

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

**AT DAR ES SALAAM**

**CIVIL CASE NO 63 OF 2013**

**JULIUS JAIROS MNUNGA.....PLAINTIFF**

**VERSUS**

**NATIONAL BANK OF COMMERCE LTD.....DEFENDANT**

Date of last order: 13/07/2018

Date of Ruling: 31/07/2018

**JUDGMENT**

**I. ARUFANI, J**

The plaintiff, Julius Jairos mnunga filed the instant suit in this court against the defendant, National Bank of Commerce Ltd praying the court to declare their loan agreement null and void ab initio, the defendant to be ordered to pay him Tshs. 60,000,000/= being costs of repairing the vehicle, Tshs. 300,000,000/= being general damages, costs of the suit and any other relief the court may deem fit to grant. During the hearing of the matter the plaintiff was represented by Mr. Alex Mashamba Balomi, senior advocate from Legal Clinic Advocates and the defendant was represented by Miss Faiza Salaha, learned advocate from IMMMA Advocates.

The background of the matter as can found in the pleadings filed in this court by the parties is to the fact that, in 2009 the plaintiff applied and granted an overdraft facility for financing his business of sawing and selling timbers and later on he was granted another term loan facility for purchasing a Scania truck and its trailer. The plaintiff said the terms and conditions for the term loan facility agreement was for the plaintiff to pay 30% of the purchasing price of the truck and its trailer and the defendant would have paid the remaining balance of 70%. The plaintiff stated in his plaint that, another term and condition of the term loan facility agreement was that. The truck to be purchase was supposed to be of not more than five years from when it was manufactured.

The plaintiff stated further that, after paying the required percentage he returned to his home to await the defendant to import the truck through her agent who was Morocco Commission Agent Ltd (hereinafter referred to as an agent). The plaintiff stated that, the defendant imported the truck through the agent and misrepresented to him the truck was manufactured in 2005 while in fact it was manufactured in 1990s. The plaintiff stated that, the motor vehicle was not road worth and had serious mechanical defects which caused the plaintiff to repay the loan advanced to

him by the defendant and incur the costs and loss is claiming from the defendant.

The defendant disputed the plaintiff's claims and denied to have imported or misrepresented to the plaintiff about the year the truck was manufactured. The defendant stated that, it was the plaintiff who chose himself the type of the vehicle he wanted and not the defendant who chose for him the vehicle he would have purchased. The defendant stated further that, its role was only to finance the purchase of the vehicle and nothing else. The defendant prayed the plaintiff's claims to be dismissed with costs.

The defendant filed in court a written statement of defence containing a counter claim preferred against the plaintiff and his wife, Angelista Mnunga and prayed that, the plaintiff be ordered to repay the sum of Tshs. 67,953,813.50 being an outstanding amount of the term loan facility advanced to the plaintiff and guaranteed by his wife Angelista Mnunga which is still unpaid. The defendant prayed to be paid interest of 29% from November 26, 2011 to the date of judgment and 7% on the decretal sum from the date of judgment till full payment. The defendant is also praying in alternative that, if the plaintiff will fail to pay the above claimed amount the court be pleased to order the plaintiff to give vacant possession of the mortgaged property at Uyole Mbeya

which was used as a security for the loan and appoint Mr. Gasper Nyika as a Receiver Manager with power to sell the mortgaged property. They also prayed for the costs of the suit. The issues framed for determination in this matter are as follows:-

1. Whether the defendant was a supplier of the vehicle with Reg. No. T 758 AUX with Trailer No. T 996 AZG.
2. If the first issue is answered in affirmative what were the terms and conditions of the supply agreement.
3. Whether the defendant misrepresented to the plaintiff that the vehicle was manufactured in 2005.
4. Whether the plaintiff has suffered loss at the hands of the defendant and to what extent.
5. Whether the plaintiff is indebted to the defendant under the counter claim to the tune of Tshs. 67,953,813.50 under the credit facility.
6. What relief(s) are the parties entitled.

The plaintiff testified before the court as PW1 and told the court that, he is a businessman and his business was to saw timbers at Sao Hill Forest which is in Iringa Region and sell them at Buguruni Area in Dar es Salaam Region. He said that, initially he took an overdraft facility of Tshs. 15,000,000/= from the defendant

for his timbers business and repaid the same fully. He said after the defendant seeing he was doing business of sawing and transporting timbers from Sao Hill to Dar es Salaam they advised him to take a term loan facility for purchasing a truck which he would have used in his business.

