

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
LAND CASE NO. 54 OF 2017

AZANIA BANK LTD..... PLAINTIFF

VERSUS

MKONGOWO TRADING CO. LTD 1ST DEFENDANT

PETER RODRICK NGOWO 2ND DEFENDANT

HALIMA RODRICK NGOWO 3RD DEFENDANT

ISSA ALLY MCHERECHETA 4TH DEFENDANT

Date of last order: 15/7/2021

Date of Ruling: 22/4/2022

JUDGEMENT

MGONYA, J.

Azania Bank Limited, the Plaintiff herein sued all four Defendants jointly and severally for a claim total amount of Tshs **446,991,055.97/=** being outstanding loan amount plus interests and penalty thereof. Both parties entered into Overdraft and short term loans whereas the **2nd**, **3rd** and **4th** Defendants were guarantors to the credit facilities granted to the **1ST** Defendant.

The Credit Facility was secured by landed properties with references **Land No. KND/KWE/CGK39/1** located at **CHANGANYIKENI, Plot No. 2036** Block A **KIMARA KING'ONGO** Area both are **KINONDONI** Municipality and in the name of Peter Rodrick Ngowo and **Plot No. 122** Block B **UBUNGO** Area in **KINONDONI** in the name of Ally Macherecheta. The credit facilities advanced to the 1st Defendant were to be repaid within a period of **12** and **18** months respectively.

The Counsel for the **1st** and **2nd** Defendants filed their Written Statement of Defence but failed and neglected to enter appearance in Court. The **3rd** and **4th** Defendants opted not to file their defence. The matter proceeded *Ex-parte* against them.

At the *Ex-parte* hearing, the Plaintiff enjoyed the legal services from Ms. Pendaeli Mziray learned Advocate.

It is testified by **Gilbert Jonas Masaka (PW1)** as a Principal Credit Officer of Azania Bank at KARIAKOO Branch that the 1st Defendant requested for various loan facilities from the Plaintiff, among was Overdraft loan to the tune of Tshs **200,000,000.00/=** and short-term loan to the tune of Tshs **100,000,000.00/=** respectively. The facilities were granted with approvals of Exhibits **P1** (Letter of Offer from Azania Bank

to the Managing Director of Mkongowo Trading Co. Ltd dated **13/8/2014**), **P2** (Three Guarantee Agreement dated **18/09/2014**), **P3** (Two Letters Offer dated **29/11/2014**), **P4** (Three Guarantee Agreements dated **1/12/2014**), **P5** (Letter Offer to Managing Director Mkongowo Trading Co. Ltd dated **18/6/2015**) and **P6** (Three Guarantee Agreements for Additional Security dated **22/6/2015**) and was required to be repaid within a period of 12 and 18 months respectively. The **2nd**, **3rd** and **4th** Defendants signed guarantee agreement to repay the loan in event the 1st Defendant failed to pay. The guarantee agreements were tendered and admitted by the court as Exhibits **P2** and **P4** all together.

Further, on **1st December 2014**, the **2nd**, **3rd** and **4th** Defendants guaranteed the 1st Defendant to a facility of Tshs **150,000,000.00/=** evidenced by Exhibit **P6** (Three (3) Guarantee Agreements for Additional Security dated **22/6/2015**) which was admitted by the court.

It was the Plaintiff's submission that, the 1st Defendant had duties to adhere to the repayment plan as per Loan contracts. Also, she was obliged to deposit sufficient balance in the 1st Defendant Bank account to cover the repayments on monthly basis. The 1st Defendant made accumulation of Principal debt and interests on the outstanding debt of TSHS **446,999,055.97**

as provided in the clause of loan contract and in **exhibits P1, P3 and P5.**

Further, it is stated by the Plaintiff's counsel that the guarantors herein have not been discharging their legal liabilities to pay the outstanding credit as per the loan contracts guaranteed and evidenced by the Exhibits **P1, P2, P3, P4, P5 and P6.** The Defendants the same were often reminded of their obligation as per **Exhibits P8 (1st Reminder Letter to Mkongowo Trading Co. Ltd dated 2/10/2015), P9 (Letter From Azania Bank Ltd to Managing Director Mkongowo Trading Co. Ltd dated 2/10/2015) and P10 (Two Notice of Default Letters dully issued by Azania Bank dated 4th January 2015 and 3rd November 2015)** whereas the reminder letters were sent and received but the same were not honoured.

Therefore, the Plaintiff prayed the court orders to be paid the total sum of **TZS 446,991,055.97/=** by the Defendants being the outstanding amount and interest thereon from the date of filling the Plaint to the date of final payment.

