

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**LAND CASE NO. 20 OF 2018**

**CENTER FOR PRACTICAL DEVELOPMENT**

**TRAINING LIMITED ..... PLAINTIFF**

***VERSUS***

**TANZANIA INVESTMENT BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ADILI AUCTION MART LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

15<sup>th</sup> June & 8<sup>th</sup> July, 2022

**KISANYA, J.:**

The event leading to this suit is that, vide the Credit Facility Agreement signed on 27<sup>th</sup> December, 2011, the 1<sup>st</sup> defendant, Tanzania Investment Bank Limited advanced to the plaintiff, Center for Practical Development Training Limited, two banking facilities amounting to TZS. 581,591,000 plus interest and charges thereon. While TZS 473,806,000/= was a long term loan facility, TZS 107,785,000/= was an overdraft facility.

Pursuant to the pleadings, both facilities were secured by the Plaintiff Farm No. 3012, CT No. 101593, LO No. 236923, Msata Area,

Bagamoyo District (henceforth "the Msata's Farm") and Title No. 171436, LO No. 775628, Mkoko Area, Msata Bagamoyo District (Farms No. 6684 to 6689) (henceforth "the Mkoko's Farm") and assets secured under Debenture executed on 27<sup>th</sup> December, 2011. It is further pleaded that the value of mortgaged properties and assets were Tshs. 1,900,000,000/=.

It is the plaintiff's case that, in terms of the arrangement between her and the 1<sup>st</sup> defendant, the latter was to return or hand over the title deed of Msata Farm upon the plaintiff submitting the title deed of Mkoko Farm. Now, the plaintiff claims that the 1<sup>st</sup> defendant failed to hand over the first title deed thereby breaching the agreement.

The plaintiff goes on claiming that she was repaying the loan and interest thereon until when her project was affected by floods which caused her financial loss. It is alleged upon the 1<sup>st</sup> defendant being notified of the said challenge, the plaintiff was instructed to submit her work plan. The plaintiff further contends that the 1<sup>st</sup> defendant changed her mind on the means of settling the matter by instructing the 2<sup>nd</sup> defendant to attach and sell all the mortgaged properties.

It is stated that, the 2<sup>nd</sup> defendant served the plaintiff with a 14 days' notice of intention to attach and sell all mortgaged land and assets secured under the debenture. The plaintiff contends that the 2<sup>nd</sup> defendant was intending to attach and sell illegally the Msata' Farm while it was no longer subject to the facilities advanced to her. In view of the foregoing, the plaintiff filed the present suit praying for the judgment and decree against the defendants as follows:

- i) A declaration that the intended sale of mortgaged land properties and assets is illegal.*
- ii) General damages assessed by this honorable court.*
- iii) Costs of the case be paid.*
- iv) Any other relief that this honorable court may deem fit and just to grant.*

Responding to the Plaintiff claims, the 1<sup>st</sup> Defendant filed a Written Statement of Defence in which she opposed all claims. In addition, the 1<sup>st</sup> defendant claims that the plaintiff undertook to submit the title deed of Mkoko's Farm before 1<sup>st</sup> December, 2012 because the submitted customary right of occupancy could not be mortgaged. It is alleged that the plaintiff breached her obligation on that account that it was on 18<sup>th</sup> March, 2018 when the title deed for Mkoko Farm was submitted to the bank. The 1<sup>st</sup> defendant contends that the tenure of repaying the loan

facility has expired and that the plaintiff has defaulted to repay the same. She further claims to have served the plaintiff with a statutory sixty days' notice in respect of the Msata Farm. For that matter, the 1<sup>st</sup> Defendant prays for dismissal of the Plaintiff's suit with costs.

The matter proceeded in the absence of the 2<sup>nd</sup> defendant who defaulted to file the written statement of defence.

During the final pretrial and scheduling conference before the predecessor judge, the Court in consultation with the parties framed, the following issues for determination of this matter: -

- 1. Whether the value of the Farm No. 3012 with Certificate of Title No. 101593, LO No. 236923, Msata is sufficient to recover the loan.*
- 2. If the value of the above mentioned farm is sufficient to recover the loan, whether it is proper for the 1<sup>st</sup> Defendant to hold the title deed (Certificate of Title No. 171436, LO No. 775628, Mkoko Village.*
- 3. Whether the Plaintiff is subjected to interest accrued from the date that the 1<sup>st</sup> Defendant was allowed to sell Farm No. 3012 with Certificate of Title No. 101593, LO No. 236923, Msata.*
- 4. To what reliefs are the parties entitled.*

Consequently, the suit was heard and each party expected to prove the foresaid issues in its favour.

