

**IN THE HIGH COURT OF TANZANIA  
COMMERCIAL DIVISION  
AT DAR ES SALAAM**

**COMMERCIAL CASE NO.49 OF 2011**

**STANBIC BANK  
TANZANIA LIMITED.....PLAINTIFF**

**VERSUS**

**JOHN ROBISON KAYUNI, trading as  
JAE MOTORS AND GENERAL SUPPLIES  
COMPANY.....DEFENDANT**

Date of hearing: 22/08/2011

Date of the last Order: 22/08/2011

Date of Judgment: 23/09/2011

**JUDGMENT EX PARTE**

**MAKARAMBA, J.:**

This is Judgment ex-parte on the suit the Plaintiff lodged in this Court on 7<sup>th</sup> day of June, 2011 claiming against the Defendant for the following:-

- (1) Judgment in favour of the Plaintiff against the Defendant for TZS 178,417,037.63/=*
- (2) Interest on the aforesaid amount accruing at the Plaintiff's default interest rate of 28% per annum from the date of institution of this suit until Judgment or sooner payment.*
- (3) Interest as above on the decretal sum post-judgment*
- (4) Such further orders or reliefs this Hon. Court deems just and equitable.*

(5) *Costs of this suit.*

The facts of this suit briefly as could be gathered from the Plaintiff's plaint are that the Plaintiff is a limited liability company licenced to carry on the banking institution business and the Defendant is a natural person. On the 3<sup>rd</sup> day of October 2007, the Plaintiff availed Credit facility to the Defendant for the purpose of financing the Defendant to acquire two brand new SCANIA buses upon the terms and subject to the conditions of the Plaintiff's facility letter dated 3<sup>rd</sup> day of October 2007 which were duly accepted by the Defendant on the 5<sup>th</sup> day of October 2007. Subsequently on or about the 1<sup>st</sup> day of September 2008, the Plaintiff and the Defendant executed Lease Agreement in connection with the aforesaid Credit Facility. The Plaintiff claim that the Defendant is in breach of his repayment obligation under the aforesaid facility in that the Defendant has defaulted in paying the Plaintiff the monthly amounts due under the Lease Agreements as a result of which the Plaintiff is entitled to recover the full balance outstanding from the Defendant.

The Defendant having been duly served with a plaint by the Plaintiff did not bother to enter defence by filing written statement of defence or to enter appearance at any stage of this suit. The Plaintiff prayed to proceed by way of *ex-parte* proof which this Court duly and hence this judgment.

In this suit the Plaintiff is represented by Mr. Kesaria, learned Counsel. On the day set for exparte proof of the suit, the following issues were framed and recorded by this Court for the determination of this suit, namely:-

***1. What were the terms and conditions of facility availed by the Plaintiff to the Defendant;***

***2. What if any is the Defendant's indebtedness to Plaintiff;***

***3. What relief is the Plaintiff entitled to***

In support of his case the Plaintiff called only one witness, **MR. JOHN LUKIKO** who testified as **PW1**. In his testimony, **PW1**, a Principal Officer at Stanbic Bank who has been a Recovery Manager for four years stated that he knows Mr. John Robinson Kayuni who was one of the bank's customers and that he had asked for a lease in terms of two vehicles. PW1 amplified that a lease is a loan given out in terms of asset finance facility and in this case motor vehicles, which lease the Bank granted to the Defendant. PW1 testified further that the **credit facility letter** was signed by both Mr. John Kayuni and Stanbic Bank and tendered it in evidence which this Court admitted and marked as **Exhibit P1**.

PW1 testified further that the amount of the credit facility advanced by the Bank to the Defendant was USD 378,000, purposely for financing the acquisition of two brand new SCANIA Marco Polo buses. PW1 testified further that the payment period of the facility was forty eight (48) months. PW1 testified further that the Defendant has not repaid the facility in full but the Plaintiff has been receiving some irregular payments from the Defendant and that the Defendant has managed to effect payment for only one bus and one bus has remained unpaid for. PW1 testified further that the Defendant did not honour payments according to the terms stipulated in the credit facility letter, rather the Plaintiff has been receiving irregular

payments on which the same has not been paid in full. PW1 testified further that it is the bank's policy that once someone has defaulted, the bank has to call auctioneers to repossess the buses. PW1 testified further that Bank managed to repossess one bus while the other bus was found at the SCANIA yard along Pugu Road. PW1 testified further that the Bank sold one bus and recovered the entire amount for one bus while the second bus was returned to Mr. John Robison Kayuni.

