

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

COMMERCIAL CASE NO. 54 OF 2016

MICHAEL NGAREKU SHIRIMA PLAINTIFF

VERSUS

AFRICAN BANKING CORPORATION (T) LIMITED DEFENDANT

BY WAY OF COUNTER CLAIM

AFRICAN BANKING CORPORATION (T) LIMITED PLAINTIFF

VERSUS

ROMBO MILLERS COMPANY LIMITED 1ST DEFENDANT

MICHAEL NGAREKU SHIRIMA 2ND DEFENDANT

MICHAEL NGAREKU SHIRIMA (as administrator of estate

of late Triza Victoria Shirima) 3RD DEFENDANT

VICENT NGALEKU SHIRIMA 4TH DEFENDANT

Date of Last Order: 12/10/2020

Date of Judgement: 11/12/2020

JUDGEMENT

MAGOIGA, J.

The plaintiff, MICHAEL NGAREKU SHIRIMA by way of a plaint instituted the instant suit against the above named respondent praying for this court to be pleased to give judgement and decree in the following orders, namely:




- i. A declaratory order that the plaintiff fully repaid the loan extended to him by the defendant and the defendant already discharged the mortgage issued by the plaintiff.
- ii. A declaratory order that the plaintiff has never mortgaged its shares in Tanzania Breweries Limited to secure the loan to RMC.
- iii. A declaratory order that the act of the defendant advising the Dar es Salaam Stock Exchange to freeze any dealing on the plaintiff's TBL shares amounted to defamation.
- iv. An order that the defendant to write to the plaintiff an unequivocal apology and an admission that the plaintiff fully settled and that his TBL shares are free from any encumbrances in favour of the defendant; and
- v. An order that the defendant to communicate to central police station, Dar es Salaam Stock Exchange, Solomon Stockbrokers Limited, Tanzania Securities Limited and Tanzania Breweries Limited being addressees of its defamatory letter unequivocally retracting the false allegations and the demand on Dar es Salaam Stock Exchange to freeze transaction on the plaintiff's TBL shares.



- vi. Payment of general damages to be assessed by the court as pleaded in paragraph 3 and 13 of the plaint.
- vii. Costs of the suit
- viii. Any other relief this Honourable court may deem fit and just to grant in favour of the plaintiff.

Upon being served with the plaint, the defendant filed a written statement of defence disputing all reliefs claimed by the plaintiff and simultaneously raised a counter claim against the four defendants above in the counter claim praying for judgement and decree in the following orders, namely:-

- a. A declaration that the 1st, 2nd, 3rd, and 4th defendants are in breach of their repayment obligations on the loan.
 - b. An orders directing 1st, 2nd, 3rd, and 4th defendants to repay the entire loan amount of USD.2,993,867.10 with interest at Commercial rate from the date when same fell due to the date of judgement as per their undertaking in the loan arrangements, and their respective guarantees.
 - c. For interest at Court's rate on the decretal amount from the date of judgement to date of full and final payments.
- 

- d. For declaration that the 2nd defendant has no lawful rights over the share certificates with respect to 75,609 Tanzania Breweries shares that 2nd defendant had pledged as securities for the outstanding loan issued by plaintiff to 1st defendant.
- e. For orders of this honourable court directing the 2nd defendant to hand over to the plaintiff the share certificate with respect to 75,609 Tanzania Breweries Shares that were pledged as security for the outstanding loan.
- f. For orders permitting the plaintiff to sell 75,609 Tanzania Breweries Shares to recover the outstanding loan amounts of USD.2,993,867.10 with interest at commercial rate from the date same fell due to the date of judgement as per the 2nd defendant's personal guarantee on the loan
- g. For costs of this suit.
- h. Any other order the honourable court will deem just and fit to grant.

Basically in this suit, parties' claim against each on the loan agreements dating back to 2004 and 75,609 shares with Tanzania Breweries Limited pledged as securities by the 2nd defendant in the counter claim to secure the



loan advanced by the plaintiff in the counter claim and the guarantors of the alleged loan.

It should be noted at the outset that this suit was heard by three judges but for reasons as recorded in the proceedings were unable to conclude the hearing, and as such, this suit was re-assigned to me for its completion as required under Order 18 Rule 10 (1) of the Civil Procedure Code,[Cap 33 R.E.2002].

At the beginning of the trial, therefore, the following issues were framed and agreed for the determination of the suit and counter claim, namely:-

1. Whether the defendant released share certificates to the plaintiff.
2. Whether the defendant's action to report to the police and Dar es Salaam Stock Exchange on alleged loss of the share certificate was justified.
3. Whether the act of defendant to advise Dar es Salaam Stock Exchange to freeze dealing on plaintiff's TBL shares and other acts like reporting to the police and series of events against the plaintiff in any way capable of injuring or actually injured the reputation of the plaintiff.



4. Whether prior to the defendant extending loan to the plaintiff, the plaintiff obtained loan facility for the defendant and pledged the TBL share certificate as security.
5. Whether the 2nd, 3rd, and 4th defendants in the counter claim issued/executed any bond to secure a loan extended to the 1st defendant on 11/11/2005.
6. If the answer to the 5th issue is in the affirmative, whether the said bonds extended to other/subsequent loans.
7. Whether the plaintiff in the counter claim continued to advance loans to the 1st defendant between 30th August, 2010 to 28th March, 2012 under any agreement.
8. Whether the 1st defendant in the counter claim breached any of the terms of the loan extended to the 2nd defendant in the counter claim.
9. Whether the plaintiff in the counter claim breached the terms of the loan agreements, and if so, in what manner.
10. What reliefs are the parties entitled to.

