/2024**

**GONZI, J.**

According to the plaint, the plaintiff is a body corporate incorporated in Tanzania under the provisions of the Companies Act CAP 212 R.E 2002, licensed to carry on banking business under the Banks and Financial Institutions Act of 2006. Amongst its functions is dealing in the business of lending money according to the laid down Rules and Procedures. The Plaintiff and the Defendant entered into a loan agreement through which the plaintiff disbursed money to the defendant, but the defendant failed to fulfil her contractual obligations and defaulted in repayment of the bank loan. As a result, after fruitless reminders and demand notices, the plaintiff filed this suit praying for Judgement and Decree against the defendant for: -

- a) Payment of a total sum of TZS. 139,660,724.38 being the amount outstanding and remaining unpaid in respect of the consumer loan granted by the plaintiff to the defendant as per the terms of the consumer loan agreement as of 14<sup>th</sup> August, 2023.
- b) Payment of interest computed at an agreed rate of 14% per annum on outstanding amount referred in (a) above, computed from the date of filing this suit to the date of judgement.
- c) Payment of interest on decretal sum at courts rate from the date of judgement till full satisfaction of the entire decretal sum.
- d) Payment of general damages as suffered by the plaintiff for loss of business and other resultant losses and damages suffered by the plaintiff as a result of the defendant's failure to heed to the terms and conditions of the loan agreement.
- e) Costs of this suit.
- f) Any other reliefs this court may deem fit to grant.

Upon filing the plaint, the plaintiff was ordered to serve the plaint to the defendant. However, personal service was not possible as the Plaintiff could not trace the Defendant whose residential address is indicated as being Mombasa area, near Chuo cha Biashara, Zanzibar. As such, on 6<sup>th</sup> November, 2023 this Court ordered the plaintiff to effect substituted

service through publication in Mwananchi and Zanzibar Leo Newspapers; which publications were effected in the editions of 22<sup>nd</sup> November, 2023 and 22<sup>nd</sup> January 2024 respectively. Copies of the Newspapers were filed in Court.

Despite the substituted service to the Defendant being effected through two widely circulating Newspapers in Tanzania Mainland and Tanzania Zanzibar, the defendant neither filed a written statement of defence nor entered appearance to defend the case against her. On 7<sup>th</sup> March, 2024 this Court, upon application by the plaintiff, issued an order for the Plaintiff to make ex-parte proof of its case against the Defendant pursuant to Rule 22(1) of the High Court (Commercial Division) Procedure Rules, GN. 250 of 2012 as amended in 2019. The Rule provides that:

**Where any party required to file written statement of defence fails to do so within the specified period or where such period has been extended in accordance with sub-rule (2) of rule 20, within the period of such extension, the Court may, upon proof of service and on application by the plaintiff in Form No. 1 set out in the Schedule to these**

**Rules accompanied by an affidavit in proof of the claim, enter judgment in favour of the plaintiff.**

In proving its claims, the plaintiff filed an application Form No. 1 and an affidavit sworn by Charles James Mugila, Principal Officer of the Plaintiff. The affidavit came along with documentary exhibits which were attached to it. The exhibits filed are:

1. Consumer loan application form signed by the Defendant on 9<sup>th</sup> May 2017 and approved by the Plaintiff's Management on 10<sup>th</sup> May 2017. The Defendant whose photograph is imprinted in the application form, was back then a Member of Parliament and while holding that position had applied to the Plaintiff bank for a personal loan of TZS 104,000,000/= (Shillings One hundred Four Million only) at the interest rate of 14% per annum. The Defendant's Employer back then at the time of taking the loan was the Parliament of Tanzania and in the loan application form, the Clerk of Parliament signed, for and on behalf of the Defendant's Employer, a declaration that:

**"We confirm that the applicant is a permanent employee/contract employee of our company/organization and that the salary and other details contained in this application form are**

**correct. We also declare to you that applicant has contributed a cumulative of Tshs\_\_\_\_ (PPF, NSSF, LAPF, PSPF&GEPF) as of todote.**

**We undertake to remit his/her salary to the account maintained at Azania Bank Limited and facilitate the instalment deduction via our payroll and remit the same to Azania Bank Ltd.**

**We further undertake to pay Azania Bank Ltd any terminal benefits due to the employee in the event of termination of employment. We also confirm that we will not accept any change to this instruction without prior written confirmation from Azania Bank Ltd.”**

Attached to the Consumer Loan Application Form is a “Terms Sheet for Consumer Facilities for Members of Parliament”. Collectively they formed Exhibit ABL-1.

