

IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 220 OF 2017

NMB BANK PLC.....PLAINTIFF

VERSUS

DAUDI CHARLES NG'OSHA.....DEFENDANT

JUDGEMENT

Date of last order: 24.02.2020

Date of Judgement: 31.03.2020

EBRAHIM, J.:

The Plaintiff and the defendant in this case had an employer-employee relationship respectively. It was during the course of their relationship that the Defendant applied for a loan of Tshs. 44,600,000/- (**exhibit PE1**). The Plaintiff extended to the Defendant unsecured loan staff general for the purpose of constructing a house. They entered into a loan agreement (**exhibit PE2**). Among other terms of the agreement, it was agreed that the Defendant shall be charged interest at the rate of 9%per annum and the entire principle and loan amount shall be paid within 72 months from

drawdown date. The amount payable was Tshs. 803,938.56 per month. It was further agreed that in any event where the relationship between the Plaintiff and the Defendant comes to an end in whatsoever manner, the Defendant shall continue to service the loan amount and the Plaintiff shall be at liberty to charge commercial interest rate on the outstanding loan. They also agreed that all costs and expenses of recovering the outstanding loan shall be borne by the Defendant.

The loan amount was disbursed on 3rd October 2013 and on 18th February 2014 the Defendant was terminated from employment due to abscondment from work (**exhibit PE4**). The Plaintiff claims that the Defendant has not repaid the remaining outstanding loan amount and thus decided to institute the instant suit praying for the following relief(s):

1. Payment of Tshs. 67,347,053.23 being principle balance and interest for the loan granted to the Defendant.
2. Commercial interest rate at 23% per annum on the above sum from the date of filing the suit to the date of judgement

3. Court interest rate of 12% per annum from the date of judgement until the payment in full
4. General damages Tshs 50,000,000/-
5. Costs.

This case proceeded ex parte following the defendant failure to enter appearance despite being served via Mwananchi Newspaper on 15.04.2019 and there being proof of service filed in court and the order of this court of 04.12.2019.

The agreed issues for determination are as follows:

1. *Whether there was a loan agreement to the tune of TZS. 44,600,000/= between the plaintiff and the defendant.*
2. *If the 1st issue is answered in the affirmative whether the defendant breached the said loan agreement.*
3. *Relief(s) that parties are entitled for.*

The Plaintiff was represented by advocate Emmanuel Mbuga.

In support of their case the Plaintiff called to the stand one witness, Ms. Julieth Kinabo (**PW1**), a loan recovery officer.

Whether there was a loan agreement to the tune of Tzs. 44,600,000/= between the plaintiff and the defendant.

PW1 in proving the existence of a loan agreement between the Plaintiff and the defendant, she explained the procedure of issuing unsecured loan to the employees. She testified that the defendant was availed loan while still in employment. He filled in Standard Staff Loan Application Form **(exhibit PE1)** after confirmation the Plaintiff and the Defendant entered into a loan agreement **(exhibit PE2)**. Referring to **Clause 4.0 of exhibit PE2**, PW1 averred that the agreed interest rate was 9% during the tenure of the employee's employment however once terminated the interest rate change to a commercial rate of 23%. PW1 testified further that as per para 7 of exhibit PE2, the Defendant was supposed to pay Tshs. 803,939/- per months for the period of 72 months. She confirmed that the loan amount stood at **Tshs. 67,347,000/- (Exhibit PE 3 – loan statement of 17.10.2017)**. She explained to the court that the last loan payment to be effected by the Defendant was on 21st February 2014. She also said the Defendant was terminated on 18.02.2014 **(exhibit PE4)** and they do not know where he is. PW1 prayed for the court to order the Defendant to repay the loan amount as it is financial loss

to the Plaintiff for they could not use the money to lend other customers. PW1 also prayed for the costs of the case.

Indisputably is the fact that the Defendant was availed a loan amount of Tshs. 44,600,000/- by the Plaintiff as evidenced in **Exhibit PE1 and Exhibit PE2**. The records are clear and as clearly provided under **section 100 (1) of the Law of Evidence Act, CAP 6 RE 2002**, when the terms of contract have been reduced into writing, such document shall speak of itself. Again there is no gain saying that according to **Clause 4.0 of Exhibit PE2**, the Defendant's loan was charged interest rate of 9% being that he was an employee of the Plaintiff. However there was a covenant that once the employment of the Defendant ceases, the commercial rate shall be charged to the loan amount and the Defendant shall be liable to pay the loan amount to the agreed term of 72 months.

Thus, I need not belabour much but rather find that certainly there was a *loan agreement entered between the plaintiff and the defendant to the tune of TZS. 44,600,000/=*.

In determining the second issue of *whether the defendant breached the loan agreement*, PW1 told the Court under oath that

the Defendant lastly paid the loan on 21st February 2014 and the transaction of a payment total of **Tshs. 803,938.96** is conspicuous in **Exhibit PE3**. It is the position of the law *that each party to a contract must fulfil its obligation to the agreed promises* as provided under **section 37(1) of the Law of Contract Act, CAP 345**. Thus, since there is clear evidence that the Defendant did not pay the remaining loan amount, obviously he breached the terms of the loan agreement.

Now coming to the reliefs; the Plaintiff has prayed for judgement and decree against the Defendant of payment of Tshs. **67,347,053.23** being the balance of the principle sum and the interest of the loan granted to the Defendant. That amount includes the car loan amount of **Tshs. 14,042,868.47** and **Tshs. 333,333.33** being a Christmas loan advanced to the Defendant. However the car loan and the Christmas loan much as were pleaded in the plaint but were not strictly proved by the Plaintiff as required by law – see the case of of **Zuberi Augustino VS. A. Mugabe** [1992] TLR 138. However, according to **exhibit PE 3** i.e. the loan statement shows that as of 17th October 2017 principle balance was **Tshs. 42,**

701,013.59 and the interest was **Tshs. 10,269,837.84** making a total loan balance of Tshs. **52,970,851.43 only.**

The Plaintiff also prayed to be awarded general damages of not less than Tshs. 50,000,000/-. In essence General damages are those elements of injury that are the proximate and foreseeable consequences of the defendant's conduct. It was stated in the case of **Anthony Ngoo & Another V Kitinda Maro**, Civil Appeal No. 25/2014 that "general damages are those presumed to be direct or probable consequences of the act complained of".

I am alive to the principle that general damages are awarded by the court after consideration and deliberation on the evidence on record able to justify the award. The court has discretion in the award of general damages, the discretion that must be exercised judiciously by assigning reason. It follows therefore that, there has to be some evidence to justify the award of general damages. PW1 simply told the court that failure by the Defendant to pay the loan amount has caused them financial loss and failed to lend other customers. However she has not evidenced to the court as to how they suffered such loss because the court was not even availed with

evidence of efforts they exerted to find the Defendant before taking the matter to Court or how they mitigated the loss. I therefore see no justification for the claimed general damages. However the Plaintiff is entitled for payment of commercial interest rate being that it was a commercial transaction.

From the above background and reasoning, I find that the Plaintiff's case has merits and it succeeds as per the following order:

1. The Defendant shall pay the Plaintiff the balance of loan amount of Tshs. **52,970,851.43**
2. Being a commercial transaction, the adjudged sum at (1) above to carry interest of 17% commercial rate per annum from the date of filing the suit to the date of judgement.
3. The Defendant shall also pay interest on the adjudged sum at the rate of 7% per annum from the date of judgement to the payment in full.
4. Costs of this suit shall be borne by defendant.

Accordingly ordered.



R.A. Ebrahim
Judge

Dar Es Salaam
31.03.2020