THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

LAND APPEAL NO. 55 OF 2021

(Originating from the District Land and Housing Tribunal for Mbeya at Mbeya Application No. 26 of 2018)

VICTORIA FINANCE PLC ..... APPELLANT

VERSUS

CHRISTOPHER UHAGILE ..... RESPONDENT

JUDGEMENT

Date of last order: 29/06/2022

Date of judgment: 15/08/2022

NGUNYALE, J.

The respondent CHRISTOPHER UHAGILE was a beneficiary of a loan facility from the appellant VICTORIA FINANCE PLC for agricultural purposes. According to the facts in record the parties signed a loan agreement on 21st January 2017 in which the respondent was to get a loan of 30,000,000/= and to repay the principal loan advanced and

interest in the tune of 38,400,000/=. The loan was for farming activities, the respondent was expecting to use the loan for growing paddy at Mbarali district. The respondent alleged that after signing the said loan agreement on 21st January 2017 he was promised that the money will be disposed to his bank account the next day, unfortunately, the same was deposited to his account on 9th February 2027. To his surprise the amount deposited was 26,100,000/= instead of 30,000,000/= which he received out of the expected time.

The respondent defaulted to pay the loan; such default made the appellant to instruct Adili Auction Mart to sell the house located at Ihanga Rujewa Mbarali District which was mortgaged as collateral by the respondent to secure the loan.

The respondent preferred Application No. 26 of 2018 in the District Land and Housing Tribunal for Mbeya at Mbeya (DLHT). The Tribunal on 26th day of May 2021 ruled in favour of the respondent as follows; -

"Hivyo maombi haya yamekubaliwa

Inaamriwa kwamba:

1. *Wadaiwa wasijihusishe kwa namna yoyote na nyumba hiyo ikiwemo kuuza, kuingia au kufanya lolote.*
2. *Mdai anapewa miezi saba kulipa deni la shilingi 26,100,000/= pamoja na riba ya kiwango cha mkataba*
3. *Kila upande ubebe gharama zake.*

Imeamriwa hivyo:"

The appellant was aggrieved with the decision of the DLHT he preferred the present appeal raising four grounds of appeal as follows; -

1. *That the trial Tribunal erred in law and fact by disregarding evidences adduced and tendered by the appellant witness which prove that the respondent is the one who breached the loan contract.*
2. *That the trial Tribunal erred in law and fact by issuing a verge and ambiguous judgment which does not state as to which period does the interest rate start to count. And the Tribunal ordered the respondent to pay the sum of Tshs. 26,100,000/= within seven months without justifying as to when the seven months start to run.*
3. *That the trial Tribunal erred in law and fact in giving the respondent seven months period to pay the loan arrears of Tshs. 26,100,000/= plus interest therein without any justification of period thereof from the respondent and the Tribunal itself.*
4. *That the Tribunal erred in law and fact in issuing a permanent injunction restraining the appellant from disposing off the suit premises while the same was security to cover the loan which the trial Chairman ordered the respondent to pay with the interest herein.*

The respondent was dully served but could not show appearance, following his non appearance it was ordered the appeal to be heard *ex parte* by written submission.

The appellant who was enjoying the service of Robi Simon Magaigwa advocate submitted that the respondent is the one who breached the loan agreement the trial Tribunal erred to rule that delay of disbursement of the loan amount to the respondent amounted to breach of contract. The

trial Chairman disregarded the evidence adduced by DW1 that the issue of signing the contract and disbursement of the loan does not happen together first the client sign the loan contract, disbursement follow later as they might be a technical error on the system or administration and the money are disbursed from head office Dar es Salaam so sometime the disbursement can delay and if the trial chairman could have analysed the evidence adduced by DW1 and PW1 could note that there is nowhere in the loan agreement that state that the money will be transferred to the respondent account soon after the signing of the loan agreement. It was the view of the appellant Counsel that the appellant did not breach the loan agreement based on the delay of loan payment.

The appellants submitted further that the respondent after being advanced with money he did not return the money but he accepted the same and continued in use of it in his agricultural activities as he aimed. The fact that he accepted the loan and used it for his agricultural purpose means that the respondent was very much aware that the loan agreement was valid and the appellant did not breach any term of the agreement.

If the respondent found that the loan was delayed he had an option to cancel the loan or reverse the loan to the appellant account. He had no complaint of the delay of the loan until when he defaulted to pay the

same. After default is when he opted to file the case claiming that the appellant breached the loan agreement.

The appellant Counsel went on to submit that DW1 testified during the trial that the respondent failed to reservice the loan due to the fact that his farm was invaded by wild animals who destroyed his crops hence he requested for rescheduling of the load. This evidence was not disputed by the respondent, the trial Tribunal could ask for restructuring of the loan which he is aware that the appellant breached it. The Tribunal errored in law and in fact for disregarding the above evidence tendered by the appellant hence reached to unjust decision.