2. Swift Transfer Report dated 11<sup>th</sup> May 2017 evidencing transfer of the loan amount into the defendant’s bank account maintained with National Microfinance Bank (NMB. This formed Exhibit ABL-2. This Exhibit was accompanied with Customer Account Statement and Loan Schedule in

respect of the Defendant maintained by the Plaintiff. The Account Statement shows the Defendant by 30<sup>th</sup> September 2020 had an outstanding loan with the Plaintiff made of TZS.104,000,000/= as the principal loan, TZS 45,714,410.96 as the accrued interest but repaid TZS 10,053,686.58 on 2<sup>nd</sup> November 2021. The Loan Schedule shows that by 14<sup>th</sup> March 2024 the Defendant's unpaid loan stood at TZS.139,660,724.38 which constitutes the principal amount and accrued interest minus the loan repayment amount of TZS 10,053,686.58 paid by or for the Defendant.

3.Demand Letters by the Plaintiff to the Defendant dated 18<sup>th</sup> July 2023, which was delivered personally to the Defendant who acknowledged receipt thereof and 13<sup>th</sup> October 2021 which was sent by Post through the postal address of the Defendant disclosed in the Loan Application Form. The third letter is dated 5<sup>th</sup> August 2021 from the Plaintiff to the Secretary of the Civil United Front, delivered and received by the addressee in the Dar es Salaam offices of Civil United Front. The 4<sup>th</sup> letter is dated 25<sup>th</sup> July 2018 addressed to the Defendant and sent by email and postal address. The theme of all these letters was consistent that is claiming for the Defendant to pay her outstanding loan amounts. The letters formed Exhibit ABL-3. Ultimately the Defendant on 21<sup>st</sup> June 2023 passed a Board

Resolution to institute Court cases against defaulting Plaintiff's defaulting customers and the name of the Defendant is in serial No.5 of the List of 17 defaulting customers. The Board resolution form Exhibit ABL-4.

The plaintiff requested the Parliament as the employer, to remit the terminal benefits (gratuity) due to the defendant in order to discharge the loan. The Parliament discharged its obligation by remitting to the plaintiff a total sum of TZS. 10,053,686.58 as the only gratuity which was due to the defendant from the parliament during the period she served as a Member of Parliament before her membership ceased. As the amount received from the Parliament was not enough to discharge the loan balance in full, the total sum of TZS. 139,660,724.38 remains unpaid by the Defendant to the Plaintiff to date. That is the basis of the present case which was filed by the Plaintiff on 27th September, 2023.

As it has been shown, when this suit was called on for orders on 07/03/2024, no written defence had been filed by the Defendant and the learned advocate for the plaintiff prayed for and was granted leave to file an application for default judgement under the provisions of Rule 22(1) of this Court's Rules.

Having carefully gone through the affidavit and the exhibits annexed to it in proof of the claim, I am satisfied that this suit revolves around breach of contract on the part of the defendant for failure to repay consumer loan granted to, and utilized by, her. The Loan Application Form and the Terms Sheet which formed exhibit ABL-1, are sufficient to prove existence of a valid personal loan contract between the Plaintiff and the Defendant. The terms of that agreement were stipulated in that contract that the defendant was to repay the loan with interest at 14% per annum and that the installments would be deducted from her salaries and other entitlements as a Member of Parliament. The Plaintiff performed her part of the contract by paying the Defendant the agreed loan amount in the bank account of the defendant as evidenced by the Swift Report, Customer account Statement and Loan Schedule which formed exhibit ABL-2. The Defendant on the other hand failed to fulfil her contractual obligations by not repaying the loan amount with interest in full after having spent the loaned amount. Her former employer, the Parliament, remitted to the Plaintiff only TZS. 10,053,686.58 on 2<sup>nd</sup> November, 2021. The Loan Schedule shows that by 14<sup>th</sup> March 2024 the Defendant's unpaid loan balance stood at TZS. 139,660,724.38 which constitutes the principal amount and accrued interest thereon minus the loan repayment amount



of TZS. 10,053,686.58 paid by the Parliament for the Defendant from her gratuities.