The plaintiff in the main suit and 2nd defendants in the counter claim were at all material time enjoying the legal services of Mr. Albert Lema, learned advocate. The defendant in the main suit cum plaintiff in the counter

claim was advocated by Mr. Peter Kibatala, learned advocate, and whereas Mr. Elvaison Maro, learned advocate was advocating for 1st, 3rd and 4th defendants in the counter claim. Parties called up several witnesses to prove their respective cases.

The plaintiff in proof of his case called two witnesses. The first witness was Mr. MICHAEL NGALEKU SHIRIMA- to be referred in these proceedings as PW1. PW through his witness statement adopted as his testimony in chief told the court that, in 2004 he borrowed money referred as Loan Facility No.M050 from the defendant and as security he mortgaged in favour of the defendant 75,609 shares which he owns in Tanzania Breweries Limited (herein after to be referred as '**TBL**') and 108,702 shares which he owns in Swissport. PW1 went on to tell the court that the relevant shares certificates were deposited with the defendant along with relevant share transfer forms dated 18th October, 2014. PW1 tendered in court a mortgage transfer of shares form dated 13/10/2004 which was admitted and marked **exhibit P1**.

PW1 went on to tell the court that, to his memory, the defendant never issued a written agreement for the loan advanced to him, but same was



granted on verbal request and submission of his shares certificates as security to the defendant.

PW1 further testimony was that after repaying the loan, he instructed his stock broker (Tanzania Securities Company Limited) to submit Mortgage Release Forms dully signed by him and the defendant to Dar es Salaam Stock Exchange (to be referred hereinafter as '**DSE**'). PW1 went on to testify that, later on, he discovered that the Mortgage Release Form was subsequently altered by his stock broker without his knowledge to cancel out reference to the TBL shares and leave Swissport shares only.

PW1 told the court further that, in the years from 2005 to 2009, the defendant extended a different line of credit from the loan extended to the 1st defendant in the counter claim, which were issued under six facility letters. That out of the six facility letters, only three letters referred as FK/CM/BS dated 11th November,2005 (LO29), FK/CM/BS dated 30th January 2006 (LO31) and FK/CM/BS dated 15th March, 2006 (LO34) that he pledged his TBL and Swissport shares to the defendant. PW1 tendered a letter with ref:FK/MC/BS dated 1/11/2005 which was admitted in evidence and marked **exhibit P2**. Also PW tendered in



evidence mortgage request form addressed to the lender- African Bank Corporation dated 18/10/2004 as **exhibit P5**.

PW1 told the court that after his shares were released, following three facility letters; IM/CM/BS dated 19th December,2006, ABCT/CR/111/07 dated 19th October,2007 (LO72) and ABCT/CR/1013/09 dated 12th August 2009 (LO121) did not include/indicate that he had pledged his shares in favour of the defendant. In the circumstances, PW1 told the court that, the six facility letters given by the defendant to RMC were not securities to be continuous and not to carry forward the fundamental terms and conditions as well as rights and obligations of the parties as they specifically not provided that way.

PW1 went on to tell the court that, although his shares were mentioned to be pledged, but he did not create any mortgage on them in favour of the defendant to entitle the defendant to exercise any power of sale for the debt extended to RMC or at all. PW1 told the court that the impugned shares certificates were deposited and received by the defendant in 2004 and were discharged by the defendant in 2007. It was further testimony of PW1 that after paying the whole amount extended to him, the defendant returned all his share certificates to him and on 19th

December, 2013, the defendant sent an email by its Credit Administration Manager to his broker Tanzania Securities Limited, confirming that indeed his TBL shares were not mortgaged with the defendant and that the plaintiff used the same shares certificate of TBL to obtain a loan from a different bank named Bank of Africa (BOA) which was extended through facility reference No. PDO/CDT/MMB/558/09 dated 25th June 2009, something which could not be possible if the same were withheld by the defendant. PW1 tendered two letters dated 18th May 2006 and 1st June 2006 collectively as **exhibits P3a-b**. PW1 as well tendered in evidence mortgage release form dated 25/06/2007 as **exhibit P6**. PW1 as well tendered in evidence a letter Ref. BOATC/AR/07/03 dated 02/07/2009 which was admitted and marked as **exhibit P4**.

PW1 went on to tell the court that, despite the truth above, the defendant wrote two letters with Ref. ABC/LDE/1102/2015 dated 14th December, 2015 and with Ref. ABC/LD/0217/2016 dated March 2016 to the Chief Executive Officer of the Dar es Salaam Stock Exchange and misrepresented that, the loan to RMC was partially secured by a mortgage created by him in favor of the defendant of 75,609 TBL and advised the Dar es Salaam Stock Exchange that the defendant has never

released the share certificate and its interests are still registered on the shares and that the share certificates (if any) held by him were fraudulently obtained from the defendant. PW1 pointed out that, on 22nd December 2015 exactly two years after confirmation, the defendant reported to the Central Police Station in Dar es Salaam that, on 21st December, 2015, the share certificates for TBL held by her had been lost/stolen. PW1 went on to point out that, as that is not enough, the defendant again on 8th January, 2016 again misrepresented to TBL by submitting to TBL an application for replacement of Lost, Misplaced, Destroyed and Depository Receipt' without disclosing that, the share certificates have been delivered to me. PW1 tendered in evidence police report of lost/stolen certificate of shares dated 22/12/2015 which was admitted in evidence as **exhibit P9** and application for replacement of lost/destroyed depository receipt but according to the form what was lost was TBL share certificates in evidence which was admitted as **exhibit P11**. PW1 as well tendered in an application to amend share certificate said to be done by him but which was presented by Solomon Stock Brokers which was admitted as **exhibit P10**. PW1 also tendered in evidence copy of his passport which expired in 2007 for purposes of



identification as **ID6**. Equally PW1 tendered in evidence a letter dated 14th December, 2015 as **exhibit P7**.

