

IN THE HIGH COURT OF TANZANIA

AT DODOMA

LAND CASE NO 4 OF 2013

MNG'ESE ALLY IJIMBO.....PLAINTIFF

VERSUS

1. CRDB BANK PLC1ST RESPONDENT

2. KONDOA AUCTION MART AND COURT BROKERS2ND RESPONDENT

JUDGEMENT

29/09/2016 & 14/12/2016

A. MOHAMED, J.

The plaintiff, a businessman, had on 30/5/2011 obtained an overdraft facility as working capital for processing of sunflower seed oil from the 1st defendant ("the CRDB Bank"). But he used the same to buy sunflower seeds for sale at higher prices during the off season. The said facility was operative for 12 months ending 31/5/2012. Consequently, he mortgaged his handed property on plot 355 Block "Y" Kondoia having a market value of 55 million shillings in the 1st defendant's favour. He claims the defendant promised him in the event of price fluctuations, he would be granted a further loan facility of 55 million shillings.

Unfortunately, sunflower seed prices dropped drastically and the plaintiff failed to service his facility. In turn, on 22/1/2013 the 1st defendant instructed the 2nd defendant to auction the plaintiff's property to secure the said loan. He consequently filed this suit and the following issues were framed for determination by this court;

1. Whether the plaintiff utilized the loan for purposes agreed in the Loan Facility Agreement.
2. Whether there was a provision for re-renegotiation or promise made by the 1st defendant for another loan facility of 55 million shillings in the Loan Facility Agreement.
3. Whether the 1st defendant was involved with the plaintiff's decision to add value to his landed property and whether the addition of such value was part of the Loan Facility Agreement.
4. Whether the plaintiff was servicing his loan in accordance with the terms in that Loan Facility Agreement.
5. To what reliefs are the parties' entitled to.

At the hearing of the suit on 24/9/2016, the plaintiff was represented by Mr. Matimbwi, whilst the defendants had the services of Ms. Munisi, both learned counsels.

In his testimony PW1, the plaintiff, explained that the 1st defendant arranged a meeting of businessman at the Geneva Hotel and intimated they would offer loans for the purchase of sunflower seeds for storing and selling later at higher prices. Further that in case

of downward price fluctuations, the Bank would discuss that matter with them. He then opened a bank account and mortgaged the said property for 40 million shillings to the 1st defendant. His application letter for the said loan was admitted as exhibit P1. An Overdraft Facility Agreement was also admitted as exhibit PW3.

After receipt of the loan, he purchased a large quantity of sunflower seeds but prices spiraled downwards. He informed Flora and Danny, both CRDB loan officer of this alarming development. After visiting his store, they promised verbally the bank would advance to him a further loan to make up for the loss. A second valuation report put his house's value at 72 million shillings. He said the bank instructed him to apply for a 55 million shilling loan on condition he deposit 4 million shillings in his account. The plaintiff then gave Danny 1 million shillings to deposit in his account and also deposited 3 million shillings in his account. His CRDB receipt dated 28/8/2012 was admitted as exhibit P5. However, the bank did not advance him the 55 million shillings loan as promised but sent him a notice to settle 30 million shillings as arrears within 14 days. He went on to say the 1st defendant had on 28/8/2012 written on a receipt his outstanding sum was 36 million shillings into his bank account.

After receipt of the notice, the plaintiff claimed the 1st respondent had breached their verbal understanding that it would advance him a further loan of 55 million shillings on condition of his

depositing the agreed sum of money in his account. Unhappy with the 1st defendant's decision, he then filed this suit.

In cross examination by Ms. Munisi, learned counsel for the 1st defendant, the appellant maintained he took a loan from the 1st defendant basing on his application letter for the said loan. The plaintiff claimed he could not understand the import of the Loan Facility Agreement as he did not know English and that condition 1:2 was unknown to him. He said he took the loan for the business of buying and selling sunflower seeds and not for sunflower oil processing. He admitted after the prices fluctuated, he talked to the 1st defendant's officers but they did not put in writing an agreement for a further loan of 55 million shillings. The appellant claimed he had other businesses and applied proceeds therefrom to renovate his house. He also said he paid a total of 8,040,000/= shillings as interest and in addition he deposited the 4 million shillings in his account at the bank. In sum, he had paid the bank a total sum of 12,040,000/=.

In reply to the plaintiff's claims, Danford Martin Muyango, an officer of the 1st defendant said the plaintiff was their client whose business was the buying and selling of corn and sunflower seeds. He said upon receiving his application letter, the bank assessed his business and was satisfied he qualified for a loan. It advanced him 40 million shillings on the security of his house. Thereafter a Loan Facility Agreement was signed between the plaintiff and the 1st

defendant. He clarified that although the agreement was for sunflower oil processing, it did not bind the plaintiff and he could buy and sell sunflower seeds. And that a mortgage deed was signed by the plaintiff, his wife and other authorities. He added the plaintiff's wife also signed a spouse's consent deed. The mortgage deed, a deed of the spouse's consent and the title deed were admitted as exhibits D1, D2 D3 and D4 respectively.

Mr. Muyango explained one of the conditions of the Loan facility was the date when interest was due. He said the plaintiff failed to remit interests as per the stipulated conditions after 6 month into the facility agreement, bank officers told the plaintiff to deposit 8 million shillings into his account so the loan would be restructured form an overdraft facility to an installment loan. His 15/1/2013 report was admitted as exhibit D5.

Mr. Muyango further submitted that following the plaintiff's failure to deposit the 8 million shillings, the 1st defendant issued the plaintiff a demand notice demanding him to repay the whole amount owed or the security would be auctioned. Mr. Muyango refuted the plaintiff's claim that the bank promised him a further loan of 55 million shillings as he had defaulted on the earlier 40 million shilling loan.

