

IN THE HIGH COURT OF TANZANIA

AT IRINGA

CIVIL CASE NO. 03 OF 2008

CRDB BANK LIMITED..... PLAINTIFF

VERSUS

GEORGE A. MATANDALA 1ST DEFENDANT

STULIDA MUHANZE 2ND DEFENDANT

10/4/2015 & 24/4/2015

JUDGEMENT

MADAM SHANGALI, J.

The Plaintiff, CRDB Bank LTD entered into a loan agreement with, the 1st Defendant. As a result of that loan agreement a mortgage was created over, the 1st Defendant's landed property and other motor vehicles were put as collaterals. On 09th May 2002 the Plaintiff filed Civil Case No. 15 of 2002 before High Court of Tanzania, at Mbeya against George A. Matandala as the 1st Defendant and Stulida Muhanze

(2nd Defendant) who was joined in this case through an application which was upheld/granted on 12th September, 2002. Through application the said case was later on transferred from Mbeya registry to Iringa registry of the High Court on 21st November, 2007 and re-registered as Civil Case No. 03 of 2008.

In this suit the Plaintiff's claim against the 1st Defendant is for 48,435,765/= being the outstanding balance against his account with the plaintiff's bank by way of an overdue term loan including interest as at 30th March 2002; interest thereon at the agreed rate of 22% per annum from 01st April 2002 to the date of judgment; an order that in default of payment the securities be sold and for an order that, if the proceeds of the sale should be insufficient to discharge the amounts due to the plaintiff, the plaintiff be at liberty to apply for extension of the decree against the defendant's other properties; any further or other relief and costs of this suit.

The basis of the plaintiff's claim is that on or about 27th

day of August 1998 the 1st defendant applied for a loan and upon that application the plaintiff approved a medium term loan of T.Shs. 37,500,000/= on condition that the same be repaid within 24 months with interest at the rate of 22% per annum through monthly installments of T.Shs. 1,045,431/= till full payment. The letter of offer 0127809 folio 362 MBLR; 15 tons Mitsubishi truck with Registration No. TZH 6934 guaranteed by one Justine Mdope; Toyota Hiace Mini Buses with registration No. TZK 6046 and TZK 6207; 2 Isuzu Buses with registration No. TZN 817 and TZN 818 were all used as collaterals for the said loan. As a result of the 1st defendant's breach of a loan contract he was indebted to the plaintiff to a sum of T.Shs. 48,435, 765/= as at 30th March, 2002. **A copy of the 1st defendant's statement of account reflecting outstanding balance was supposed to be annexed to the plaint and marked "CRDB 2" but it is no where to be seen.**

In the 1st defendant's written statement of defence which was filed on 26th June 2002 the 1st defendant strongly denied

the plaintiff's claim of sum of T.Shs. 48,435, 765/= in the sense that the plaintiff's claim was exaggerated. He complained that the plaintiff's claim to that extent was caused by the plaintiff's acts and omissions. This was due to the fact that; firstly the plaintiff prematurely and unjustifiably detained the 1st defendant's motor vehicles which were commercially used and secondly due to lack of proper communication between them although the 1st defendant was ready to settle the matter amicably out of court. On the side of the 2nd defendant, she is contesting the attachment and selling of the collaterals as they are matrimonial properties acquired by the defendants' joint efforts and there was no prior consent from her which was sought and obtained. From the parties' pleadings the following issues calls for the determination by this court:

- 1) Whether a medium term loan of T.Shs. 37,500,000/= which was to be repaid within 24 months with interest at the rate of 22% per annum through monthly**

installments of T.Shs. 1,945,431/= was issued to the 1st defendant.

2) Whether the 1st defendant breached the loan contract.

3) Whether the sum of T.Shs. 48,435,765/= was the outstanding balance against the 1st defendant as at 30th March 2002.

4) Whether the 2nd defendant has any right against the plaintiff.

5) What reliefs parties to this suit are entitled to?

Parties to this suit were all represented by learned Advocates. Mr Edward Kinyunko represented the plaintiff, whereas the 1st and 2nd defendants were represented by Mr. Onesmo Francis.