Further, PW1 told the court that, on 3rd February, 2016, the defendant through its brokers, Solomon Stockbrokers Limited submitted to Dar es Salaam Stock Exchange documents purportedly signed by him seeking amendment of the Depository records to permit a transfer to the defendant. PW1 told the court that, the false allegations communicated to parties', was careless, defamatory, directly imputes criminal and fraudulent conduct of his testimony. In addition to that, PW1 told the court that, the act of the defendant's demand upon the Dar es Salaam Stock Exchange to freeze any dealings on the plaintiff's TBL share has paralyzed his right to free trade in the shares and this has resulted into loss of expected income and he deserve payment for general damages quantified to Tshs.5,000,000,000/=. PW1 tendered in evidence a letter addressed to DSE dated 06/03/2016 as **exhibit P8**.

Under cross examination by Mr. Kibatala, PW1 said that, reporting incidence to police depends on the circumstances and the investigation that they have to carry. PW1 shown exhibit P9 and said he got it from his broker. PW2 said that police have never contacted him on this issue. PW1

told the court that, he has several shares in several companies and he is a man of integrity. PW1 said he remembers none of the companies he has shares ever asked him to surrender his shares. PW1 shown exhibit P7 and said he is not aware if same was published or not. As to exhibit P5, PW1 said he got it from the broker who did certification of the documents through him. PW1 did not call a witness from DSE to come to testify on his behalf.

PW1 pressed with more questions told the court that he discharged all loan taken from the defendant and in proof of this he tendered exhibit P5. PW1 when shown exhibit P11 said he has 90,100 shares and admitted that the number differs with the number stated in the witness statement.

PW1 when recalled for further testimony in chief told the court that he did not trade freely with his shares because his shares were pledged against previous loan taken from defendant. When shown exhibit E 1 (d) dated 01/06/2006 he stated that he does not remember what the defendant is claiming against him because the personal loan from the defendant was secured by Treasury bills amounting to Tshs.82.3 millions, hence, no reference to the TBL shares. PW1 when shown term loan facility dated 20/12/2006 of Tshs.500,000,000.00 for purchase of Akiba Commercial

Bank shares said that, the security was cash deposit and no reference was made to the TBL shares. PW1 when shown exhibit P11 stated that it shows he is the owner but in actual sense was drawn by Solomon Brokers who are not his brokers for same do not bear his signature, hence, even variance of shares cannot be explained by him. PW1 when shown exhibit P4 told the court that it was written to him at his capacity as Chairman of Precision Air as acknowledgement of share certificate for TBL shares as security for a loan from the defendant. The ABC loan, according to PW1, was of 2004 and the defendant's loan was of 2009. When PW1 further shown exhibit P6 said it was for releasing of the shares tendered to his broker for submission to DSE by his broker but which showed there were deletions in the form and subsequently, there was another form superseding exhibit P6.

Further, PW1 shown exhibit P5 and said he only signed it but other details were inserted by his broker. PW1 insisted he offered TBL shares to the defendant to 2004 loan but not otherwise.

The next witness for the plaintiff was Mr. PERFECTUS JOSEPH URIO-to be referred as PW2. Through his witness statement adopted in these proceedings as his testimony in chief told the court that, he works as

Head of Business Development of the plaintiff's stock brokers (Tanzania Securities Ltd) since 1998. According to PW2, in 2004 being a broker of the plaintiff he registered the mortgage of 75,609 shares of TBL and 108,721 shares of Swissport. PW2 said he submitted DSE mortgage request forms dated 18/10/2004 which was eventually fully registered. PW2 told the court that, in that loan the relevant certificate of shares were deposited with the defendant along with shares transfer form. PW2 went on to tell the court that in 2007, the plaintiff instructed to discharge or release his mortgage shares in Swiss Port and TBL from DSE, a job he did as instructed but upon submitting the forms the officer of DSE, one Emmanuel Nyalali told PW2 that he cannot release the certificates because part of the loan has not been paid. PW2 went on to tell the court, he was advised by Emmanuel Nyalali he followed up the matter and it was agreed that the Swissport shares be used to pay the outstanding amount to the defendant and Mr. Nyalali advised PW2 to cancel TBL shares from mortgage release forms and that he will accept the forms. Following that instruction, PW2 cancelled TBL shares and the mortgage on Swissport shares was properly released.

PW2 went on to tell that, in July 2007 the plaintiff again instructed PW2 to release his TBL shares and he initiated the process but it did not reach to the end and in 2015 the plaintiff wanted to trade with his shares but it was discovered that same are still held under pledge. PW2 said in the circumstances, he sent an email to Benito Kyando accompanied with release forms after obtaining the share certificate because back in 2013 the Eugenia Shayo a Credit Administrator of the defendant had confirmed that TBL shares were not mortgaged with the defendant.

It was further testimony of PW2 that, Benito Kyando requested hard copies of the Release Forms because the ones sent through email are faint. PW2 told the court that he delivered them to DSE but on 24th March, 2016 DSE replied after elapse of 8 years. And later they were told they cannot act on the matter because the case is in court. PW2 tendered in evidence mortgage release forms dated 20/07/2007 for identification as **ID-PW2A**. PW2 tendered in evidence a letter dated 29/03/2016. which was admitted and marked as **exhibit P12**.

