

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

**CIVIL CASE NO. 214 OF 2021**

**MOHAMMED ENTERPRISES (TANZANIA) LIMITED ..... PLAINTIFF**  
**VERSUS**  
**JUSTICE ADEODATUS RUGAIBULA ..... DEFENDANT**

**EX-PARTE JUDGMENT**

13<sup>th</sup> December, 2022 & 13<sup>th</sup> February, 2023

**KISANYA, J.:**

The Plaintiff, Mohammed Enterprises Limited filed a suit against the defendant, Justice Adeodatus Rugaibula claiming for the following reliefs:

- (a) Payment for the principal amount of TZS 460,000,000/- due on Defendant.*
- (b) Payment of commercial interest of 12% at commercial rate on the principal sum from the date the said sums became due till full and final payment.*
- (c) Payment of general damages as shall be assessed by the Honourable Court.*
- (d) Interest of the decretal sum at court rate from the date of judgment till full and final payment;*
- (e) Costs of the suit.*
- (f) Any other relief(s) the Honourable Court may deem fit and proper to grant.*

I find it apposite to commence the judgment by setting out the factual background of this suit. It is stated in the plaint that the plaintiff and defendant entered into a loan agreement and agreed that the defendant would repay the loan within six months upon receipt of the loan. In compliance with the agreement, the plaintiff claims to have advanced the loan amount of TZS 460,000,000/= to the defendant. It is alleged that the defendant failed to pay back the loan and that despite the demand, the defendant neglected to heed to the same, thereby leading to this suit for the foresaid reliefs.

The defendant was duly served with the plaint. He filed his written statement of defence out of the time prescribed by the law without leave of the Court. On that account, this Court struck out the defendant's written statement of defence. Being guided by Order VIII, Rule 14(1) of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC), the Court ordered the hearing to proceed *ex-parte* and thus, this *ex-parte* judgment.

When this matter came up for hearing, it was ordered that the evidence in chief of the plaintiff's witness (es) would be conducted by way of witness statement. In proof of the suit, the plaintiff filed the witness statement of one witness namely, Mr. Mohamed Anwer Ali Rashid.

At all material times, the plaintiff enjoyed the legal services of Ms. Neema Mahunga, learned advocate.

Mr. Mohamed Anwar Ali Rashid testified as PW1. His witness statement was admitted to form part of his evidence in chief. PW1 testified that he was the Chief Operations Officer of the plaintiff and that his duties include, handling the plaintiff's transport division. He told the Court that he knew the defendant because he (defendant) had transport dealings with the plaintiff.

It was PW1's testimony that the defendant requested for a loan of TZS 460,000,000/= from the plaintiff on the condition that the loan would be paid within sixty days from the date of disbursement. He went on testifying that the defendant's request was agreed by the plaintiff as the duo were doing different business and it was not the first time the defendant made such request and honour his premise.

PW1 stated on oath that, on 24<sup>th</sup> June, 2020, the plaintiff disbursed TZS 460,000,000/ (in cash) to the defendant. He told the Court that the defendant signed a petty cash voucher acknowledging receipt of the loan and that the plaintiff's director who approved the said loan signed the said voucher with understanding that the loan would be paid within 60 days from 24<sup>th</sup> June, 2020. To supplement his oral testimony, PW1 tendered the petty cash voucher and

written statement of defence by the defendant which were admitted in evidence as Exhibit P1 and Exhibit P2, respectively.

PW1 further testified that the defendant did not pay the loan with sixty days as agreed and that when the latter was reminded to effect payment of the loan, he gave empty promises without heed to the same. On the foregoing evidence, PW1 prayed for judgement and decree against the defendant as per reliefs stated in the plaint.

In determining this suit, I am guided the principle governing civil cases as provided for under sections 110(1) and (2), and 111, 112, of the Law of Evidence Act, Cap. 6, R.E. 2022, that, a person alleging on existence of certain facts is duty bound to prove the same on a balance of probabilities. See for instance, the case of **Berelia Karangirangi vs. Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 CAT (unreported) where it was held that:

*"We think it is pertinent to state the principle governing proof of cases in civil suits. The general rule is that, he who alleges must prove...it is similar that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on the balance of probabilities."*

Having the foregoing principle in mind and examined the plaint and evidence on record, the issue is whether the plaintiff had proved the following

facts deposed in the plaint: One, that the plaintiff and defendant entered into a loan agreement; two that defendant breached the loan agreement; and three, that the plaintiff is entitled to the reliefs sought in the plaint. As indicated earlier, the standard of proof is on the balance of probabilities.

As for the fact that the plaintiff and defendant entered in a loan agreement, PW1's evidence suggest that the parties' relationship was based on oral agreement, which in law, is binding. In that regard, I am guided by the case of **Catherine Merema vs Wathaigo Chacha**, Civil Appeal No 319 of 2017 (unreported) in which the Court of Appeal cited with approval the case of **Combe Vs. Combe** [1951] 1 All E.R. 767, where Denning, L.J (as he then was) had this to say on the oral agreement:

*"The principle, as I understand it, is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken at him his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself had so introduced, even*

*though it is not supported in point of law by any consideration, but only his word."*

The principle derived from the above decision is that, an oral agreement is made when one party promises or gives assurance to the other party, by words or conduct, that, he intends to create legal relationship and the other party acts on the said words or conduct.