PW1 testified further that the **lease agreement** as entered by both parties was signed by STANBI BANK TANZANIA LIMITED and JOHN ROBINSON KAYUNI t/a JAE MOTORS AND GENERAL SUPPLIES COMPANY. PW1 tendered the Lease Agreement in evidence which this Court admitted and marked as **Exhibit P2**. PW1 testified further that the registration number of the bus which was repossessed and sold by the Bank was **T 642 AWD** and that the registration number of the second bus which is still in the possession of the Defendant is **T 637 AWD**. PW1 testified further that there is a **provisional statement** which shows an outstanding amount of the facility up to the date of filing this suit, which PW1 tendered in evidence and this Court admitted and marked as **Exhibit P3** showing the current total liability as TZS **212,190,719.09**. PW1 prayed before this Court that the Plaintiff be paid this outstanding amount which the Defendant still owes the Bank with an interest of 19.5% and costs of this suit.

I shall now, having summarized the testimony of PW1 the only witness in this suit, turn to consider the issues as framed and recorded by this Court for the determination of this suit.

The first issue is *what were the terms and conditions of facility availed*. It was the testimony of PW1 that the Bank has advanced to the Defendant a credit facility amounting to USD 378,000 for financing two brand new SCANIA MARCO POLO busses and that the payment period was set at forty eight (48) months. AS could be gathered from the testimony of PW1 up to the date of the filing of this suit the Defendant had defaulted on the credit facility for he had paid for only one bus of the two buses for which he took the loan from the Bank to finance their acquisition. In his closing submissions, Mr. Kesaria, learned Counsel for the Plaintiff submitted that in any event of default, the Defendant is liable according to the terms and conditions provided stipulated in clause 12 of the Lease Agreement. Mr. Kesaria submitted further that the Plaintiff is therefore entitled to immediate judgment as it appears under clause 12.2.1 and clause 12.2.2 of the Lease Agreement. The Defendant after having been executed the Lease Agreement, he has agreed to be bound by the terms and conditions specified therein, Mr. Kesaria surmised.

I have examined the terms and conditions stipulated in the Lease Agreement, **Exhibit P1**, which show that the repayment of the lease had to be made monthly. PW1 told this Court however, that, the Defendant repaid the facility irregularly and has managed to pay only for one bus. In such circumstances this Court finds that the Defendant has defaulted on the loan agreement as he has failed to honour the terms and conditions as stipulated both in the Lease Agreement, **Exhibit P1** and the credit facility letter, **Exhibit P2**. The first issue is therefore answered in the affirmative.


The second issue is *what if any is the Defendant indebtedness to the Plaintiff*. As per the credit facility letter, **Exhibit P1** and on the testimony of **PW1**, this Court finds that the Plaintiff's bank advanced USD **USD 378,000** (Say Three Hundred and Seventy Eight Thousand Dollars only) to the Defendant, which attracted interest at the rate of 19.5% per annum. However, I have discovered that there are some arithmetical errors in **Exh.P1** which shows the amount advanced by the Bank to the Defendant as "**USD 378,0000**" instead of "**USD 378,000**". Despite this error, however on the testimony of **PW1**, there is no doubt that the correct figure should be **USD 378,000**. On the provisional statement, **Exhibit P3**, the current total liability for the second bus with registration number **T 637 AWD**, which the Defendant is required to pay to the Bank has accumulated and stands at **TZS 212,190,719.09** (say Two Hundred and Twelve Million One Hundred Ninety Thousand Seven Hundred Nineteen Shillings and Nine Cents Only) being the amount of the indebtedness of the Defendant to the Plaintiff and thus resolving the second issue in the affirmative as well.

The last issue is *to what relief is the Plaintiff entitled to*. As submitted by Mr. Kesaria, the Plaintiff being a commercial bank earning profits from its customers and the Defendant being among the Plaintiff's Bank customers, he has to pay the outstanding amount with the accumulated interest. The prayer of the Plaintiff in the Plaint is **TZS 178,417,037.63/=** which amount this Court accordingly grant with incidental costs of this suit.


In fine, judgment and decree is hereby entered against the Defendant for the following reliefs:-

- (1) Payment of the total amount of TZS 178,417,037.63/= being the outstanding amount.***
- (2) Interest on the amount in (1) above accruing at the Plaintiff's default interest rate of 28% per annum payable from the date of the institution of this suit until judgment.***
- (3) Interest at the court's rate of 12% per annum on the decretal sum post-judgment until payment in full.***
- (4) Costs of this suit.***

Order accordingly.

  
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**R.V. MAKARAMBA**  
**JUDGE**  
**23/09/2011**

Judgment delivered in Chambers this 23<sup>rd</sup> day of September, 2011 in the presence of Mr. Maguso, Advocate for the Plaintiff and Exparte for the Defendant.

  
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**R.V. MAKARAMBA**  
**JUDGE**  
**23/09/2011**

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