

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

CIVIL CASE NO. 10 OF 2021

MKOMBOZI COMMERCIAL BANK PLC PLAINTIFF

versus

JOSEPH RICHARD MASOLWA DEFENDANT

JUDGMENT

(Order XXXV: summary procedure)

26th & 30th July, 2021

RUMANYIKA, J.:

According to the plaint lodged on 18/5/2021, Mkombozi Commercial Bank PLC (the plaintiff) claimed from Joseph Richard Masolwa (the defendant) shs.416.0m being bank loan on application extended to him by the plaintiff on 31/12/2017 the latter having had acknowledged receipt, he promised and undertook within the first six years to repay it in equal installments of shs. 80.0m but he defaulted hence the summary suit. Pursuant to order of 28/6/2021, by way of publication through Nipashe Local Newspaper of 3/7/2021 the defendant duly served but he did not, within the first 21 days file a written statement of defence. Mr. C. Mtalemwa learned counsel appeared for the plaintiff.

Paragraphs 3-7 of the plaint are as quoted as under;

3. That the Plaintiffs bank's claim against the defendant is for payment of Tanzania Shilling Four Hundred Sixteen Million only (Tsh. 416,000,000/=) being a debt expressly accepted and promised to be paid by the defendant by equal annual instalments of not less than Tanzania shillings Eighty Million only (Tsh. 80,000,000/=).
4. That the promise by the defendant to pay the amount of Tshs. 416,000,000/= as stated in paragraph 3 above, was made by the defendant in both the deed of acknowledgment dated 13.06.2017 and the agreement for acknowledgement and undertaking to pay the debt, subject of this suit. A Copy of the undertaking promise to pay the debt dated 13.06.2017 is attached herewith and marked "M1".
5. That in or about 2016, the defendant in his capacity as the Human Resources Officer/Manager of M/s Sahara

Media Group processed loan application/agreement involving 57 ghost employees who purportedly secured Banking facilities from the plaintiff bank worth Tshs. 416,000,000/= which later became unrecoverable by the plaintiff Bank.

6. In addition, the defendant undertook that in default of repayment of the amount in demand of Tshs. 416,000,000/=: his two properties comprised of three (3) houses situated at Malimbe, Mkolani ward in Nyamagana, Mwanza City and House located at Plot No. 8 Block "L" Geita Region were availed to the plaintiff bank for sale towards recovery of the amount of Tsh. 416,000,000/=.

7. That upon expiration of promised repayment period of six (6) years, the defendant failed to honour the promise of repaying the amount in demand of Tshs. 416,000,000/=.


Now that the defendant was duly served and had a sufficient notice but, it appears for the reasons known to himself he just muted. Pursuant to provisions of Order XXXV (2) (2) (a) of the Code therefore, all such allegations are deemed to have been admitted by the defendant (the case of **Onasis E. Lema v. Lake Transport Limited**, Civil Case No. 01 of 2002 (HC) at Mwanza, unreported).

I think the best witness ever is the one who, in criminal trial confesses the guilty and, logically as the case may be, like it happened here in a civil case a plaintiff who admits all the allegations leveled against him (case of **Paulo Madukwa and 4 Others v. Republic**, Criminal Appeal No. 110 of 2007 (CA) unreported. The defendant was lucky enough that he was not charged and prosecuted for an offence of Obtaining Money by false pretenses given the allegations in paragraphs 6 and 8 of the plaint.

However, with regard to the instant case looking at the contents of paragraph 7 of the plaint the issue was no longer whether the defendant defaulted but the plaintiff's timing and the extent of default much as counting from 31/12/2017 the 6 (six) years term should have expired on 31/12/2023 in other words the parties had say two (2) good years to go save for the first four (4) years of default.


Nevertheless the summary suit succeeds in its entirety with costs and interest. For avoidance of doubts therefore, it is ordered thus; (a) the defendant pay the plaintiff shs. 416,000,000/= plus a decretal interest of 7% per annum. It is so ordered.

Right of appeal explained.



S. M. RUMANYIKA
JUDGE
28/07/2021

Judgment delivered under my hand and seal of the court in chambers this 30/7/2021 in the absence of the parties.



S. M. RUMANYIKA
JUDGE
30/07/2021