In the instant case, PW1 testified that the defendant requested for a loan of TZS 460,000,000/= from the appellant on the condition that he would repay the same within sixty days from the date of disbursement. It was also stated that the plaintiff granted the defendant's request as the parties were doing different business. It is also in evidence that, in compliance with the agreement, including the defendant's promise to repay the loan, the plaintiff disbursed TZS 460,000,000/= to the defendant on 24<sup>th</sup> June, 2020. According to Exhibit P2, the defendant admitted receipt of TZS 460,000,000/=. Further to this, the petty cash voucher (Exhibit P1) shows that the said sum of TZS 460,000,000 was given to the defendant "as LOAN to be paid in 60 Days". In that regard, I am satisfied that it was proved on the balance of probabilities that the plaintiff and defendant entered into a loan agreement.

On the plaintiff's allegation that the defendant's breached the loan agreement, PW1 stated on oath that the loan was given on the condition it would be repaid within sixty days as indicated in Exhibit P1. In that regard, the defendant was required to honour his promise by paying the loan within sixty days as agreed. This is also pursuant to section 37(1) of the Law of Contract Act [Cap. 345, R.E. 2019] which provides:

*"37 (1) The parties to a contract must perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act or of any other law.*

It is in evidence that, the defendant did not pay the loan within the time agreed in the contract. Apart from the evidence of PW1, the defendant's averment in Exhibit P2 that he was ordered by the plaintiff to deliver the money advanced to him to the third party suggests the said amount was not repaid. Considering further that the defendant did not disclose the name of the third party and prove to have paid him (the third party), I hold the view that it has been established that the defendant breached the terms of the loan agreement.

Next issue for consideration is whether the defendant is entitled to the reliefs sought in the plaint. Having resolved herein that the defendant breached the terms of the loan agreement, the plaintiff is entitled to compensation for

loss or damage caused to her and which arose from such breach. I am fortified by the provision of section 73 of the LCA which is quoted hereunder, for clarity.

*"73(1) When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*

*(2) The compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*

*(3) When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.*

*(4) In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account."*

Having in mind the above position, the first relief for payment of principal amount of TZS 460,000,000/= due on the defendant. It is clear that the said



relief is in the form of special damages. The settled law requires the special damage to be proved. As indicated herein, PW1 and Exhibit P2 shows that the defendant has not repaid TZS 460,000,000/ which was advanced to him. It follows therefore that the claim for principal amount has been proved. Thus, the plaintiff is entitled to be paid TZS 460,000,000/=.

With respect to the prayer for interest of 12% at Commercial rate on the principal sum from the date the said sums became due till full and final payment, no evidence to suggest that the plaintiff and defendant agreed that failure to pay the loan within the prescribed time would attract interest of 12% at commercial rate. For that reason, the plaintiff is not entitled to the interest on the principal amount before the date of institution of this case.

On the prayer for general damages, I am alive to the position that general damages are awarded at the discretion of the trial court after consideration and deliberation on the evidence on record able to justify the award. See for instance the case of **Antony Ngoo and Denis Antony Ngoo vs Kitinda Kimaro**, Civil Appeal No. 35 of 2015, CAT at Arusha (unreported) in which the Court of Appeal underscored that:

*"The law is settled that general damages are awarded by the trial court after consideration and deliberation on the evidence on record able to justify the award. The judge has*

*discretion in awarding general damages although the judge has to assign reasons in awarding the same."*

In his evidence, PW1 did not give evidence to warrant the Court granting the general damages. Thus, the prayer for general damages is not granted.

As for relief on interest on decretal sum from the date of judgment till full and final payment, Order XX, Rule 21(1) of the CPC empowers the trial court to award interest at the rate of 7% per annum from the date of judgment until satisfaction of the decree or such other rate not exceeding 12% agreed upon by the parties before or after the delivery of judgment. Therefore, I proceed to order that the decretal sum shall attract interest of 7% per annum from the date of judgment until satisfaction of the decree.

On the relief for costs of the suit, the law is settled that costs follows the event. Having considered that the plaintiff has proved his case, I award costs in her favour.

In the upshot of the foregoing, the plaintiff case is found meritorious. Consequently, the judgment and decree are entered in favour of the plaintiff as follows:-

1. The defendant shall pay the Plaintiff the sum of TZS 460,000,000/=.

2. The defendant shall pay interest on the decretal sum in paragraph 1 herein at the rate of 7% per annum from the date of judgment till payment in full.
3. The defendant shall pay costs of this suit.

It is so ordered.

DATED at DAR ES SALAAM this 13<sup>th</sup> day of February, 2023.



S.E. KISANYA  
**JUDGE**  
13/02/2023