

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

**AT DAR ES SALAAM**

**CIVIL CASE NO. 156 OF 2018**

**BETWEEN**

**AKIBA COMMERCIAL BANK PLC.....PLAINTIFF**

**VERSUS**

**ANNA ENOCK KIJO A. K. A**

**ANNA SAMSON NGUSARU..... DEFENDANT**

**EX-PARTE JUDGEMENT**

**Date of Last Order:** 21/07/2020

**Date of Ex -Parte Judgment:** 09/10/2020

**MLYAMBINA, J.**

The brief facts leading to this suit is that, on or about 25<sup>th</sup> February, 2016 the Defendant, while under the Plaintiff's employment, applied for a housing loan. The Plaintiff offered the Defendant a Tanzania Shillings Fifty Seven Million (TZs 57,000,000/=) Housing Loan Facility which the Defendant accepted on March 3<sup>rd</sup> 2016 together with all the terms and conditions contained in the facility letter and thus forming a loan agreement. The Defendant was required to make a monthly repayment of TZs 1,128, 668.32 commencing from the month of March, 2016.

The Defendant deposited with the Plaintiff an original land sale agreement of a Plot located in Meibaku, Saitabau Village Kiranyi Ward, Arumeru District, Arusha Municipality together with a Certificate from the Meibaku Village Chairman certifying that the said Plot belongs to Anna Samson Ngusaru; and a Certificate of Occupancy over Plot No. 496 Block 7 situated in Bagamoyo Urban area in the name of Anna Samson Ngusaru thus forming a lien by deposit of documents.

It was the Plaintiff's allegation that, at all material times when the Defendant was the Plaintiff's employee, the interest rate of the housing loan facility was 7% per annum. It was a term of the housing loan facility letter that the staff interest rate of 7% per annum would only be applicable as long as the Defendant was under the Plaintiff's employment. However, the Defendant resigned from employment effective March, 15<sup>th</sup> 2017 and thus the Plaintiff's consumer lending rate of 18% per annum became immediately applicable to the Defendant's housing loan facility at the date of termination.

Following the termination, the Defendant has never made any repayments to service the loan despite of several reminders as at May 17<sup>th</sup> 2018 the total debt stood at TZs Fifty Four Million Four Hundred Ninety Six Hundred Seventeen Twenty Cents TZs

54,496,617.20/= together with interests at the Plaintiff's lending rate of 18% per annum and penalty interest of 3% per annum.

**Wherefore,** the Plaintiff claimed against the Defendant for Judgment and Decree as follows:

- a) Payment of Tanzania Shillings Fifty Four Million Four Hundred Ninety Six Hundred Seventeen Twenty Cents (TZs 54, 496, 617.20/= together with interest at the bank's lending rate of 18% per annum and penalty interest of 3% per annum;
- b) An order for sale and vacant possession of the Plot of land belonging to Anna Samson Ngusaru located in Meibaku, Saitabau Village, Kiranyi Ward Arumeru District, Arusha
- c) An order for the sale and vacant possession of Plot No. 496 Block 7 in Bagamoyo urban area in the name of Anna Samson Ngusaru;
- d) Interest on the decretal amount at the Court's rate of 7% from the date of judgment until full and final payment;
- e) Costs of the suit; and
- f) Any such other relief (s) that this Honourable Court may deem fit to grant.

The Defendant could not be traced. Hence service was effected by way of publication through Mtanzania Newspaper dated 20<sup>th</sup>

February, 2019 and the Guardian Newspaper dated 23<sup>rd</sup> February, 2019. Both Publication ended in vain. Hence the suit was proved ex-parte in terms of *Order VII Rule 14 (2) (b) of the Civil Procedure Code, Cap 33 (R.E. 2002)*.

During final PTC the Court framed three issue for determination:

1. Whether the Defendant obtained a loan from the Plaintiff at the tune of TZs 57 Million.
2. Whether the Defendant fully repaid the loan disbursed by the Plaintiff.
3. To what relief (s) are the parties entitled to.

To prove her case, the Plaintiff paraded only one witness namely Robert Jackson Masala (42 years old) (PW1). He is the employee of the Plaintiff in the capacity of Human Resource Manager. He told the Court that the Defendant obtained a loan at the tune of TZs 57 Million. The Letter Offer at the tune of TZs 57 Million dated March, 2016 issued to Anna Enock Kijo by the Plaintiff was admitted as (exhibit P1).

With that exhibit and in absence of any valid convincing evidence to the contrary, the 1<sup>st</sup> issue remains answered in the affirmative. The Defendant was extended a loan of TZs 47 Million by the Plaintiff, the loan of which was supported with the properties

whose documents were admitted by the Court as (exhibit P2).

These are:

1. Certificate of Occupancy LO No. 464211 Ref. No. BAG/LD/1302 supported with Loss Report DAR/CEN/RB/215029/2020.
2. Shahada ya umiliki wa Nyumba (Title Deed) of Anna Sasson Ngusaru.
3. Sale Agreement dated 2003.

PW1 testified *inter alia* that the Defendant resigned from her work in March, 2017. After resignation her loan was converted into a Commercial Loan, but up to the time of resignation the loan stood at TZs 47,243, 535.95. The copy of resignation letter dated 15/3/2017 was admitted as (exhibit P3).

As per the unshaken evidence of PW1, up to 20/10/2019 the loan debt of the Defendant stood at TZs 54,496, 617.20. The bank statement for Anna Enock Kijo dated 20/10/2019 was admitted as (exhibit P4).

In the light of the above claims, evidences and exhibits, it is clear that the Defendant borrowed from the Plaintiff as her employee. It is clear that the Defendant never repaid the loan. It is clear that the Defendant resigned from the employment as of March, 2017.

The Defendant's loan was converted into commercial loan immediately after resignation from employment with a commercial interest of 18%. As of 20<sup>th</sup> October, 2019 the Defendant's loan stood at TZs 54,496,617.20.

As regards the relief (s) the evidence of PW1 proves that the Plaintiff made several efforts by issuing demanding notices but in vain. (Exhibit P5 collectively) established the efforts done by the Plaintiff. They include demand notice dated 21/8/2018 and email to Anna Enock Kijo admitted *under Section 18 (1) of the Electronic Transaction Act*.

In the circumstances of the above, I find the Plaintiff is entitled to all the prayed relief (s) as she has discharged her legal duty of issuing notice to the Defendant but in vain. The relief (s) granted to the Plaintiff as against the Defendant are:

1. The Defendant is ordered to pay the Plaintiff the sum of Tanzanian Shillings Fifty Four Million Four Hundred Ninety Six Hundred Seventeen Twenty Cents (TZs 54,496,617.20) together with interest at the Bank's lending rate of 18% per annum and penalty interest of 3% per annum.
2. The Defendant to pay the Plaintiff interest on the decretal amount at the Court rate of 7% from the date of Judgment until full and final payment.

In the alternative and upon failure of the Defendant to head with the two orders above:

3. The Plaintiff is entitled for sale and vacant possession of the mortgaged plot belonging to Anna Samson Ngusaru located at Meibaku Saitabau Village, Kiranyi Ward, Arumeru District, Arusha Municipality and Plot No. 496 Block 7 Bagamoyo urban area in the name of Anna Samson Ngusaru.

4. The Defendant to pay costs of the suit.

Order accordingly.

**Y. J. MLYAMBINA**

**JUDGE**

**09/10/2020**

Judgment pronounced and dated 9<sup>th</sup> October, 2020 in the presence of Counsel Janeth Njombe for the Plaintiff and in the absence of the Defendant.

**Y. J. MLYAMBINA**

**JUDGE**

**09/10/2020**