

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

**AT DAR ES SALAAM**

**CIVIL CASE NO. 10 OF 2020**

**I & M BANK TANZANIA LIMITED.....PLAINTIFF**

**VERSUS**

**PROPERTY CONSULTANCY & SERVICES LIMITED.....DEFENDANT**

**JUDGMENT (EXPARTE)**

The plaintiff above mentioned is claiming against the defendant mentioned above for a declaration that in conducting valuation of the plaintiff in respect of shop No. 5 (Block 186018/26/5) the defendant was negligent in that its valuation fell far beyond an acceptable margin of error or "bracket" to be expected of a reasonable competent valuer; two, the defendant be ordered to pay the plaintiff a sum of Tsh. 480,000,000 being special damages for loss suffered by the plaintiff; three, the defendant be ordered to pay the plaintiff interest on decretal amount from 23/2/2019 to the date of judgment; interest on decretal amount from the date of judgment at the court rate of 12%; payment of general damages; costs and other reliefs.

The matter was proved *ex parte* by way of affidavit, after the defendant had defaulted to appear and file written statement of defence.

In the affidavit, the deponent stated that, sometimes in the year 2011, Mustafa (2005) Limited, approached the plaintiff bank and applied for a credit facility. The said credit facility was secured by the apartment/shop No. 5 which is located on the ground floor of a four (4) storey building on Plots No. 1347/208 and 1348/208. That, in order to evaluate and establish the value of the collateral which was pledged by National Supplies Limited/Mustafa (2005) Limited in securing the loan, the plaintiff entered into an agreement with the defendant for the latter to carry out valuation of the said apartment/shop. That, the defendant carried out the valuation as instructed, and submitted its valuation report dated 27<sup>th</sup> June, 2012. According to the valuation report, the defendant established that the apartment/shop had an area of 198 square meters, breakdown being, the main building (shop) area consisted of 75.00 square meters, mezzanine floor 75.00 square meters and the access veranda had 48.00 square meters. Based on this size, as regard the "Opinion of Value", the valuation indicated that the property

had an open market value of Tshs. 823,000,000.00, and a forced market value was Tshs. 658,000,000.00. That, acting on the valuation report, the plaintiff bank approved a credit facility of Tshs. 500,000,000.00) to one Mustafa (2005) Limited, by way of an overdraft facility. That, Mustafa (2005) Limited defaulted to pay the overdraft facility and interest, and consequently the loan plus interest accumulated to the tune of Tshs. 1,973,137,035.41. Furthermore, Mustafa (2005) Limited (the borrower) became insolvent, and the plaintiff bank resorted to auction the mortgaged property (apartment No. 5) so as to recover the outstanding loan plus interest, which by then stood at Tshs. 1,973,137,035.41. That, the plaintiff re-engaged the defendant in early 2019 to conduct a fresh valuation report, so as to establish its current value for sale purposes. To the plaintiff's amazement and big surprise, the second valuation carried out by the defendant, whose report was released on 23<sup>rd</sup> February 2019, showed the size of the apartment/shop is only 51.6 square meters, which is against the size of 198 square meters which was indicated in the initial valuation carried out in 2011/2012. That, consequently, the second valuation report established the open market value of the apartment/shop as Tshs. 222,000,0000.00, and a forced market value as Tshs.

178,000,000, which is against the earlier open market value of Tshs. 823,000,000.00 and forced market value of Tshs. 658,000,000.00, hence creating a huge difference between the initial valuation carried out in 2011/2012 and the current valuation carried out in 2019. That, the huge difference in the value of the property as shown in the valuation report of 2011/2012 and 2019 was attributed by huge difference in the area/size of the apartment/shop. The defendant is in breach of her duty towards the plaintiff bank under the agreement, because it is impossible for the area of the apartment/shop to be 198 square meters in 2011/2012, and the same to measure and area of 51.06 square meters in 2019, while being valued by the same Valuer, taking into account that there is no structural changes of the size of the apartment/shop. That, the defendant acted below the standard required of her as a professional Valuer because, the total computed area of the apartment/shop was overstated in the initial valuation report on the basis of which the plaintiff bank approved the overdraft facility of Tshs. 500,000,000.00, which has resulted into huge loss to the plaintiff. That, on 18<sup>th</sup> April, 2019, the plaintiff engaged Yono Auction Mart & Co. Ltd. who auctioned the property and ended up getting only Tshs. 130,000,000.00 and could not fetch/recover the whole

outstanding amount of Tshs. 1,973,137,035.41 which was due and outstanding, since the borrower also became insolvent. That, the defendant's negligence has caused the plaintiff to suffer huge losses, which falls within the scope of the defendant's duty of care as a professional Valuer, because she failed to exercise a professional standard of care in the preparation of the initial valuation report, which fell far beyond the acceptable margin of error or bracket to be expected of a reasonably competent Valuer. That, owing to the defendant's negligence, the plaintiff bank is entitled to recover the sum of Tshs. 480,000,000.00 from the defendant, being the difference between the forced sale value of the first and second valuation reports, as the plaintiff could not recover the loan from the Borrower because the borrower is insolvent.