After the above analysis, this court has the following issues for determination:

1. Whether the parties entered into contracts of credit facilities.

2. Whether that contract breached by either of the parties; and

3. What reliefs are the Parties entitled to.

Starting with the first issue of determination, as to whether the parties entered into a contract of credit facilities, this Court after going through the *Ex-parte* evidence and submissions of PW1 and PW2, finds straight away that the parties entered into contracts and Plaintiff granted credit facilities to the 1st Defendant and the other three 3 Defendants were guarantors. Also, the above guarantors gave out their landed properties as securities for credit facilities granted. The credit facilities granted in different times, simply proves that the Defendants consented to their guarantors and had full knowledge on what they were doing and exchanged with consideration.

Coming to the second issue of determination as to whether that contract was breached by either party; It has been demonstrated by Plaintiff's evidence and **exhibits P8 (1st Reminder Letter to Mkongowo Trading Co. Ltd dated 2/10/2015), P9 (Letter From Azania Bank Ltd to Managing Director Mkongowo Trading Co. Ltd dated 2/10/2015), and P10 (Two Notice of Default Letters dully issued by Azania Bank dated 4th January 2015 and 3rd November 2015 respectively)** tendered and admitted by the court. That after the

1st Defendant had failed to honor the loan advanced to be repaid on monthly basis, the Plaintiff issued letters to remind the Defendants. The Defendants were supposed to fulfil their obligations under the contract as guarantors.

It is very known fact that loan agreements entered by parties are governed by laws and are creating legal relationships and promises between them. **Section 37 (1) of The Law and Contract Act, Cap. 345 [R. E. 2019]** makes it clear that the Parties are required to perform their respective promises unless such promises are dispensed with or excused under the Act or any other law. The promises to be performed must be extended to the guarantors who assured that the Lender will honour the contract by servicing the loan. In the case of ***AGENCY CARGO INTERNATIONAL VERSUS EURAFRICAN BANK (T) LIMITED, HC (DSM), Civil Case No. 44 of 1998 (Unreported)*** it was stated that:

"... The object of security is to provide a source of satisfaction of the debt covered by it. The Respondent to continue being in banking business must have funds to lend and which as to be repaid by its debtors. If a bank does not recover its loans, it will seriously be an obvious candidate for bankruptcy It is only fair that banks and their

customers should enforce their respective obligations under the banking system”.

Moreover, the Plaintiff tendered various Exhibits **P1** up to **P10** that are; **P1** Letter of Offer from Azania Bank to the Managing Director of Mkongowo Trading Co. Ltd dated **13/8/2014**, **P2** Three Guarantee Agreement dated **18/09/2014**, **P3** Two Letters Offer dated **29/11/2014**, **P4** Three Guarantee Agreements dated **1/12/2014**, **P5** Letter Offer to Managing Director Mkongowo Trading Co. Ltd dated **18/6/2015**, **P6** Three Guarantee Agreements for Additional Security dated **22/6/2015**, **P7** The Azania Bank Statement as from **1/1/2015** to **31/6/2016** and Loan Contract Schedule for Mkongowo Trading Co. Ltd dated **17/3/2017**, **P8** The 1st Reminder Letter to Mkongowo Trading Co. Ltd dated **2/10/2015** , **P9** (Letter From Azania Bank Ltd to Managing Director Mkongowo Trading Co. Ltd dated **2/10/2015** and **P10** Two Notice of Default Letters dully issued by Azania Bank dated **4th January 2015** and **3rd November 2015** being as prove of the credit facilities advanced to the Defendants. To this extent, the Defendants breached the contract which they were required to fulfil their contractual obligations by paying the outstanding debt to the Plaintiff.

The last issue for determination is to what reliefs are the parties entitled to. It is obvious that the first two issues are affirmed to the extent that the Plaintiff entitled to the reliefs they have prayed for.

In my considerably view, the Plaintiff herein has successfully managed to prove her case on the balance of probabilities. She has discharged her duty to make follow up to the Defendants by reminding them to perform their contractual obligation in terms of the advanced loan. On the other hand, the Defendants were aware of what was going on to the court and opted not to appear. This is taken to be proof and inference that they had liability to all their outstanding and the interest thereon. This is supported by **section 80 of The Law and Contract Act, Cap. 345 [R. E. 2019]** which provides the liability of the surety is co-extensive with that of the principal debtor, unless it is provided otherwise by the contract.

Consequently, this court declares that the Defendants jointly and severally liable under the loan agreement to pay the Plaintiff the following;

1. That the plaintiff be paid sum of Tshs 446,991,055.97/= being the outstanding sum claimed from the Defendants;

2. That, the Plaintiff be paid interest rate of 7% per annum from the date it was due to the date of judgement and decree to the date of discharging the whole payment in full; and

3. Costs of this suit be borne by the Defendants.

It is so ordered.

Right of appeal is explained.




L. E. MGONYA

JUDGE

22/04/2022

Court: Judgement is delivered before Honourable F.H. Kiwonde Deputy Registrar in the presence of Mr. Martin George, Principal Officer of the Plaintiff and in the absence of the Defendants this 22nd April 2022.




L. E. MGONYA

JUDGE

22/04/2022