In this suit, the court is aware of the Written Laws

(*Miscellaneous Amendments*) (No. 3) Act, 2002, which provides that:-

"The Magistrates' Courts Act 1984 is amended –

(a) in section 40 by –

- (i) deleting the words "*twelve million*" appearing in Paragraph (a) of subsection (2), and substituting for them the words "*one hundred and fifty million*", –
- (ii) deleting the word "*ten million*" appearing in Paragraph (b) of subsection (2) and substituting for them the words "*one hundred million*".

In light of the change made on the Section 40 (2) of the Magistrate Courts' Act a claim of T.Shs. 48,435,765/= as in this suit, as of now, is within the pecuniary jurisdiction of the District or Resident Magistrates' Courts. However when this suit was filed on 09th May, 2002 in the High Court of Mbeya it

was within the jurisdiction of the court. It could have been more convenient, at that time after they have become aware of the amendments than now, to re-file the suit to a proper court with pecuniary jurisdiction following a famous decision in the case of **M/S Tanzania-China friendship textile Co. Ltd versus Our lady of the Usambara Sisters**, [2006] TLR 70.

At the hearing of this suit, in proving the plaintiff's claim, Ludovick Rimisho (*PW1*) testified on the plaintiff's behalf. On the other side one witness (the 1st defendant) testified for both defendants. In his evidence, Ludovick Rimisho (*PW1*) told this court that he is the employee of the plaintiff. The 1st defendant was issued with a loan of T.Shs. 37,500,000/= which was medium short term loan which he was required to pay within a period of 24 months. As a result of the 1st defendant's failure to repay the said loan on time the debt raised to T.Shs. 48,435,765/= as an outstanding amount. The interest rate of the said loan was 22% per annum with the monthly installments of T.Shs. 1,945,431/=. The 1st defendant's motor vehicles and a letter of offer of a piece of land were used as

securities for the loan. In proving the outstanding amount claimed, PW1 produced a bank statement in respect of account No. 01J1070405800 (exhibit P1) which is in the name of the 1st defendant. The plaintiff is claiming the outstanding amount plus all other interests as per the plaint.

During a robust cross examination by Mr. Onesmo Francis, learned counsel for the defendants, PW1 told this court that the registration cards of the motor vehicles and a letter of offer which were used as collaterals were in the hands of the plaintiff. There was a time when the plaintiff attached all the securities but PW1 could not remember for how long. He could remember that one motor vehicle is under the plaintiff's custody. He could not remember the values of collaterals. He was not aware as to what a bank statement or record says. He admitted that there was a time when the 1st defendant made efforts to repay the loan but PW1 was not aware or could not remember as to what amount was paid until now. He was not aware of the 1st defendant's difficulties in repaying the said loan. The said T.Shs. 48,435,765/= is the amount which

includes the original loan of T.Shs. 37,500,000/=. The additional is the interest as calculated by the plaintiff. The pleadings and his evidence does not show how much the defendant has paid to the plaintiff and on top of that the plaintiff had no loan facility letter because it was misplaced.

The 1st defendant testified on behalf of the defendants as DW1. He told this court that he took a loan of T.Shs. 37,500,000/= from the plaintiff in 1999 with conditions that the loan be repaid within 24 months and T.Shs. 2,000,000/= was monthly installment. He was able to repay a total of T.Shs. 21,900,000/= from when he received the loan. He failed to continue paying from when the plaintiff impounded his motor vehicles. The said T.Shs. 21,900,000/= was paid up to 2001. He managed to produce pay slips of a total of T.Shs. 12,994,000/= (Exhibit D1) other pay slips to make a total of T.Shs. 21,900,000/= which he had already paid the bank were misplaced. Exhibit P1 does not show all the amount of money he had deposited with the plaintiff. The motor vehicles were impounded after six months from the date of loan. The said

motor vehicles were the securities for the loan but he failed to understand why the plaintiff decided to impound those collaterals six months after the issuance of the loan. He stated that it is not true that he is indebted with T.Shs. 48,435,765/= as claimed by the plaintiff but admitted T.Shs. 14,900,000/= only. That it was the plaintiff who caused him to fail to repay the said loan by his premature and unlawful action of impounding his motor vehicles.

During cross examination he stated that the outstanding amount of T.Shs. 14,900,000/= which he admitted was obtained after deducting the amount he already paid to the plaintiff.