Under cross examination by Mr. Kibatala, PW2 told the court that Messrs. Emmanuel Nyalali and Benito Kyando work with DSE and are available. PW2 pressed with question admitted that in order for one to trade in

shares must fill forms and in this case PW1 did not fill any. Asked about exhibit P12, PW2 admitted the same was not accompanied by any forms.

Under re-examination by Mr. Lema, PW2 told the court that, he was not supposed to witness signing release forms and that he did not return the forms for necessary action.

This marked the end of the plaintiff's case and same was dully marked closed.

The defence case was opened by Mr. RENATUS BUKILA MUTANI- to be referred as DW1 for purposes of these proceedings. DW1 through his witness statement which was adopted to be his witness in chief told the court that he is the Credit Administration Manager of the defendant (African Banking Corporation) herein responsible for credit and loan matters of the defendant. According to DW1, the allegations in the plaint are false and the defendant denied to have defamed the plaintiff at any moment of time. DW1 went to tell the court that, by 2005 the company by the name of Rombo Millers Company Limited (RMC) which, one of its directors, is the plaintiff, approached the defendant and applied for and was issue and enjoyed with banking facility known as Line of Credit to



facilitate the purchase of export Arabica coffee. DW1 pointed out that, it was agreed that the security for the Line of Credit would be a pledge of the Coffee Stock financed by the bank under collateral management, legal mortgage for USD.4,000,000.00 over the companies immovable property located on plot No.29A Viwanda Street Unga Limited industrial area with certificate of title No.8607 valued at Tshs.390,000,000.00 as per valuation done on June 2008. Further securities, according to DW1, was unlimited guarantees of Michael Ngaleku Shirima- the plaintiff herein, Mr. Vicent Ngaleku Shirima and Mrs.Triza Victoria Shirima, bank interest being secured further in the insurance policy over the stock financed by the defendant bank and the property and subordination of shareholders loan of Tshs.134,445,585,00.

DW1 said further that, other securities to the loan was also secured by specific debenture over 3 Scania trucks with trailers valued at Tshs.350,000,000.00 of the year 2007. DW1 went on to tell the court. that, the loan was also secured by deed of security by the plaintiff and Vicent Ngaleku Shirima and Triza Victoria Shirima. DW1 told the court that, the plaintiff also pledged a total of 75,609 TBL shares and 108,721 shares in Swissport as further securities of the line of credit.

On the basis of the above state of affairs, DW1 told the court that, it is not true that, the plaintiff personally obtained the loan from the defendant but the loan was advanced to the company known as Rombo Millers Company Limited on aforesaid arrangements. DW1 told the court that, in the circumstances, the defendant had safe custody of the security documents and shares certificates. DW1 further told the court that, in 2015, the aforementioned company had accumulated a default in repayment obligations and as a result the bank sought to enforce its rights of the sale of the pledged shares. In the process, DW1 told the court that, the defendant discovered that the shares certificates that were in her custody were missing and was obliged to report to police Dar es Salaam central station to facilitate the re-issuance of new certificates.

DW1 further testimony was that, they only report but no one was implicated in the report. Following the report, police investigation was professionally made without injuring anybody in any way. DW1 went on to testify that, on 8th January 2016, the defendant as the lawful mortgagee of the shares notified TBL on the loss of the shares certificates with a view of them (TBL) to issue new shares certificates to the defendant.



DW1 told the court that, the defendant denies to have executed or authorized the release of mortgage form as the plaintiff was still indebted and among the valuables securities were the TBL shares. Not only that, but also, DW1 pointed out that, the release of the securities was by a resolution of the defendant's bank credit committee and not otherwise. DW1 went on to point out that, even DSE when presented with release form doubted them because had discrepancies on the year purported to be executed and presented. The release forms appears to have been executed sometimes 25th June 2007, which date shows Rombo Miller Company Limited account under which the share certificate were charged had an outstanding amount, proving that no way the defendant could release the share certificates.

DW1 testified that, the allegations that the defendant misrepresented to the DSE in relation to the loss of share certificate are strongly denied because communication between DSE and the defendant was done in good faith and in normal business practice intended to protect the interest of both parties given the nature of the loss. DW1 went on to tell the court that, Rombo Millers Company Limited utilized the line of credit to its limit of USD.2,500,000.00 for their own benefit and use, which

leave the outstanding amount to the tune of USD.2,993,867.10 which remain unpaid to date. The bank/defendant issued demand notices to both the plaintiff, the defendants in the counter claim who are Rombo Millers Company Limited, Vicent Ngaleku Shirima and Triza Victoria Shirima but which demand notice have not been heeded to.

Under cross examination by Mr. Maro, DW1 told the court that, he joined the bank in November, 2015 while the transaction in dispute started in 2005 as such he did not participate in the loan transaction but knew the loan through official records because he is the Credit Administration Manager and custodian of all credit transactions records. DW1 told the court that, according to the records, the purpose of the loan was to purchase and export Arabica coffee. DW1 pressed with questions told the court that, he don't know how the money was disbursed and whether it was paid to the client of Tanzania Coffee Board. DW1 insisted that, it is not true that the money was paid against the contract. When DW1 was referred to exhibit P1, he categorically stated the money was to be paid to TCB and coffee became the property of the bank under collateral management system. DW1 went on to tell the court that the contract did not specify how the money was to be used, save that clause 3.1 was

saying the money will be used to repay the loan's interest. As to the debenture, no documents were seen by DW1 but motor vehicle registrations cards. DW1 as custodian did not see a debenture document. DW1 admitted personally cannot tell the outstanding amount. DW1 when referred to exhibit P1 said under the clause of said the contract was valid up to 30.08.2010.