He said after seeing that business would have enabled him to get more profit he agreed to take the term loan facility for purchasing the truck and trailer. When he asked for the terms and conditions of the said loan he was told he would have been required to pay 30% of the purchasing price of the truck and its trailer and the defendant would have paid the remaining balance of the purchasing price of the truck and the trailer. The plaintiff said when he told the defendant he was not familiar with the business of transportation the defendant told him they would have taken him to their agent who sales trucks and they took him to Mr. Kanji who was the defendant's agent for selling trucks to their customers.

The plaintiff said to have been told the price of the truck and the trailer is Tshs. 130,000,000/= and after paying the required 30% of the mentioned price he returned to his home as the defendant was supposed to do everything including registration of

the vehicle. He said while at his home he received a phone call from the Manager of the defendant at Iringa Branch who informed him he was supposed to go to Dar es Salaam as his truck had already arrived. After going to Dar es Salaam he went to see the defendant's Manager called Mahagi who gave him a youth who took him to Mr. Kanji's yard at Morocco area. He said to have shown the vehicle and its registration card which had his name and the name of the defendant.

He said to have been given the copy of the registration card of the truck which indicated the truck was manufactured in 2004. He said after taking the truck which its registration number was T785 AXU and trailer with number T996 AZG he used them for six months and the truck started developing frequent mechanical defects. When he communicated with the manufacturer who was Scania he discovered the truck was not of 2004 but was manufactured and assembled on 1<sup>st</sup> day of December, 1996. The document containing the said communication was tendered and admitted in the case as exhibit P1. The plaintiff said that, after such discovery he communicated with Iringa Branch Manager who told him to write a letter and though he wrote a letter but he didn't get any reply from the defendant.

He said to have repaired the truck several times and tendered to the court the receipts which were collectively admitted in the case as exhibit P2. He said when he went to see Mr. Mahagi he was told to write a letter and the letter written by his advocate and the same was admitted in the case as exhibit P3. He said the loss he got from that business of transportation caused him to close his saw mill business at Sao Hill and failed to proceed with the business of selling timbers at Buguruni. He said further that, the business of truck he purchased caused him to enter into conflict with the member of his family and his children were chased from the school because of failure to pay fees and his father in law died because of pressure. He prayed the court to dismiss the counter claims of the defendant on the ground that they have joined a family loan agreement with that of the truck.

When the plaintiff was cross examined by the learned counsel for the defendant he said that, when he applied for the term loan facility for purchasing the truck he was replied by the defendant by a letter which he signed on it but he don't remember its date. He said to have indicated the truck he wanted to purchase to be Scania 124/400. He also said that, although the defendant do not do business of selling motor vehicles but they directed him to go to their agent who was at Morocco area. He said after seeing the truck

he returned to the defendant and signed the contract of buying the truck. He said annexure NBC1 to the written statement of defence is the copy of the letter he received and signed from the defendant and NBC2 is the term loan facility agreement he signed which contain all conditions and the terms of the loan.

The plaintiff said that, he has not repaid the loan he took for the truck because the truck is defective and is not working. He said he don't know how much the defendant is claiming from him up to now. He said in 2010 the defendant was claiming Tshs. 91,000,000/= and after receiving a demand letter from the defendant he continued to repay the loan but he didn't finish the whole debt. He said it is not in their agreement that the defendant would have been responsible with the costs of repairing the truck but the defendant was required to make sure the truck was in good order.

Angelista Mununga who is the wife of the plaintiff testified as PW2 and told the court that, she knows PW1 entered into a loan agreement with the defendant and their house situates at Uyole Mbeya was mortgaged as a security for the said loan. She said nobody lives in the said house as now they have shifted to Dar es Salaam. She said according to her memory the loan taken by PW1



which was Tshs. 30,000,000/= was successfully repaid. She said to have signed the agreement for the said loan which was for purchasing the truck. She said to have seeing the truck which is make of Scania and said now is grounded at Kahama for seven years because of mechanical defects. She said that, according to her memory the loan which the house was mortgaged as a security for the same was repaid but the current defendant's claims is arising from the fact that the defendant merged the previous loan granted for business and the loan granted for purchasing the truck.

When PW2 was cross examined by the learned counsel for the defendant she said to have consented and signed the loan agreement taken for business and not the loan taken for purchasing the truck. She said she don't have a certificate to show the loan was repaid. She also said that, PW1 has not repaid the loan because the truck is not working.