Mr. Muyango went on to submit that by 30/5/2012, the plaintiff had paid a total of 12,040,000/= shillings into his account. However, he stressed, the appellant was obliged to have paid the whole sum of 40 million shillings by that date. He said the bank believed the plaintiff diverted funds from the loan facility to renovate his house as the second valuation report (Exhibit PW3) which displays the property's value appreciated to 70 million shillings. And that the 1st defendant wrote a letter on 28/8/2012 to the plaintiff that he owed the bank 36,884,756/13 shillings as the principal sum and the interest would push the finger upwards. He said that after 90 days lapsed, the 1st defendant attached the house and on 22/1/2015 wrote to the 2nd defendant to auction the house. He said after the plaintiff filed the present suit, the house was not sold and the debt to date was 44,883,943/64.

When cross examined by Mr. Matimbwi, for the plaintiff, Mr. Muyango said the 1st defendant appraised the plaintiff's ability to repay the loan. But he denied the bank promised a further loan to the plaintiff. In re-examination he maintained that there were discussions with the plaintiff to re-structure the loan facility to an installment facility to be paid over a longer period of time.

After hearing the parties' contentions and after reviewing the record, I will earnestly consider the issues raised in the suit.

The 1st issue was whether the plaintiff utilized the loan facility as per the agreement. Conditions 1.2 of the said agreement reads;

"Purpose of the overdraft:

Working capital for sunflower processing"

The plaintiff's application letter to the 1st defendant dated 14/4/2011 (Exhibit P1) which formed the basis of the loan facility partly reads and I quote;

"Naleta maombi yangu ya kuptiwa mkopo wa muda mfupi wa shilingi milioni Ishirini (Tshs 20,000,000/=) kwa ajili ya kununua alizeti kwa msimu (sic) huu wa 2011 kuiweka ghalani na kuiuza baada ya miezi kadhaa pale bei itakapokuwa inaongezeka."

Mr. Muyango, the 1st defendant's officer, submitted that although the purpose of the loan agreement was for working capital for sunflower processing, the plaintiff was not bound by it but could engage in the business of buying and selling sunflower seeds for a profit. He admitted, in fact one Flora and Benny, officers of the 1st defendant visited the plaintiff's store and inquired into the appellant's troubled business.

After the foregoing, I am of the view both parties varied the said condition by conduct. The plaintiff's application letter expressly stated the purpose for the loan was for the speculative business of buying and selling sunflower seeds. Conversely, the Loan Facility Agreement stipulated the purpose was **"working capital for sunflower processing."**

It is clear the two purposes, though related to sunflower seeds, are totally different. The first was a risky speculative business venture depending on the vagaries of market prices whilst the other a more stable business enterprise dependent on the sale of processed oil. Why didn't the 1st defendant advance the loan for the stated purpose in the plaintiff's application letter of 14/4.2011? It is also of concern why were 1st defendant's agents to wit Flora, Benny and Mr. Muyango complacent in condoning the plaintiff's use of the loan facility for buying and selling sunflower seeds whereas the conditions in the agreement were solely for use as working capital for sunflower processing?

In the same vein, from the evidence on record, it is clear the parties agreed to vary the substance of the contract by restructuring it from a Loan Facility to an installment facility. When cross examined, DW1 admitted in his testimony that the 1st defendant had agreed to vary the Loan Facility to an Installment one that would take a longer period to be paid.

It was suggested by the 1st defendant that the plaintiff applied the loan facility to renovate his house. However this remains a mere allegation as the 1st defendant failed to substantiate his claim. The mere fact that the said house's value appreciated to 70 million does not necessarily impute the money came from the bank loan as the appellant owned other businesses. I am therefore; satisfied it remains an unproved allegation.

In regard to the 2nd issue of whether there was a provision for re-negotiation of the loan facility; the answer is both in the positive and negative. As to the question whether the 1st defendant promised to advance a further loan of 55 million shillings to the plaintiff, the 1st defendant categorically refuted to have made such a promise to the plaintiff. On his part, the plaintiff could not expressly substantiate his claim by way of a written agreement or promise. I am therefore satisfied that the plaintiff has failed to substantiate his claim and I accordingly find this issue answered in the negative.

I find the 3rd issue is in the negative. There was no evidence whatsoever that the 1st defendant agreed with the plaintiff to add value to his landed property either to secure a further loan or otherwise.

As to the 4th issue, it is evident from the 1st defendant's evidence that following the sliding spiral of sunflower seed prices, the plaintiff defaulted on his payments to the 1st defendant. It was the 1st

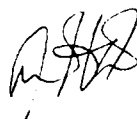
defendant's admission the plaintiff had settled 12,040,000/= shillings by 30/5/2012.

Nevertheless, gathering from the evidence, I find from the parties conduct there was an understanding the 1st defendant would re-structure the Loan Agreement to an Installment Facility but which he now renegades. When re-examined, Mr. Muyango maintained that there were discussions with the plaintiff to re-structure the loan facility to an installment facility to be paid over a longer period of time.

From the foregoing, I enter judgment for the defendants.

In the final issue, I find it equitable in the circumstances of this particular case that the plaintiff ought to pay the 1st defendant the sum of 27,960,000/= after deduction of 12,040,000/= shillings paid by the plaintiff from the 40,000,000/= due and owing to the 1st defendant as an installment facility.

It is so ordered



A. MOHAMED

JUDGE

14/12/2016

The right of appeal explained.



A. MOHAMED

JUDGE

14/12/2016