Under cross examination by Mr. Lema, DW1 told the court that, he is responsible for loan matter and security dealing with recovery. DW1 admitted to have not seen a debenture instrument. DW1 told the court that the bank claim against the 2nd, 3rd, and 4th defendants in the counter claim because were guarantors and Shirima pledged his shares with TBL worth USD.2.5 million. According to DW1, the mortgage was perfected and the shares registered with DSE. Pressed with questions and referred to exhibit P1 and P5 denied to know them and said they are not the ones used to register Mr. Shirima's shares and that the shares were not, referred to exhibit P1, hence, not part of the security. DW1 when referred to paragraph 5 of the amended written statement of defence said that it may be referring to specific offer letter and that security remains valid until the obligation is discharged. DW1 categorically said in the facility

letters dated 19/12/2006 and 19/12/2006 no mention of shares as forming party of the securities. Further quizzed DW1 told the court that, the parties had different facilities letters with different purposes. DW1 admitted to be the one who reported that the share certificates of Mr. Shirima were missing to police and without any defamation. DW1 wondered why the plaintiff is complaining to be defamed.

DW1 when referred to exhibit P8 said he is aware of it and it was alleging fraud on the part of the bank. On exhibit P7, it was a request for issuance of new shares certificates and seeking permission to sale the shares. DW1 was not sure if the bank contacted Mr. Shirima before reporting that shares are lost and that he cannot confirm with certainty whether Mr. Shirima personally obtained loan from the bank.

Under re-examination by Mr. Kibatala, DW1 referred to exhibit P7 said this letter was copied to Mr. Shirima but he never replied it and was only copied to all persons concerned in the transaction. DW1 said they reported to police because they wanted to get police report so that they could be issued with fresh share certificates. DW1 when shown various securities she stated them as coffee stock, legal mortgage in Arusha, unlimited guarantees, insurance and subordination of shareholders loan.

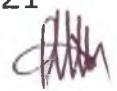
DW1 told the court that, obligation to pay do not depend upon expiry of the facility letter, hence, the bank reserves the right to institute legal action for recovery under the same terms and conditions until the whole outstanding money is recovered. DW1 told the court that, Rombo Millers Company Limited did not pay the loan.

The second witness for the defendant was Ms. LILIAN RICHARD MUSINGI- to be referred hereinafter in the course of these proceedings as DW2. DW2 through her witness statement adopted in these proceedings as her testimony in chief told the court that, she is the Head of Legal and Company Secretary of African Banking Corporation Tanzania Limited-the defendant herein responsible for all legal and compliance matter of the defendant and custodian of all documents which has legal or compliance implications.

DW2 pointed out that, the allegations in the plaint are false and the defendant denies to have defamed the plaintiff at any moment. DW2 went on to tell the court that, sometimes in 2005, a company by the names of Rombo Millers Company Limited, one of whose director is the plaintiff approached the defendant and applied for and was issued with a Banking Facility known as a Line of Credit to facilitate the purchase of and

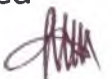
export of Arabica Coffee of which Bank duly issued and utilized the facility as requested.

DW2 went on to testify that, it was agreed, among others, that the Line of Credit would be a pledge of the coffee stock financed by the Bank under collateral management Legal mortgage for USD.4,000,000.00 over the company's immovable properties located on plot No.29A Viwanda street Unga Limited Industrial area held under certificate of title No.8607 within Arusha Municipality valued at Tshs.390,000,000.00 as of 2008. Further securities were unlimited guarantees by Mr. Michael Ngaleku Shirima who is the plaintiff, Mr. Vicent Ngaleku Shirima and Mrs. Triza Victoria Shirima, insurance policy over stock financed by the defendant bank and the property and subordination of shareholders for Tshs.134,445,585.00. Another securities were specific debenture over 3 Scania Trucks with trailers valued at Tshs.350,000,000.00 as of 2007 and deed of suretyship by the plaintiff, Vicent Ngaleku Shirima and Triza Victoria Shirima. Further DW2 told the court that the plaintiff also pledged a total of 75,609 Tanzania Breweries Limited shares (TBL) and 108,721 shares in Swissport.



DW2 seriously disputed the grant of the loan to the plaintiff personally but the loan was advanced to Rombo Millers Company Limited. DW2 told the court that, the defendant had safe security of all the security documents and share certificates. DW2 went on to tell the court that, by 2015 the company had accumulated a default in its repayment obligations and the bank wanted to enforce its right of the sale of the pledged shares. It was further testimony of DW2 that in the process the bank discovered that share certificates relating to the 75,609 TBL shares that were under the custody of the bank are missing necessitating the reporting to police for further action as matter of law and enabling the defendant to be re-issued with new certificates. According to DW2, the report to police was not ill-motivated and no one was injured as the investigation by police was professionally conducted without injuring any person, the plaintiff inclusive.

DW2 testified that, in the circumstances, on 08th January, 2016 the defendant as the lawful mortgagee of the shares notified the TBL on the loss of the share certificates with a view that, TBL to issue new shares certificates to the defendant. DW2 strongly denied to have executed or authorized the release of mortgage form as the plaintiff was still indebted



and among the valuable securities were TBL shares. DW1 went on to point out that, the procedures for release of such shares require a board resolution of the defendant bank's credit committee but which has never sat for that purpose.