Harold Ngogolo testified as DW1 and told the court is working with the defendant as a Recovery Manager. He said he has worked with the defendant for nine years from 2009 and his duty was to collect debts from the clients of the defendant. He said he know the plaintiff as their customer from their branch of Iringa. He said the plaintiff was given two loans one being an overdraft facility for

doing business and another one was a term loan facility which was for purchasing a truck. He said the plaintiff was given overdraft loan in 2007 and 2008 and term loan in 2009. He said the overdraft loan given to the plaintiff was Tshs. 30,000,000/= and the term loan was Tshs. 91,000,000/=.

He testified further that, the overdraft loan was supposed to carry an interest of 22% and the plaintiff was supposed to have an immovable property as a security for the loan and his wife was supposed to give her consent for the house to be mortgaged as a security for the loan. He said another condition for the term loan was continuation of the condition of the first loan agreement and there must be another security which would have been in form of chattel.

He also said the defendant wanted the motor vehicle which would have been purchased through the said loan to be of not more than five years from when it was manufactured. They also agreed the loan should have carried the interest of 24% and in case of default a penalty of 5% would be charged. He also said it was the condition of the term loan agreement that, the plaintiff should have paid 30% of the price of the truck and the trailer and the defendant should have paid the balance of 70%.

DW1 tendered to the court the term loan facility agreement dated 23<sup>rd</sup> day of March, 2009 and it was admitted in the case as exhibit D1. He also tendered to the court the overdraft loan agreement deed which was admitted in the case as exhibit D2 and the deed of mortgage of right of occupancy which was admitted in the case as an exhibit D3. Also the consent given by PW2 for the house to be mortgaged as a security for the term loan facility was admitted in the case as exhibit D4 and the document to guarantee the plaintiff to take the loan which was signed by PW2 was admitted in the case as exhibit D5. The truck was also used as a chattel mortgage for the term loan facility and its document was admitted in the case as exhibit D6.

DW1 said the relationship between the defendant and Morocco Commission Agent Ltd (Agent) is that, the defendant knows the said agent is selling motor vehicles and bank is not selling motor vehicles. He also said it is not true that the defendant cheated the plaintiff and said as stated in their agreement the plaintiff was supposed to be satisfied the truck was of the required year. He said the defendant required the truck to be of not more than five years so that if the plaintiff would have failed to repay the loan the defendant could have sell the truck. He said the details of

the truck was given to the TRA which prepared the Registration Card of the truck by seller of the truck and not the defendant.

DW1 testified further that, according to clause 22 of exhibit D1 the plaintiff was required to pay Tshs. 39,000,000/= and thereafter the supplier Morocco Commission Agent Ltd was required to hand the original registration card of the truck to the defendant. He said from when the plaintiff was granted the loan he didn't repay the same and when he was reminded he said the business was not going well. He said up to when the plaintiff filed the suit in this court the total debt for loans advanced to him was Tshs. 67,439,000/=. He tendered to the court the demand notice for reminding the plaintiff to repay the loan and the bank statement of the plaintiff's loan agreement and were admitted in the case as exhibits D7 and D8 respectively.

DW1 told the court that, the claims of the plaintiff has no basis because there is no clause in their loan agreement which is requiring the defendant to pay the costs of repairing the truck. He prayed the court to order the plaintiff to pay the debt which is Tshs. 67,953,000/= together with the interest of 29% from 26<sup>th</sup> day of November, 2011 up to the date of judgment, to pay interest of 7% on the decretal sum from the date of judgment up to the date of

full payment of the debt. He prayed further that, if the plaintiff will fail to pay the debt the court be pleased to appoint Gasper Nyika as a receiver manager so that he can sell the properties used as security for the loan to enable the defendant to realize the money advanced to the plaintiff as loan. He also prayed the court to order the plaintiff and his wife, PW2 to give vacant possession of the house at Uyole Mbeya which was used as a mortgage for the first overdraft facility and be paid the costs of the suit.

When DW1 was cross examined by the learned counsel for the plaintiff he said he started working with the defendant Bank at Dar es Salaam Headquarter from October, 2009 and he has never worked at the Branch of the defendant which is at Iringa. He said he had not attended the plaintiff personally and said he don't know if the plaintiff do not understand English language. He said where a person do not understand English language it is their procedure to allow that person to look for a person who would have translated the contents of the loan agreement to him before signing the same. He said the original card of the truck which is a subject matter of this suit is in the custody of the defendant.