The evidence on record reveals that there is no dispute that a loan of T.Shs. 37,500,000/= was issued to the 1st defendant which was about to be repaid within 24 months at the rate of 22% per annum. The 1st defendant was supposed to pay T.Shs. 2,000,000/= per month as monthly installment. The 1st defendant defaulted in repaying the said loan so in a

way the 1st defendant breached the loan contract. So the 1st and 2nd issues are hereby affirmatively answered. Also it is undisputed that the letter of offer 0127809 folio 362 MBLR; 15 tons Mitsubishi truck with Registration No. TZH 6934 guaranteed by one Justine Mdope; Toyota Hiace Mini Buses with Registration No. TZK 6046 and TZK 6207; 2 Isuzu Buses with Registration No. 817 and TZN 818 were all used as collaterals for the said loan. The registration cards of the motor vehicles and a letter of offer which were used as collaterals are in the hands of the plaintiff. It is not clear as to what actually happened to the properties used as collaterals and which were in the hands of the plaintiff. The only available evidence is that there was a time when the plaintiff attached all securities and the fact that one motor vehicle is still in the custody of the plaintiff.

In this case the plaintiff is claiming a total of T.Shs. 48,435,765/= as an outstanding amount, in proving this claim the plaintiff depends on exhibit P1. It is common principle of

law that he who alleges must prove. Section 112 of the Evidence Act provides that:

"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person."

In the case at hand when PW1 was cross examined it was so interesting as it is the claimant whose most answers to his claim were *"I don't know"*. For example when questioned as to how long the plaintiff stayed with the collaterals after they were attached, the answer was *"I don't know"*. *"I don't know what the bank statement and record says"*. There was a time when the defendant paid but for sure *"I don't know"* how much he paid until now. The plaint and my evidence does not show how much the defendant has paid in bank. Looking at Exhibit P1 it is hard to tell exact outstanding amount the 1st defendant is indebted. No wonder even PW1 failed to know what exhibit P1 says. On the other hand the 1st defendant through exhibit

D1 has paid a total of T.Shs. 12,994,000/= and claim to have deposited other amount to the tune of T.Shs. 8,906,000/= which will make a total of Tshs. 21, 900,000/=. The plaintiff has not been able to discharge his burden of proving the exact amount which the 1st defendant is still indebted. The plaintiff was expected to tell this court that the claimed outstanding amount of T.Shs. 48,435,765/= includes .which amount after deducting which amount already been paid by the 1st defendant and after realizing his attached assets or whatever.

On the other hand there is no evidence useful to support the 2nd defendant's concerns as pleaded because there was no evidence adduced to that extent. In the upshot a claim of T.Shs. 48,435,765/= by the plaintiff as an outstanding amount against the 1st defendant failed to be proved by the plaintiff.

The sweeping assessments made by PW1 can not assist this court to grasp and determine the case fairly. Luckily to the plaintiff, one thing is clear from the 1st defendant that he admits to be indebted to the plaintiff to the tune of T.Shs.14.9

million. He categorically denied the debt of T.Shs.48,435,765/= and indeed there is no evidence to prove that. Therefore, I hold that the first defendant breached the loan contract and now he is indebted with outstanding balance of T.Shs.14.9 million against the plaintiff. That resolves issues number 2 and 3.

On the 4th issue, the record of this court will bear me witness, to the effect that there is no scintilla of evidence to support the 2nd defendant's allegations. To put the matter short the 2nd defendant has failed to prove her case against plaintiff.

Lastly, on the issue of reliefs the plaintiff has failed to prove the outstanding debt of T.Shs.48,435,765/= against the 1st defendant but since the 1st defendant has admitted and conceded to the outstanding debt of T.Shs.14.9 million, the Judgement is entered in favour of the plaintiff at T.Shs.14.9 million only. Considering the circumstances of this case the 1st defendant is given ten (10) months from the date of this

decision to settle the debt of T.Shs.14,900,000/=. Each party to shoulder its burden of costs.

It is so ordered.

M. S. SHANGALI

JUDGE

24/4/2015

Judgement delivered in the presence of Mr. Kinyuko, counsel for the plaintiff and Mr. Onesmo counsel for the defendant.

M. S. SHANGALI

JUDGE

24/4/2015