DW2 pointed out that the DSE when presented with the said release form hesitated to recognize the purported Mortgage Release Form because they appeared to have been executed way back on 25th June, 2007, the period which Rombo Millers Company Limited loan account under which the share certificates were charged had an outstanding amount, hence, no way the defendant could release them.

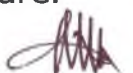
DW2 told the court that the allegations that the defendant misrepresented to the DSE in relation to the loss of Share certificates are strongly denied because the communication between defendant and DSE was done in good faith and in the normal business practice and was intended to protect the interest of both parties given the nature of the loss. DW2 pointed out that, Rombo Millers Company Limited utilized the Line of Credit to its limit of USD.2,500,000.00 for their own benefit and the outstanding amount is USD.2,993,867.10 which remain unpaid to date. The bank issued and served demand notices to both the plaintiff,

defendants in the counter claim but despite that the defendants have not repaid the loan.

In proof of what has been testified above, DW2 tendered in evidence the following exhibits, namely:

1. Letters of credit dated 12/08/2009, 19/10/2007, 19/12/2006, 15/03/2006,30/01/2006 and 11/11/2005 collectively as **exhibits D1a-f.**
2. The security documents that were pledged by Mr. Michale Ngaleku Shirima, Rombo Millers Company Limited, Vicent Ngaleku Shirima and Triza Victoria Shirima were admitted as **exhibit D2a-c.**
3. Loss report by ABC bank of the loss of shares certificates as **exhibit D3.**
4. The bank statement of Rombo Millers Company Limited as **exhibit D4.**

Under cross examination by Mr. Lema, DW2 told the court that, she has been working with ABC since 2015, where she was a head of Legal and Compliance and Company Secretary to date. DW2 pressed with questions as to whether Mr. Shirima had personal loan with the bank said she is not sure.



As the plaintiff having a personal loan it can be certainly told by Head of Credit, one, Saleh Ramadhani because they originate from his desk. DW2 went on to tell the court that, the first loan to Rombo Millers Company Limited was 2005 and that share certificate was a document used to pledge the shares of TBL. DW2 admitted when the transaction started she was not there. DW2 admitted that in 2004 the securities were treasurer bonds, pledges of 75% of the shares from TBL, 108,721 shares of Swissport, 714/285 Umoja Fund and Coffee stock which were all to be perfected. For 2006, 2007 and 2009 loans the securities, TBL shares were never mentioned. DW2 insisted that you cannot release securities if the client is still indebted to you.

DW2 when shown exhibit P10 and ID6 and asked if she knew them, she said exhibit P10 is copy of the passport and ID6 is a broker who dealt with the matter and they were trying to amend the forms as the passport by then has expired. DW2 told the court that, the loss of share certificates came to her knowledge in 2016 but when contradicted admitted the loss was on 2015 after being shown exhibit P8. DW2 told the court that, share certificates have never been recovered but apart from the certificates there are other



evidence which shows that, were part of the securities and in exhibit P8 no sentence that defamed the plaintiff.

Under cross examination by Mr. Maro, DW2 told the court that, the amount secured in 2005 was USD.300,000.00 for purchase of coffee from Tanzania Coffee Board. In January 2006, the amount was USD.500,000.00 with same purpose. In March 2006 for USD.220,577.76 for same purpose. In December, 2006 was for USD.1,500,000.00 same purpose. In October, 2007 the amount was USD.4,000,000.00 and the last one was USD.2,500,000.00 for the same purposes.

DW2 told the court that, diversion of the loan is allowed provided one follows the procedures by amending the purpose of the loan. In the disputed loans no record for diversion, said DW2. DW2 went on to tell the court that even when diversion is there still the guarantor is liable provided that there is unpaid loan. DW2 when taken through exhibit D4 which showed there were several debits contrary to the purposes of the loan admitted diversion was there as per records. DW2 when asked as to the consent of guarantors never gave one.

DW2 referred to exhibit D1 and asked the value of the contract for October, 2007 said was USD.4,000,000.00 and the securities were the ones which

secured 2005 loan. DW2 admitted the August 2009 loan worth of USD.2,500,000.00, there was no security clause.

On 08/12/2006 the status shows zero balance but DW2 denied confirming if the whole amount was paid. On 13/08/2010 the balance was USD.2,661,311.00 meaning there is a debt as no other contract was signed after 2009.

Under re-examination by Mr. Kibatala, DW2 told the court that, no single loan contract the Government was a party. Under the contract the coffee itself in stock was held as security. The other parties paid were not sued and no complaint for diversion was tendered in court.

Next witness for defendant/counter claimant was Mr. SALEH RAMADHANI – referred as DW3 for purposes of these proceedings. Through his witness statement adopted in these proceedings as his testimony in chief, DW3 told the court that, he is the Credit Manager of the defendant/plaintiff in the counter claim. The substance of DW3 testimony is like that of DW2 and I need not repeat them here.

Under cross examination by Mr. Lema, DW3 told the court that, he joined ABC in 2013 and was handed over all transactions including the 2005. DW3



went on to tell the court that, it was through the record he knew of Rombo Millers Company Limited. DW3 when shown exhibits P1 and P5 said that these are documents which Mr. Shirima offered as security for the loan to Rombo Millers Company Limited.

Under cross examination by Mr. Maro, DW3 told the court that, Rombo Millers Company had a loan account and bank account as exhibited in exhibit D4. As to exhibits D1a-f was all for the same purpose to buy Arabica coffee from TCB for export and all monies were deposited into the account of Rombo Millers Company Limited.