He also said the registration card which is issued by the TRA shows the year of manufacturing the truck is 2005. He said further

that, the plaintiff is the one purchased the truck as he went himself to the dealer of the truck and chose the truck he wanted. He said the role of the defendant was to facilitate the process of paying the dealer so that the truck can be sold to the plaintiff. He said they have a right to repossess the truck but before exercising that right the plaintiff sued them in this court. He said the loan was supposed to be paid from the business of selling timbers and the truck would have been used to transport the timbers instead of hiring another truck.

When re-examined by the learned counsel for the defendant he said though he has testified on some exhibits which were signed in 2007 before being employed by the defendant but he said when he was employed he was handed the said documents so that he can make a follow up of the unpaid debts. He also said the loan agreements were signed by the plaintiff and he didn't say he don't know English and has never stated so in his reply to the written statement of defence. After hearing the evidence from both sides the counsel for the parties prayed and allowed to file the final written submission. I commend both learned counsel for the parties for filing the submissions within the time given by the court. Whenever need arise, I will be referring to them in the course of determining the issues framed for determination in this matter.

Starting with the first issue which is asking whether the defendant was a supplier of the vehicle with Registration No. T785 AUX and Trailer No. T996 AZG the court has considered the evidence of the plaintiff (PW1) and that of his wife (PW2) and the final submission of his learned counsel in relation to that issue and find the basis of the plaintiff to say the defendant supplied to him the above mentioned vehicle is because the defendant advised him to purchase the truck for his business and directed him to the agent who would have sold the vehicle to him. Another basis is because the defendant paid the loan for purchasing the vehicle direct to the seller of the vehicle and the defendant took the original Registration Card of the vehicle from the seller of the vehicle. Apart from that evidence there is no any other evidence to establish the defendant supplied the vehicle and the trailer to the plaintiff.

Having considered the above evidence the court has found after the plaintiff agreed to purchase the truck and given the conditions and terms of buying the vehicle he went to pay the percentage of the purchasing price he was required to pay to the agent which was 30% and after the vehicle arrived he went to take the copy of the Registration Card and the vehicle from the agent who sold the vehicle to him. Therefore even if the agent used to sell vehicles to the customers of the defendant but there is no way

it can be said from the evidence adduced before this court the defendant is the one supplied the truck and its trailer to the plaintiff.

The court has arrived to the above finding after seeing when the plaintiff was cross examined by the learned counsel for the defendant he said the defendant do not do business of selling vehicles and their role in the term loan facility advanced to him was to pay the balance of the price of the truck and the trailer and nothing else. The above evidence of the plaintiff was supported by the evidence of DW1 who said the supplier of the vehicle was Morocco Commission Agent Ltd whom the plaintiff referred to as Mr. Kanji. The court has also gone through the term loan facility agreement admitted in the case as an exhibit D2 together with other exhibits but failed to see any of them stating the defendant supplied or would have supplied the vehicle to the plaintiff. What is stated in exhibit D2 is that, the plaintiff would have been granted term loan facility for purchasing the truck and the plaintiff would have repaid the same within thirty six months.

The court has considered the submission by the learned counsel for the plaintiff who said the defendant failed to call the agent who sold the vehicle to the plaintiff and find as rightly



submitted by the learned counsel for the defendant sections 110, 111, 112 and 115 of the Evidence Act, Cap 6 R.E 2002 imposed a duty to the plaintiff who asserted or alleged the defendant is the one supplied the vehicle to him to establish the said assertion or allegation. To say the defendant was required to call the agent who sold the vehicle to the plaintiff is to go contrary to what is provided in the above referred provisions of the law.

The court has found even if it might be said it is true that the defendant is the one advised the plaintiff to buy the vehicle and directed him to the agent where he would have purchased the vehicle but that alone cannot be interpreted in any way to establish the defendant is the one supplied the vehicle to the plaintiff. The truth is that, the supplier of the vehicle to the plaintiff was Morocco Commission Agent Ltd and not the defendant. This makes the court to find there is no sufficient evidence adduced by the plaintiff to move the court to find the answer to the first issue can be in affirmative.