On the second and third grounds of appeal the appellant submitted that perusal of the decree and judgment of the trial Tribunal the same are verge and ambiguous to the parties. The tribunal did not state as to when the interest starts to accrue as to from the date of judgment or date of issuing the loan. The trial Tribunal ought to be specific on its order so that the parties can be aware as to when the parties should start adhering with the order of the Tribunal and how much interest the respondent has to pay.

In respect of the fourth ground of appeal that the Tribunal erred in law and fact in issuing a permanent injunction restraining the appellant from

disposing the suit premise while the same was security to cover the loan which the trial Chairman ordered the respondent to repay the appellant with the interest herein. The permanent injunction was erroneous issued by the DLHT because the said house was a security to cover the loan advance to the respondent. The respondent has paid nothing so far so the appellant will have no security to attach and sale to recover the respondent loan arrears.

After a careful perusal of the records before the DLHT, the grounds of appeal and the submission of the appellant the central issues are **one,** whether the appellant breached the loan agreement with the respondent **two,** whether it was lawful for the DLHT to order permanent injunction to restrain the appellant to sale the house which was a collateral to the loan facility.

The DLHT was satisfied that there existed a loan contract between the appellant and the respondent, the contract imposed a contractual relationship between the parties. Since there was a contractual relationship, they are bound by an ancient rule that courts are not allowed to interfere with the contractual obligation of the parties as stated in the case of **General Tyre E. A Ltd vs HSBC Bank Plc** [2006] TLR 60. Similarly, in the case of **SME Impact CV & 2 Others vs. Agroserve**

Company Ltd, Civil Appeal No. 9 of 2018 (unreported) the Court cautioned about the prevailing trend of the loan defaulters to use the Courts to hide from their obligation to repay the loan.

In the present appeal the appellants complaints touches and concerns three categories **one**, breach of contract **two**, when interest starts to accrue **three**, and order of the DLHT to restrain the appellant from realizing the mortgaged house.

In her submission the appellant stated that she was not in breach of contract it is the respondent who breached the contract by defaulting to liquidate the loan. He submitted that the DLHT erred to find that the appellant breached the contract by delaying to give the loan to the respondent. Is true that the parties signed the loan contract on 21st January 2017 and the respondent received the loan amount on 9th February 2017, by simple calculation he received the money after nineteen (19) days from the date of signing the contract. It was the view of the appellant that the delay cannot amount to breach of contract because the respondent after receiving the money he never complained about the delay to get the same, still he had an option to cancel the agreement.

I take the words of the appellant that such a delay cannot amount to breach of contract because the appellant condoned to it by remaining silence after receiving the loan amount and continued to use the money for the intended purpose. To start complaining about the delay after defaulting to repay the loan is simply considered as an afterthought. There was no breach of contract on the side of the appellant, what would amount to breach of contract is disbursement of less amount of money against the contract or non-compliance of any of the terms in the agreement. In the contract they agreed that the respondent will get the loan of 30,000,000/= but the respondent was given 26,100,000/= Tshs but such variation is not the subject of this appeal. DW1 testified before the trial Court that the appellant received 26,100,000/= because the other amount was deducted as loan charges. In his own words he stated; -

> *"Mkopo huo ulikuwa na tozo tatu, Bima 1%, 2% ada ya mkopo na 10% akiba. Tozo hizi zinalipwa na mkopaji. Tozo alizilipa, zilikatwe kwenye mkopo wake. Jumla ya tozo ilikuwa shililngi 3,900,000/=. Kwa hiyo kiasi kilichoingia kwenye akaunti yake kilikuwa ni shilingi 26,100,000/="*

I already said that parties are bound by the obligations in the contract, in this case the parties are bound by the contract as they signed on 21st day of January 2017. In the very agreement the respondent received the loan of 30,000,000/= and he was to pay 38,400,000/=. In the circumstance where exist a written contract it is a legal principle that a written

agreement cannot be proved by words of mouth. Therefore, the parties are bound by the terms in the contract. The contract which was tendered as exhibit before the DLHT read in part; -

1. *0 Kufuatia maombi ya MKOPAJI (jina) CHRISTOPHER UHAGILE ya kukopeshwa kiasi cha shilingi 30,000,000/= (kwa maneno) MILIONI THELATHINI TU atatakiwa kurejesha mkopo wote pamoja na riba kiasi cha jumla ya shilingi 38,400,000/= kwa muda waliokubaliana na MKOPESHAJI.*
2. *0 Mkopo huu utarejeshwa kwa kipindi cha miezi ..... kuanzia tarehe ..... rejesho la kwanza mpaka tarehe ..... rejesho la mwisho.*
3. *0 MKOPAJI atarejesha mkopo huu kwa MKOPESHAJI jumla ya marejesho ikiwa ni mkopo pamoja na riba shilingi 38,400,000/= (kwa maneno) MILLIONI THELATHINI NA NANE LAKI NNE TU.*