The failure by the Defendant to repay the loan amount pursuant to the terms of the loan agreement, inevitably negatively impacted the Plaintiff whose business is banking business of accepting money from depositors as creditors and lending the money with interest. If the loan granted to the Defendant in 2017 had been repaid, the Plaintiff would have been able to use the sum in its other business transactions and generate more income. Like it has been shown herein, the Plaintiff has spent much efforts in an attempt to claim the money back but in vain and without any response from the Defendant despite her acknowledgement in writing of receiving the several demand letters.

Having established that all the necessary ingredients for a successful suit based on breach of contract exist in this case, the next issue which I am supposed to determine is whether the plaintiff is entitled to the prayers and reliefs sought in this court against the defendant?

This Court faced similar situation in the cases of **NITRO EXPLOSIVE (T) LIMITED vs. TANZANITE ONE MINING LIMITED**, COMMERCIAL CASE NO.118 OF 2018 (HC) DSM (Unreported) and **A-ONE PRODUCTS AND BOTTLERS LIMITED vs. TECHLONG PACKAGING**

**MACHINERY LIMITED AND ANOTHER,** COMMERCIAL CASE NO. 105 OF 2017 (HC) DSM (Unreported) in the interpretation of Rule 22 (1) as amended. The Court held that for the Plaintiff to enjoy fruits of justice under Rule 22, the following cumulative ingredients must be proved, namely;

- (a) Proof of the service to the defendant but who has failed to file written statement of defence.
- (b) The plaintiff must make an application in the prescribed Form No. 1- to the First Schedule to the Rules.
- (c) That the said application in Form No. 1 must be accompanied by an affidavit in proof of the claim.

In the instant suit, there is no dispute that the defendant was served in accordance with the law. In spite of being served, no written statement of defence was filed by the defendant to contest the suit. Equally it is not in dispute that the plaintiff has complied with the requirement of making an application in prescribed Form No. 1 and the same was accompanied with the affidavit of proof of the claim.

In terms of Rule 22(1) of the High Court (Commercial Division) Procedure Rules, 2012 as amended by G.N.107 of 2019, this court does hereby enter

judgement by default against the defendant in favour of the plaintiff and order the Defendant to pay the Plaintiff: -

- a) TZS 139,660,724.38 being the outstanding loan balance plus interest thereof as it stood on 14<sup>th</sup> March, 2024 in respect of the consumer loan granted by the plaintiff to the defendant as per terms of the consumer loan agreement.
- b) Interest on (a) above at the rate of 14% per annum based on the agreed rate of 14% per annum from 14<sup>th</sup> March 2024 to 24<sup>th</sup> April 2024 which is the date of delivery of this Judgement.
- c) Interest on decretal sum at the court's rate of 7% per annum from the date of Judgement until full and final satisfaction thereof.
- d) TZS. 20,000,000/= as general damages suffered by the plaintiff for loss of business and other resultant losses and damages suffered by the plaintiff as a result of the defendant's failure to heed to the terms and conditions of the loan agreement.
- e) Costs of the suit be borne by Defendant.

It is further ordered that the execution of this Decree should comply with the provision of Rule 22 (2) (a) and (b) of the Commercial Court Rules. The decree awarded herein 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 and after a period of twenty-one (21) days from the date of expiry of the said period of ten (10) days.

It is so ordered.



A handwritten signature in black ink, appearing to read "A. H. Gonzi".

**A. H. GONZI**

**JUDGE**

**24/04/2024**

Judgment is delivered in Court this 24<sup>th</sup> day of April, 2024 in the presence of Mr. Mbagati Nyarigo, learned advocate for the Plaintiff and in the absence of the Defendant who was duly notified of the date of delivery of this Judgment by way of Publication via Zanzibar Leo Newspaper dated 15<sup>th</sup> April 2024.



A handwritten signature in black ink, appearing to read "A. H. Gonzi".

**A. H. GONZI**

**JUDGE**

**24/04/2024**