Coming to the second issue the court has found the answer to this issue is depending on the answer of the first issue because it was intended to establish if the defendant was the supplier of the truck and trailer to the plaintiff what were the terms and

conditions of supplying the said vehicle. Since it has been found in the first issue the defendant was not a supplier of the vehicle then whatever defect which might have been found in the vehicle cannot be directed to the defendant. The court has found as stated by DW1 the only condition for the supply of the vehicle which would have been directed to the defendant is the condition that, the defendant was required to pay the balance of the purchasing price to the agent who sold or supplied the vehicle to the plaintiff and the defendant would have retained the original registration card of the vehicle until when the term loan facility would have been fully repaid by the plaintiff. As there is no any other condition or term entered by the plaintiff and the defendant in relation to the supply of the vehicle the court has found as rightly submitted by the learned counsel for the defendant this issue is bound to be answered in negative.

As for the third issue which is asking whether the defendant misrepresented to the plaintiff that the vehicle was manufactured in 2005 while in fact it was manufactured in the year 1996 the court has found PW1 testified that, when he went to take the vehicle from the agent who sold the vehicle to him he was given a copy of Registration Card of the vehicle which shows the vehicle was manufactured in 2004. He testified further that, after taking the

vehicle and use it for six months it started mechanical problems and when he inquired form the manufacturer about when the vehicle was manufactured he was informed through exhibit P1 that the vehicle was manufactured on 1<sup>st</sup> day of December, 1996.

The court has found as testified by the plaintiff himself together with DW1 and as stated in exhibit D2 the truck to be purchased was supposed to be of not more than five years from when it was manufactured. The court has tried to consider the evidence adduced before this court together with the submission from the learned counsel for the parties and find that, there is no any evidence showing the defendant misrepresented to the plaintiff that the vehicle was of 2004 or 2005 while in fact it was of 1996. The court has found as rightly submitted by the counsel for the defendant the Registration Card for the Vehicle which its copy was handed to the plaintiff together with the vehicle was not prepared by the defendant but it was prepared by the TRA through the information given to the TRA by the seller of the vehicle.

That makes the court to come to the finding that, if there is any misrepresentation or cheating in relation to the year of manufacturing of the vehicle as alleged by the plaintiff the same was supposed to be directed to the agent or seller of the vehicle

as is the one imported the same and prepared its registration card through TRA and he handed its copy to the plaintiff. It is because of the above stated reasons the court has failed to see how it can be said the defendant misrepresented to the plaintiff the vehicle was of 2005 while in fact it was manufactured in 1996.

The court has considered the submission by the learned counsel for the plaintiff that, as DW1 admitted during cross examination that the original registration card for the vehicle is in the custody of the defendant but the defendant did not tender the same to the court to defeat the allegation of misrepresentation of the year of manufacturing of the truck then the third issue is supposed to be answered in affirmative and find that, a mere admission that the original card for the vehicle is in custody of the defendant and the same was not tendered in court cannot be enough to establish the defendant misrepresented to the plaintiff.

The court has arrived to the above view after seeing it is not only that the evidence adduced before the court did not establish the defendant participated in preparing the said registration card for the truck but also there is no any evidence to show the original registration card in the custody of the defendant is bearing a different year with the one written in the copy of registration card

of the truck handed to the plaintiff by the dealer who issued the vehicle to him. In the premises the court has found the third issue is as well deserve to be answered in negative.

With regards to the fourth issue which is asking whether the plaintiff suffered loss at the hand of the defendant the court has found the plaintiff stated to have suffered loss of Tshs. 60,000,000/= being costs of repairing the truck and is claiming for general damage of Tshs. 300,000,000/= against the defendant. The plaintiff testified that, apart from costs of repairing the truck he has also suffered the loss of closing his timbers business, he also entered into family and health problems. The defendant denied to have caused any of the loss alleged by the plaintiff and stated that, there is nowhere the defendant agreed to be responsible with the costs of repairing the truck.

The court has found as it has already been determined there is no evidence to establish the defendant misrepresented to the plaintiff about the year of manufacturing of the vehicle and there was no prove that the defendant had agreed to repair the vehicle then it is the finding of this court that, there is no way it can be said the plaintiff suffered any loss in the hand of the defendant. To the contrary the court has found as testified by DW1 and stated in

exhibit D2 the vehicle was supposed to be of the age of not more than five years. In that circumstances the plaintiff was supposed to make sure the vehicle supplied to him was of the year stated in the term loan facility and not otherwise before taking it. In the premises the court has found there is no evidence to establish the plaintiff suffered any loss at the hand of the defendant. Consequently, the fourth issue is as well answered in negative.

