

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

AT DAR ES SALAAM

CIVIL CASE NO. 6 OF 2018

NMB BANK PLC..... PLAINTIFF

VERSUS

ERICK ALBERT GAMA.....DEFENDANT

JUDGMENT (EXPARTE)

The plaintiff above mentioned is suing the defendant mentioned above for payment of Tsh 30,990,996.75 being principal balance and interest of the loan secured by the defendant, commercial interest at 23% of the above sum from the date of filing suit to the date of judgment, court interest at 12% from the date of judgment until payment in full, general damages not less than 50,000,000/=, cost of the suit and any other relief the court may deem fit to grant.

This was an *exparte* proof. PW1 Juliet Melkior Kinabo who is working with the plaintiff, in her capacity as a banker and senior recovery officer stated that the defendant was an erstwhile employee of the defendant, employed as a bank manager. That on 2.5.2009 the defendant made an

application for loan from the plaintiff a sum of Tsh 27,000,000/= via a standard staff loan application form exhibit P1. That the said amount was disbursed to the defendant and attracted staff interest rate of 9% as per loan agreement exhibit P2. That in 2016 the plaintiff terminated service of employment of the defendant, after the later had flawed bank procedures and policies for issuing loan without collateral, as per a letter of termination exhibit P3. That at the time of termination the defendant was indebted a sum of 25,064,303.29, as per a bank statement exhibit P4. That the said sum increased up to 30,926,000 due to change of interest rate from staff interest to commercial rate of non-staff, after the defendant service was terminated.

In this suit, the plaintiff who is represented by Mr Mbuga Jonathan learned Counsel, took a ride *ex parte* after the defendant had defaulted to appear.

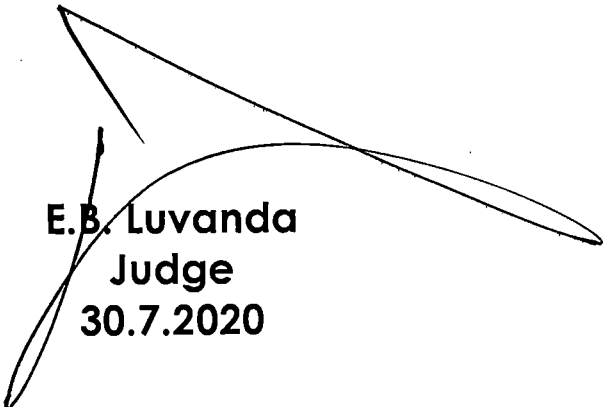
This is a straightforward case, that the defendant had applied for staff loan a sum of 27,000,000/= under discounted rate of 9%, which was approved by the plaintiff and disbursed to the defendant. Later the defendant's employment ceased, before expiry of credit facility, which ought to be repaid within seventy-two months, in monthly

instalment of Tsh 486,690/= as reflected in clause 7 and loan repayment schedule of exhibit P2. From the evidence presented by the plaintiff, it is vividly clear the defendant had failed to discharge his obligation to make good the outstanding liabilities a sum of Tsh 26,594,673.89 as it stood on a date of his termination at 20th May, 2016 as depicted in a letter of termination exhibit P3. The said liabilities accumulated to 30,926,000 due to accrued commercial interest rate.

In view of the above, it suffices to rule that the plaintiff has proved a claim on a balance of probability in respect of a sum of Tsh 30,926,000 being principal sum plus interest. However, a claim for general damages, which the plaintiff pinned down this court to assess it not less than 50,000,000/=, succumb for want of justification as to how and why the plaintiff is entitled to the same. On similar vein, relief for commercial interest at a rate of 23% is refused. The adjudged sum will attract interest at court rate of 12% which will accrue from the date of judgment to payment in full.

The defendant is therefore hold liable to pay the plaintiff a sum of Tsh 30,926,000 with interest at a court rate of 12% from the date of judgment to a date of full payment.

A suit succeeds to the extent demonstrated above with costs.



E.B. Luvanda
Judge
30.7.2020

30.7.2020

Coram: E.B. Luvanda, J

For the Plaintiff: Mr Emmanuel Mbuga Advocate

For the Defendant: Absent

B/C: Laigwana

Mr Emmanuel Mbuga Advocate: The matter is for judgment. We were ordered to notify the defendant on the date of delivery of judgment, we have done the same via Mwananchi newspaper dated 29/7/2020. We humbly pray to tender the same. We are ready to receive the judgment.

Court: Judgment *ex parte* delivered at chamber court, in the absence of the defendant although was notified through Mwananchi gazette on 29/7/2020.



E.B. Luvanda
Judge
30.7.2020