In his testimony before the DLHT DW1 testified that the respondent took a loan of 30,000,000/= but in his account it was deposited 26,100,000 after deduction of the fees. The respondent did not cross examine this aspect of variation from 30,000,000/= to 26,100,000/= in the testimony of DW1. It is a settled principle of law that failure to cross examine an important aspect means what was said is true. It means existence of such fees and charges was a true fact.

The loan contract is intact and binds the parties, as I already stated the Court cannot be used to interfere with the contractual obligations of the parties by being mindful to the rule of sanctity of contract. In the present case the parties are bound by the terms they freely agreed to, they have

no option to diverge. It is settled law that parties are bound by the agreements they freely entered into and this is the cardinal principle of the law of contract. That is, there should be a sanctity of the contract as lucidly stated in **Abualy Alibhai Azizi v. Bhatia Brothers Ltd** [2000] T.L.R 288 at page 289 thus: -

> *"The principle of sanctity of contract is consistently reluctant to admit excuses for non-performance where there is no incapacity, no fraud (actual or constructive) or misrepresentation, and no principle of public policy prohibiting enforcement"*

With the same spirit of the principle of sanctity of contract and being mindful with the clauses of the agreement quoted above I have no reason to rule in favour of the respondent. The respondent is obliged to perform the contract as they entered with the appellant on 21st January 2017.

He is bound to perform the contractual obligations which he willingly signed on 21st January 2017 with free will. He is in breach of contract by defaulting to repay the loan, the Court is expected to give proper reliefs in the circumstance of breach of contract.

The contract terms as quoted above specify that the respondent ought to pay 38,400,000/= but the duration of payment was not stated in the contract. In the terms quoted about item No. 2.0 was left blank. The testimony of DW1 is to the effect that the contract was of seven (7)

months, the appellant had four (4) months grace period and he was to start paying the fifth, sixth and seventh months. The respondent in his testimony was not disputing that he was to pay such amount in such period stated by the DW1. The appellant his complaint in the grounds of appeal was about when the interest starts to accrue and when the payments were to be made because the DLHT could not specify. I am in agreement with him that the DLHT gave a very general order which may cause some difficult in execution, the anomaly will be rectified indue course. In my view I prefer to be guided by the contract signed by the parties and the evidence I noted above. Because the contract was signed on 21st January 2017 the amount of 38,400,000/= ought to be paid within seven months (7) from the date of signing the contract. It means the respondent ought to have paid such amount by third week of August 2017 to reflect seven months from the date the parties signed the contract. Item No. 9.0 of the loan contract provides for penalty in case of delay of payment of the loan. The item reads; -

> *'Endapo MKOPAJI atashindwa kulipa kwa mpango ulioelezwa katika JEDWALI LA MALIPO ambayo ni sehemu ya mkataba huu (repayment schedule) atakuwa akitozwa faini ya nusu asilimia moja (0.5) ya rejesho kwa kila siku anayochelewesha'*

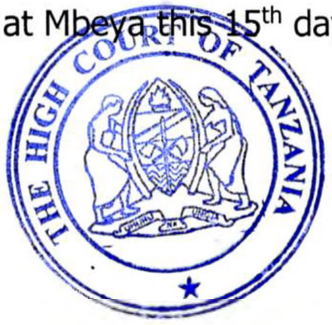
The last complaint of the appellant was that the DLHT erred to enter permanent injunction to restrain the appellant to realize the property

which was put as security to the loan by the respondent. The appellant submitted that said house was as security to the loan purposely to be sold in case the respondent default to pay the loan. The order of the DLHT prevent the appellant to exercise her right to attach and sale the same for recovering the loan.

This complaint is simple, it will not take time to settle. It has already been ruled that the courts should not be used by loan defaulters to hide themselves from discharging their rights and obligations under the contract. Guided by the said principle I am settled in my mind that the DLHT erred to grant such order, to leave such order to stand is as good as interfering the sanctity of the contract. Therefore the order to restrain the appellant to realize the loan security is set aside.

In the end result, I am satisfied that the trial Court erred to order payment of 26,100,000 plus interest which was not specified. The respondent is ordered to pay 38,400,000/= to the plaintiffs plus penalties which accrue from 22nd day of August 2017 to the date of payment and litigation costs. Appeal allowed.

Dated at Mbeya this 15th day of August 2022.



D. P. Ngunyale
Judge