Under re-examination by Mr. Kibatala, DW3 told the court that, according to exhibit D4, Rombo Miller as from 31/05/2013 to 1/06/2013 was indebted to the tune of USD.2,970,474.59

DW2 prayed that the instant suit be dismissed and counter claim be allowed with costs.

This marked end of hearing of defence and plaintiff case in counter claim.

The first witness for defence in counter claim was Mr. VICENT NGALEKU SHIRIMA- hereinafter to be referred as DWC1. DWC1 through his witness statement adopted in these proceedings as his testimony in chief told the

court that, he is the 4th defendant in the counter claim and also Managing Director of the 1st defendant in the counter claim (Rombo Millers Company Limited). DWC1 told the court that, he is being sued in the counter claim because he was guarantor, allegedly guaranteeing six credit lines/loan facilities advanced to the 1st defendant in the counter claim. DWC1 remembers that in the period running between 11th November, 2005 to 12th August 2009 the counter claimant and the 1st defendant signed six facility letters amounting to USD.9,029,577.76 out of which the 1st defendant expended a sum of USD.7,814,435.45 for purchase of coffee from TBC. DWC1 went on to tell the court that, they are seriously disputing the facilities extended to the 1st defendant because were seriously abused, expended in blatant breach of the terms of the facility letter, credits were wrongly advanced without there being contracts and securities making the 1st company to suffer loss as a result of the counter claimant failure to protect the 1st defendant interest by pursuing her compensation case with the Government of the United Republic of Tanzania during the year 2008/2009 economic downturn. According to DWC1, the terms of the facility agreement was to facilitate purchase of coffee from Tanzania Coffee Board



(TCB) Auction floors in Moshi and Mbozi Coffee Curing Company Limited (MCCCL) in Mbeya and for export against the orders.

DWC1 pointed out that, according to clause 3.1 of the facility letter with reference ABT/CR/111/07 dated the 19th October, 2007 which facility expired on the 24th October, 2008, had several mode of operations of the facility under the collateral management scheme in ten terms. Further DWC1 pointed out that, the basis of the counter claimant in the counter claim was on bank statement attached to the counter claim as TAL-CL-4 which, according to DWC1 after examining it noted that substantial part of the money in facility was negligently and in breach of the express terms of the facility disbursed to third parties other than TCB and completely unrelated to the coffee purchases to the tune of USD.1,134,341.69 as enumerated and itemized in paragraph of his witness statement. It was the strong view of DWC1 that diversion of the funds as set out above was not sanctioned by the 1st defendant nor was there any variation or a written waiver of the terms as demanded by the facility letter, hence, vitiating the claim of USD1,134,341.69 and interest and penalty of USD.1,210,986.38 wrongly disbursed and claimed in breach of the terms of the contract.



Further, DWC1 pointed out that, facility advanced on the 12th August 2009 vide facility letter with Ref. ABCT/CR/1013/09 on the 30th day of August 2010 which by then the 1st defendant had exhausted the facility advanced but from 12th August 2009 to 28th March 2012 without any authority from the 1st defendant and without there being any facility/loan agreement and without any security the counter claimant advanced to the 1st defendant a sum of USD.466,465.54. This unsolicited facility sum of USD.792,308.00 is not found on the six agreement pleaded under paragraph 7 of the counter claim, hence, unrecoverable under this claim or at all times.

DWC1 went on to tell the court that, the terms of the facility were clear that once a consignment of the coffee purchased in an auction conducted by TCB is paid for becomes the property of the counter claimant but in November, 2008 and July/August 2008 two consignments consigned to Washed Arabic Coffee Grade AAA valued USD.36,753.84 to Ms. Helafric in Greece and Washed Arabic Coffee valued at 229,675.57 to Ms. Ecom Agro Industrial Corporation Ltd respectively upon arrival were disqualified for bad quality. It was the view of DWC1, that the whole amount USD.541,908.82 which comprised of principal and interest are not recoverable because the said coffee belonged to the counter claimant, hence, is frustrated transaction.

DWC1 told the court that, in July, 2009 the Government of the United Republic of Tanzania offered stimulus package to rescue the agricultural sector by cushioning their losses. On that understanding, the 1st defendant on, 16th July, 2009 vide letter with reference RMC/ARS/011.12 instructed the counter claimant to pursue her case for compensation under the Government stimulus package but for unknown reason the claimant failed or neglected to pursue the compensation package, hence, failure to enjoy package and mitigate losses. It was the view of DWC1 that the counter claimant failed to protect herself.

In the circumstances, DWC1 testified that the 1st line of credit in the sum of USD.300,000.00 was allegedly secured by inter alia suretyship by Michael Ngaleku Shirima, Vicent Ngaleku Shirima and the late Triza Victoria Shirima but since were not stamped as required by law, hence, they cannot tie him up.

DWC1 in disproof of the counter claim tendered in evidence the following exhibits in this suit;

1. DWC1 prayed that exhibit D1b forms part of their defence.
2. Contract dated 11/08/2008 and letter dated 1/12/2008 collectively as **exhibit DC1a-b.**



3. Letter dated 21/11/2008 to Rombo Millers as **exhibit DC2.**
4. Invoice from Ecom to Rombo Millers dated 10/10/2008 as **exhibit DC3.**
5. Letter from Rombo Millers dated 16/07/2009 to ABC Bank as **exhibit DC4.**
6. Letter dated 27/07/2009 from ABC Bank to Rombo Millers as **exhibit DC5.**

Under cross examination by Mr. Lema, DWC1 told the court that, the securities varies over time in terms of conditions and gave an example of D1c dated 11/11/2005 which for the credit line for USD.300,000.00 in terms of the shares involved, and according to DWC1, securities were not continuing facilities. The allegation that TBL shares were mortgaged to the bank is not true.