Going to the fifth issue which is asking whether the plaintiff is indebted to the defendant under the counter claim to the tune of Tshs. 67,953,813.50 being outstanding debt of the credit facilities granted to him by the defendant the court has found that, it is not in dispute that between the year 2007 and 2008 the defendant granted to the plaintiff a credit facility worth Tshs. 30,000,000/= for financing his business and in 2009 he was granted term loan facility of Tshs. 91,000,000/= for purchasing the truck and trailer. There is also no dispute that the loan has not been repaid fully because the plaintiff said so clearly that the loan advanced to him has not been repaid fully as the truck which he was expecting to use to repay the loan is now grounded after undergone frequent mechanical problems.

The court has found the evidence of DW1 to show the plaintiff is indebted to the stated tune is to the effect that, when the term loan facility was granted to the plaintiff the same was merged with the overdraft facility which had been advanced to him earlier and required to repay the same together. DW1 stated that, up to 4<sup>th</sup> day of June, 2010 the sum of the outstanding debt was Tshs. 99,000,000/= . After a demand notice being written to the plaintiff he repaid part of the debt and the unpaid balance up to 26<sup>th</sup> day of November, 2011 was Tshs. 67,953,813.05. The breakdown of the said debt was that, while Tshs. 67,000,000/= was for the term loan facility, 953,813.50 was for the overdraft facility. To support that claim DW1 tendered to the court the statement accompanied by bank statement of account of the plaintiff (exhibit D8) which show the debt of the plaintiff to the defendant.

The court has considered the evidence of the plaintiff and that of his wife, Anjelista Mnunga (PW2) who is joined as the second defendant in the counter claim and evidence of DW1 and find that, although PW2 said the first credit facility of Tshs. 30,000,000/= was fully repaid and the problem is that the defendant merged the said overdraft facility with the term loan facility and caused the debt to be seeing as stated but the court has found when the plaintiff was cross examined by the learned counsel for the

defendant he admitted he was indebted to the defendant. However, he didn't say how much he had paid out of the total debt and how much has not been repaid.

In addition to that and as stated by PW2 when he was cross examined by the counsel for the defendant they had no any evidence being a certificate or anything else to show the overdraft facility advanced to the plaintiff for financing his business was cleared or repaid fully. Since in his testimony the plaintiff has not stated the amount claimed by the defendant in the counter claim is not the actual outstanding debt and as the same is supported by the evidence adduced before this court by DW1 the court has found there is no reason for this court to find the fifth issue cannot be answered in affirmative. Therefore the fifth issue is answered in affirmative.

Coming to the last issue of the reliefs parties are entitled the court has come to the finding that, as the court has found the plaintiff has not managed to prove any of his claim against the defendant then the plaintiff's suit is hereby dismissed in its entirety with costs. As for the reliefs claimed by the defendant in the counter claim the court has found as the defendant has managed to prove the claim in the counter claim against the plaintiff to the



extent stated hereinabove the same deserve to be granted. The court has found the defendant deserve to be paid the claimed outstanding debt together with the interest stipulated in the deed of term loan agreement.

The court has also found as the term loan facility was granted by the house being mortgaged as a security for the loan and as the plaintiff has defaulted to repay the loan and its interest then under the agreement made by the parties in exhibit D1, D2 and D3 the prayer of appointing a Receiver Manager to collect the debt of the defendant with power to sell the mortgaged property deserve to be granted. In the strength of all what has been stated hereinabove the court is hereby entering judgment and decree in the counter claim in favour of the defendant and against the plaintiff as follows:-

- (a) The plaintiff to pay the defendant the sum of Tshs. 67,953,813.50 being outstanding amount of the Term Loan Facility.
- (b) Interest on the above amount at the rate of 29% from 26<sup>th</sup> day of November, 2011 to the date of judgment.
- (c) Interest on the decretal amount at the rate of 7% from the date of judgment until full and final payment.

- (d) In the alternative and upon failure by the defendants to pay the amount in (a) the court is appointing Mr. Gasper Nyika as a Receiver Manager with powers to sell the mortgaged properties to wit CT No. 10672-MBYLR, Plot No. 260 Block 'C' Uyole Area, Mbeya City.
- (e) The court is ordering the defendants to give vacant possession of the mortgaged property on CT No. 10672-MBYLR, Plot No. 260 Block 'C', Uyole Area, Mbeya City.
- (f) Costs of the counter claim.

It is so ordered.

Dated at Dar es Salaam this 31<sup>st</sup> day of July, 2018



A handwritten signature in blue ink, appearing to read 'I. Arufani'.

**I. ARUFANI**  
**JUDGE**  
**31/7/2018**