At the hearing of the suit, the Plaintiff had the legal service of Mr. Samson Lusumo, learned Advocate, whilst Ms. Tausi Swedi, learned State Attorney represented the 1<sup>st</sup> defendant.

In pursuing her claim, the Plaintiff called Fortunata Timoth Msakamali, Director of the plaintiff's company who testified as PW1. Led by counsel Rusumo, PW1 tendered eleven (11) documentary evidence (Exhibits P1 to P11) to support her oral testimony. On the other hand, the 1<sup>st</sup> defendant called her principal officer from the Loan Workout and Recovery Department. This is DW1 Eugence Naftal Ingwe whose evidence was supplemented by two documentary evidence (Exhibits D1 and D2).

After the Plaintiff and Defendant gave their evidence, the counsel filed their respective written submissions. I will consider the evidence adduced by the witnesses for both parties and the submission made by the learned counsel in the course of resolving the issues pertaining to this suit.

In the first issue, this Court is being moved to decide whether the value of Farm No. 3012 with Certificate of Title No. 101593, LO No. 236923, Msata is sufficient to recover the loan. It is worth noting that,

parties are not at issue that the 1<sup>st</sup> defendant advanced to the plaintiff the banking facilities. In terms of the Credit Facility-Letter of Offer (Exhibit P1) tendered by PW1 and the Credit Facility Agreement (Exhibit D1), the banking facilities advanced to the plaintiff amounted to TZS 581,591,000. Exhibits P1 and D1 shows that Facility 1 was Long Term Loan to the tune of TZS Tshs 473,806,000 and Facility 2 was Structure Overdraft to the tune of TZS 105,785,000//=.

It is also deduced from Exhibit P1 and D1 that both facilities were secured by a debenture creating a first ranking over all the assets of the company both moveable and immovable and first ranking legal mortgage over the Msata Farm.

In her evidence, PW1 admits that the plaintiff did not repay the loan in accordance with the credit facility agreement. That is when DW1 contends that the 1<sup>st</sup> defendant was entitled to take steps of recovering the loan including selling the mortgaged properties. It is my considered view that the issue whether the Msata Farm is sufficient to repay the outstanding loan depends on different factors including the outstanding balance, the value of Msata Farm and availability of buyers to mention but a few.

With regard to the outstanding loan, DW1 testified it was TZS 1,074,168,761 as of 20<sup>th</sup> May, 2022. However, he did not tender the relevant statements to support his oral testimony. That notwithstanding, Exhibits D2, P4 and P11 display that the plaintiff was informed that as of 23<sup>rd</sup> May, 2017, 13<sup>th</sup> August, 2018 and 17<sup>th</sup> November, 2018, the outstanding loan balance stood at TZS 510,746,541, TZS 766,279,714 and TZS 792,861,013 respectively. In her evidence, PW1 did not give evidence contesting the outstanding balance stated in the foresaid exhibits. That being the case, it is clear that the plaintiff was duly notified that as of 13<sup>th</sup> August 2018, the outstanding loan was TZS 792,861,013.

As regards the value of Msata Farm, the plaintiff relied on the valuation report prepared at the instance of the 1<sup>st</sup> defendant in 2011 (Exhibit P11). In terms of the said report, the total value of Msata Farm was TZS 1,747,000,000 while its Forced Market Value was TZS 1,223,000,000. PW1's evidence is based on valuation conducted in 2011, I agree with DW1 and the learned counsel for the 1<sup>st</sup> defendant that one cannot conclude that the outstanding loan can be recovered by selling the Msata Farm only. This is when it is considered that in terms of regulation 53(6) of the Valuation and Land Valuers (General) Regulations, 2018, GN No.136 of 2019, the validity period for land value schedule is

three years. Even if it is considered that the valuation was related to crops, it lasted for five years as provided for under regulation 52(4) of the Valuation and Land Valuers (General) Regulations. It follows that this case was instituted when the valuation report relied upon by the plaintiff had already expired.