Essentially the valuation survey inspection report done by the defendant on 30<sup>th</sup> November, 2011 had a lot to be desired. For one thing the author/valuer did not indicate method of valuation deployed.

Two, computation of area entail unexplained huge variation between the valuation dated 30/11/2011 in comparison with

a subsequent valuation conducted by the same valuer on 4<sup>th</sup> February, 2019. In the first valuation report, an area of main building (shop area) was 75.00 square meters, while on the second valuation report an area of a main building (shop) is shown to be 51.06 square meters. This huge variation difference over the same structure was unexplained, and as stated by the deponent, there have been no structural changes over the property. This suggest negligence on the part of the defendant.

Three, in the first valuation report mezzanine floor and access verandah were given estimated value of Tsh 372,600,000 which is 82.8% of the value of a main building which was valued at 450,000,000/=. But on the second valuation, mezzanine floor and access verandah were not given any value, meaning were worthless (useless). No explanation offered as to why mezzanine floor and access verandah were omitted, not considered in the second report. This trend show something was wrong (fishy) on the part of first valuation report.

Four, in the first report, valuation analysis or assessment was very shallow, does not show the basis and formulae used in

computing and arriving to those alarming figures, which suggest possibility of exaggeration and inflation.

Five, in the first report opinion value is shallow, does not depict or amplify criterion and yard stick used to arrive at figures shown, unlike the second report which is elaborate and show criterion which were taken into account to form the opinion for current market value and forced sale value for mortgage purpose. Criterion on the second report were summarized to include general condition of the buildings within the locality, condition, plot size, construction details, method of valuation, together with other value affecting factors.

Six, the valuation work sheet (computation of area and assessment) for the second report is too detailed, elaborate compared to the first impugned report which pose a question of inaccuracy on the part of the first report. Even if in the statement of value (reflected in the second valuation), the valuer explained that, value is never static; it is all the time "floating" in response to changes in prevailing condition at a particular time. But this statement is missing in the first report. Meaning that it was inserted in the second report as defence

in attempt to shroud mishap and misnomer committed in the first valuation report.

I understand that the second report was conducted after elapse of seven years and two months counting from when the first valuation report was done. But in absence of explanation in the second report that there is material change on the suit property or else that there is development on the style and modes operandi of inspecting, conducting and crafting valuation report, the defendant cannot escape liability. As the deviation, shortfalls, shortcomings in the first report are glaring.

It is in evidence that the first valuation report which was prepared and submitted by the defendant to the plaintiff, indicated that the property had an open market value of Tsh 823,000,000 and forced market value of Tsh. 658,000,000. The plaintiff acting on this report, approved a credit facility of 500,000,000 in favor of one Mustafa (2005) Limited by way of an overdraft facility. The said Mustafa (2005) Limited defaulted to pay an overdraft facility and interest which accumulated to Tsh. 1,973,137,035.41. Thereafter the defendant was recalled to conduct a second valuation report, which show the mortgaged property dropped its



value from 823,000,000 to 222,000,000 for open market value and Tsh 178,000,000 far away from 658,000,000 for forced market value. This huge difference and rapid drop on the margin, cannot be excused for under the alleged floating theory. The shortcoming depicted on the first valuation report imply negligence on the part of the defendant.

Having said as above, I rule that the defendant being a professional valuer, failed to exercise his duty of care and professional standard in preparing the first valuation report. The defendant is therefore held liable for negligence.

Regarding reliefs, in the plaint, the plaintiff impleaded a sum of Tsh 480,000,000 as special damages for loss suffered. According to the averment in the plaint, the said sum is alleged to be a difference between the forced sale value in the first valuation and second valuation report. In the affidavit, the deponent averred that, they are entitled to recover the mentioned sum, for reason that the plaintiff could not recover the loan from the borrower because the borrower is insolvent. The circumstances of this case does not justify placing the defendant into the shoes of a defaulter borrower. Although the defendant has been held to be negligent but the same cannot justify imposing punitive

award against him. I say so, because the plaintiff was still under duty to exercise due diligence before approving and disbursing loan to the said Mustafa (2005) Limited, under the renowned banking practice and slogan "know your customer" (KYC).

I therefore assess an amount of Tsh 100,000,000 as damages, which is among reliefs craved for by the plaintiff, to meet the end of justice.

The plaintiff is entitled to general damages a sum of Tsh 100,000,000/= which will attract interest at court rate of 7% per annum, plus cost of a suit.

A suit succeeds to the extent explained above.



**E.B. Luvanda**  
**Judge**  
**30.7.2020**