

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
AT MWANZA**

**COMMERCIAL CASE NO. 21 OF 2014**

**NATIONAL MICROFINANCE BANK PLC ..... PLAINTIFF**

**VERSUS**

**BWABU PRIMARY COOPERATIVE  
SOCIETY LIMITED**

**DARIA JERONIMO**

**SIMON MABOGO**

**LEONSI CHARLES**

**..... DEFENDANT**

16<sup>th</sup> & 17<sup>th</sup> February, 2015

**JUDGMENT**

**MWAMBEGELE, J.:**

This is a default judgment. The facts of the case, as can be gleaned from the plain,t are that: by a Loan Facility Agreement dated 14.08.2012 between the National Microfinance Bank (the plaintiff) and Bwabu Primary Cooperative Society (first Defendant), the former advanced to the latter a loan of USD 48,902.75 for purposes of purchase of input. Daria Jeronimo (second defendant), Simon Mabogo (third defendant) and Leonsi Charles (fourth defendant) guaranteed the payment of the said loan and signed

the relevant Deeds of Guarantee. The loan was repayable by 31.11.2013 with an interest of 8.5% per annum.

The first defendant defaulted to repay the loan within the agreed timeframe and efforts by the plaintiff bank to recover the loan proved futile. As at 30.03.2015, USD 46,763.00 was still outstanding. Thus on 12.08.2014, the plaintiff bank filed this suit claiming against the defendants jointly and severally for the following orders:

1. That the Defendants should pay to the Plaintiff an amount of USD 46,763.40 being the principal sum due as at 30<sup>th</sup> March 2014;
2. That the Defendants should pay to the Plaintiff interest that shall accrue on the principal sum at the rate of 8.5% per annum from 30<sup>th</sup> March 2014 up to the date of judgment;
3. That the Defendants should pay to the Plaintiff interest on the decretal sum from the date of judgment up to the date of payment in full;
4. That the Defendants should pay Costs of the suit; and
5. Any other order as the Court may deem fit and just under the circumstances.

When this suit was called on for hearing on 16.04.2014, the defendants did not enter appearance. On 10.02.2015, this court made an order to the effect that the defendants should be served by substituted service; publication in two Kiswahili Newspapers of wide circulation in the country.

After the order was made, the matter was slated for 24.03.2015 for necessary orders.

Mr. Kange for the plaintiff, at the date slated for hearing; that is, 16.04.2014, contended that there was ample proof that the defendants were served by publication through which they were informed to appear on 24.03.2015. They did not appear on the said 24.03.2015 and did not appear on 16.04.2015 when this case was called on for hearing. Mr. Kange thus prayed to file Form No. 1 to apply for default judgment in terms of rule 22 (1) of the High Court (Commercial Division) Procedure Rules, 2012 – GN No. 250 of 2012. This court granted his prayer and the application was accordingly filed as ordered by the court.

There is no dispute that the defendants, by way of publication in two Kiswahili tabloids – Majira and Mtanzania – of, respectively, 19.02.2015 and 20.02.2015 were served. I am alive to the fact that the defendants were notified through the said publication to appear on 24.03.2015 when this case was fixed for mention and the defendants were so informed through the said publication. However, the defendants did not appear on the slated date and the case was fixed for orders on 16.04.2015 during which, again, the defendants did not appear. The court record of the said 23.03.2014 has it that, in addition to the substituted service by publication, the court made efforts to notify the defendants vide text messages and phone calls but all efforts have gone unrewarded. The methods of communication are recognised by the Rules. Having regard of the entire circumstances of this case, I am of the considered view that the plaintiff is



entitled to judgment as prayed for in the plaint. Accordingly, in terms of rule 22 (1) of the Rules, I enter judgment for the plaintiff and decree as follows:

1. The defendants shall pay the plaintiff the sum of USD 46,763.40 being the principal sum due as at 30<sup>th</sup> March 2014;
2. The defendants shall pay the plaintiff interest on the principal sum at the rate of 8.5% per annum from 30<sup>th</sup> March 2014 up to the date of this judgment;
3. The defendant shall pay the plaintiff interest at court's rate of 7% on the decretal sum from the date of this judgment to the date of final and full satisfaction of the decree; and
4. The defendants shall pay costs of the suit.

And, in terms of rule 22 (2) (a) and (b) of the Rules, I further direct that the decree in this case 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 in the country and after a period of twenty-one (21) days from the date of expiry of the said period of ten (10) days has lapsed. It is so ordered.

DATED at MWANZA this 17<sup>th</sup> day of April, 2015.

**J. C. M. MWAMBEGELE**  
**JUDGE**