In terms of section 110 of the Evidence Act [Cap. 6, R.E. 2019], it is the plaintiff who was expected to produce evidence as to the current market value of Farm No. 3012, Msata Area and that the same is sufficient to repay the outstanding loan. Since this was not done, the first issue cannot be decided in the plaintiff's favour.

The second issue is subject to the first issue being answered in affirmative. Although the first issue is not answered in affirmative, I find it apt to state that, the evidence on record bears it out that submission of the Certificate of Title of the Mkoko Farm was one of the specific conditions of the facilities. This fact is reflected in the letter offer (Exhibit P1) in which the parties agreed that:-

*"The borrower shall provide an undertaking to submit the title deed of the farm at Mkoko village before 31<sup>st</sup> December, 2012."*



It was the testimony of PW1 that parties had agreed that upon submission of the title deed of the Mkoko Farm, the 1<sup>st</sup> defendant would hand over to the plaintiff, the title deed of the Msata Farm. However, PW1 did not tender any evidence to prove the alleged undertaking or arrangement. That being the case, I am of the view that the title deed of the farm at Mkoko village is being held by the 1<sup>st</sup> defendant basing on what was agreed by the parties in the letter of offer (Exhibit P1).

However, it is undisputed fact that the Mkoko Farm was not duly mortgaged as one of the securities of the loan advanced to the plaintiff. In that regard, the Mkoko Farm cannot be sold or disposed to recover the loan unless it is established that the plaintiff has failed to recover the loan from the securities.

The third issue is whether the Plaintiff is subjected to interest accrued from the date she (the plaintiff) allowed the 1<sup>st</sup> Defendant to sell the Msata Farm. My starting point is that interest is charged based on the agreement entered by the parties. Exhibits P1 and D1 show that the long term loan (Facility 1) was subject to interest of 5% per annum charged daily on the outstanding amount and semi-annually in arrears. As regards the structured overdraft (Facility 2), the agreed interest rate is 16 % per

annum, charged daily on the outstanding amount and paid monthly through automatic debit to the account. In view of the foregoing terms, it is clear that any outstanding amount attracts interest.

Reverting to the issue under consideration, PW1 did not state as to when the plaintiff allowed the 1<sup>st</sup> defendant to sell the Msata Farm. As that was not enough, it is on record that, this case was instituted by the plaintiff. Thereafter, this Court issued an order for temporary injunction restraining the defendants from selling the said farm.

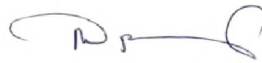
In any case, clause 10.03 of the Credit Facility Agreement (Exhibit D1) provides that delay in exercising or omission to exercise any right, power or remedy accruing to any party under the Facility Agreement upon default cannot be construed to be a waiver thereof. From the foregoing, the third issue is answered not in affirmative.

Last for consideration is the reliefs to which the parties are entitled to. Following the end result of the previous three issues, it is clear that the plaintiff has failed to discharge her duty of proving the case on the balance of probabilities. In that regard, this Court cannot grant in favour of the plaintiff, a declaration order that the intended sale of mortgaged land properties and assets is illegal and general damages prayed in the

plaint. However, much as the Mkoko farm was not mortgaged, it can only be dealt with by the 1<sup>st</sup> defendant to recover the loan if the outstanding loan cannot be recovered by using the securities and after complying with the law.

In the upshot of all this, this suit fails save for sale of Mkoko Farm. It is ordered that the Mkoko Farm should not be sold unless the relevant laws or procedure for recovering loan from properties not subject to the loan's securities are complied with. Each party is ordered to bear its own costs.

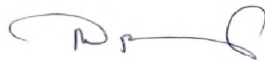
DATED at DAR ES SALAAM this 8<sup>th</sup> day of July, 2022.



S.E. Kisanya  
JUDGE

COURT: Judgement delivered this 8<sup>th</sup> day of July, 2022 in the presence of Mr. Samson Rusumo, learned advocate for the plaintiff and Ms. Tausi Swedi, learned State Attorney for the defendant.

Right of appeal explained.



S.E. Kisanya  
**JUDGE**  
08/07/2022