

**THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL APPEAL No. 281 OF 2018**

(Originating from the Resident Magistrate Court of Dar es Salaam at Kisutu,
Civil Appeal No. 83 of 2015)

SIOI SOLOMON.....APPELLANT

Versus

STANBIC BANK TANZANIA LTD.....RESPONDENT

JUDGMENT

26.11.2019-19.03.2020

J. A. DE-MELLO J;

The Appellants herein was the Defendant before the **Resident Magistrate Court of Dar Es Salaam at Kisutu** in **Civil case No. 83/2015** where the Court decided in favor of the Plaintiff now the Respondent.

Aggrieved the Appellant here the Appellant appealed with **four (4) grounds** as hereunder;

- 1. That, the Trial Magistrate erred in law and, fact by holding that the Applicant was in breach of the loan agreement.**
- 2. That, the Trial Magistrate erred in law and, fact by failing to evaluate the evidence of defense witness "DW-1" which**

shows that the Respondent is in breach of the loan agreement.

3. That, the Trial Magistrate erred in law and, fact by holding that, the Defendant's dismissal from employment had nothing to do with loan repayment thereby arriving at unjust decision.

4. That, the Trial Magistrate erred in law and, fact by awarding interest at the rate of 12% and, costs to the Respondent.

On the **26th September, 2019**, Counsel for Appellant could not appear and **Counsel Tairo** for the Respondent held his brief with prayer to hear the Appeal by way of written submissions. In Counsel's submission while merging the first and second ground of Appeal that, the Appellant was the Employee of the Respondent who received a Staff Loan amounting to **Tanzania Shillings Sixty Millions (60,000,000/=)** for a pay back within a period of thirty six weeks (36) at a monthly rate of **TShs 1,758,124.74/=** deductible from the Appellant salary. As this was the case, and following termination, the outstanding amount stood at **TShs 40,77,793.92/=**. Nothing else other than the Appellant's salary formed part and, basis of security towards the said loan, notwithstanding the unlawful and, unfair termination. Further that and following termination, the Appellant referred the matter to the Commission for Mediation and Arbitration, "**CMA**" which confirmed that, the Appellant was unfairly terminated and awarded compensation totaling, **TShs. 263,810,000/=** still owing and pending since **8th June, 2015**.

It is his conclusion that, if it was not for the Respondent's wrong doing act, the Appellant would have been still in service and, yet even following the award, entitled to compensation as per **Section 73 (1)** of the **LCA Cap 345 R.E. 2002**.

Responding to the Appeal, Counsel for the Respondent observes nothing to justify the first two grounds of Appeal as nothing in the Trial Magistrate judgment prove that the Appellant's salary was the security for the said loan. **Exhibit P1** the Loan Agreement tendered by **PW1** does not reflect that, and in compliance with **section 63 and 64(1)** of **Cap 6** and not disputed by the Appellant didn't dispute the said documents were tendered and admitted. Reference of **Labor dispute** before **CMA** Counsel stresses, has no relevance whatsoever in case before the Court but rather the omission by Appellant to include **exhibit D1** as information relevant to the loan agreement indicating that, the Appellant never treated the loan agreement as part of the unfair termination. The linking of the two, Counsel cautions an attempt by Appellant to avoid discharge of his obligations in accordance to the terms and conditions of loan agreement, them being two distinct contracts and not all employees borrowed. Attaching of Ruling of High Court in **Revision No. 471 of 2015** prohibited by **Order XXXIX Rule 27 (1)** of **Cap. 33**, with the case of **Ismail Rashid vs. Mariam Msati, Civil Appeal No. 75 of 2015**. He even challenged the Breach of Contract it being out of context unless proved with reference to the terms and conditions of the said loans agreement only appeared in **exhibit P1** as provided under **section 100 (1)** of **Evidence Act Cap. 6**.

In rejoinder, Counsel for Appellant insisted that, there is overwhelming nexus between Contract of Employment and the Loan Agreement, in which the employer was to deduct the loan instalments from nowhere else than the Appellant's salary. I appreciate Counsel's rival submissions but cognizant the matter had traversed from the CMA, the **District Court at Kinondoni** and now on Appellant the High Court. Records from the Trial Court file has **exhibit P1** as the loan agreement between the Appellant and, his employer.

In addressing the suit the following issues were framed;

1. Whether there was any Breach of Contract between parties?

2. What are the Reliefs the parties are entitled to?

It is a principle of the Law of Contract that, every agreement must be furnished with the consideration as it was held **in Rann vs. Hughes, H.L. (1778) 7 TL 346**. In banking, a party securing a any loan must furnish security over it and it becomes binding on him. In the case of **Pillas vs. Van Mierop (1956) Burr 1663**, it was stated that; "**consideration is only one of the several modes of supplying evidence of promisor's intention to bind himself**". In this case and, as reflected in the **Staff Loan 16th April 2013** was a **Personal Loan** and, with clear **Irrevocable Instruction** to the Employer stating;

"Please arrange to deduct my loan installments from my salary, allowances and gratuity and all other benefits every month with effect from next salary date and pay the amount directly to my loan account. This was not a ~~gift~~ but purely a staff loan by viture of the

Appellant's capacity as an employee and, more even **Head of Legal** as reflected therein. Further perusal on **exhibit P1**, indicated the deductible amount to be that of **TShs. 1,758,124.74/=**. This therefore brings us to the fact that the nature of the loan was had its genesis for employer and employee, whose repayment was secured form none other than the employee salary.

What follows now is whether the question remain is whether the unfair termination amounted to breach of that loan agreement. It is undisputed fact both the Appellant's employment as well as his salary was an integral part of the loan. It is even that the termination was challenged before the CMA and determined in favour of the Appellant. This implies until that juncture that, the termination was unlawful and whose result had a multiplier effect to his relation to his employer as well as the loan. Before the CMA the Appellant was awarded compensation of **TShs. 263,810,000/=**. He has not been paid todate, as observed. The impact of such illegal acts of the employee incapacitated the Appellant to discharge his obligation as required under the Staff Loan Agreement. In the event the termination could be declared fair, then the Appellant and would be responsible for his acts as per **section 73 (1)** of the **Law of Contract Act Cap. 345 R.E. 2002**. I hence find the 1st and 2nd ground of Appeal to have basis and thus merited. . With regard to the 3rd and 4th ground of Appeal, the CMA award is a clear proof that, Appellant was entitled to continue with his employment, accruing salary therefrom and, therefore would have been able to discharged his contractual duties and, obligations under the loan agreement. The case of **Tanganyika Farmers**

Association Limited vs. Njake Oil Co. Ltd, Civil Appeal No. 40 of 2005, that, was referred is applicable though opposed by the Respondent.

It is evident that, the Trial Magistrate failed to appreciate the correlation and nexus between the Contract of Employment and the Staff Loan agreement between the Appellant and Respondent. The absence of security in the said is evident of the trust and confidence between the two but the **Irrevocable Instruction to Employer** had it all for salary as collateral. Salary for sure, was impliedly a security towards the same. The mere fact the Appellant was an Employee made it possible to advance the loan and to be deducted from nothing else that the salary. The termination culminated to direct and indirect breach more so when it was declared to be unfair.

In the result, and for the reasons stated above, this Appeal is with merits and succeeds. The entire, proceeding and findings of Trial Court are hereby quashed and set aside.

It is so ordered.


J. A. DE-MELLO.

JUDGE

19/03/2020