Under cross examination by Mr. Kibatala, DWC1 admitted that the TBL shares were used as securities in 2005 loan and that they did not write a letter to claim discharged shares after paying out the loan. DWC1 when pressed with questions admitted that they had access to the funds and no resistance was made to the money paid to third parties and that even in exhibit DC4 no where the defendant raised an issue of the loan and its

management. DWC1 admitted to have signed all the six contracts and is bound by the terms therein and did not raise any query to the shares. As to the funds paid to other entities, DWC1 admitted it was a mistake done by themselves and the bank. Equally pressed with questions, DWC1 agrees with the contents of exhibit D4 that are correct.


DWC1 went on to tell the court that, the security was coffee stock under collateral management along with other securities.

Under re-examination by Mr. Maro, DWC1 testified that, they guaranteed contract dated 11/11/2005 and it was not a line of credit. DWC1 further told the court that TBL shares were not properly handled and were not registered.

The last witness for defendants in the counter claim was Mr. MICHAEL NGAREKU SHIRIMA-hereinafter to be referred as DWC2 in these proceedings. DWC2 through his witness statement (testified for himself and as administrator of estate of late Triza Victoria Shirima) that was adopted as his testimonies in chief told the court that he is testifying as the second defendant and as administrator of the estate of the late Triza Victoria Shirima who passed away in South Africa in 2016 dully appointed to administer her estate. DWC2 told the court that, himself and the late Triza

were sued as guarantors of the facility extended to the 1st defendant- Rombo Millers Company Limited by the counter claimant. DWC2 told the court that, having read the witness statement of DWC1, he associated himself with same and prayed that it be adopted as theirs.

DWC2 admitted to have executed a deed of suretyship for the claimant in the years 2005 and 2006. On 11/11/2005 he personally guarantee the repayment of a sum of USD.300,000.00 and in 2006 of USD.1,500,000.00 advanced on 19th December,2006. It was further testimony of DWC2 that, subsequent to October, 2006 he and the late Triza have never executed expressly or otherwise any other deed of suretyship nor guarantee to secure the loans advanced in the years 2007,2008 and 2009. DWC2 went on to tell the court that, he has perused the facility letter dated 19th December, 2006 but no where it shows that the TBL shares were securities and that even the notice of default served on 14th January, 2013 do not say so. DWC2 concluded therefore that, as guarantors they are not responsible for funds, spent in breach of the terms of the loan agreement/facility letter and that they are not responsible for facility advanced without any loan agreement subsequent to 30th August, 2010.



DWC2 through his learned advocate prayed that all exhibits tendered in the main suit namely; exhibits 1-11 be part of the defence in the counter claim.

DWC2 tendered in evidence letters of administration of late Triza Victoria Shirima as **exhibit DC6**.

Under cross examination by Mr. Kibatata, DWC2 told the court that, the late Triza was his wife. And that when the bank filed their defence she was sick and he don't remember writing to the bank disputing transaction by her. DWC2 pressed with question, he admitted that, he can't remember exactly what DWC1 said in verbatim. DWC2 admitted to be the director together with DWC1 in Water Solutions Drilling Company Limited, Rombo Millers Company Limited and they did nothing to money entered into those accounts of the named companies. Further pressed with questions DWC2 denied to have knowledge of the transfer of the money to their account/companies until after this case. DWC2 when shown exhibit D2a said he saw it in court and that all transactions regarding the companies were handled by DWC1. DWC2 when shown exhibit D2d said it was referring to other securities.

There was no re-examination and this marked the end of the defence case in the counter claim.

The learned advocates for parties prayed and were granted leave to file final written submissions but up to the moment I am writing this judgement no submissions were ever filed.

Having painstakingly summarized the evidence of both sides of this legal dispute, the noble duty of this court now is to determine the merits and demerits of the suit and counter claim respectively by determining each issue as agreed and recorded. In this suit, parties are claiming for breach of contract against each other arising from the loan agreements entered between parties.

The first issue I am obliged to answer in this suit is '*whether the defendant released share certificates to the plaintiff?*' Having carefully gone through the testimony of the parties and the documentary evidence tendered in respect of this issue I am certainly akin to answer this issue in the negative.

The reason I am taking this stance is not far to fetch. **One**, the plaintiff reason for claiming back the said share certificates was that, were released in connection to his personal loan granted in 2004, but the truth is that in accordance to exhibits D1f dated 11/11/2005 clause 6.2 on Line of Credit No LO29, D1e dated 30/01/2006 clause 6.2 of Line of Credit No: LO31, D1d dated 15/03/2006 in clause 6.2 of Line of Credit LO34 all are clear as day.




light that the alleged share certificates were pledged as securities such any release cannot be pegged to personal loan advanced in 2004. For easy of reference clause 6.2 of all the three Lines of Credits above provides as follows:

6.2. Pledge of 75,609 shares in Tanzania Breweries Ltd(TBL) and 108,721 shares in Dar es Salaam Airport Handling Company Limited (DAHACO) to the Bank.

In the circumstances, therefore, no way the release of the shares certificate could be possible to the plaintiff unless and until he had proved payment of all lines of credits in question. Since no such evidence on record, then no way as right defended by the defendant the disputed share certificates could be released in any way.

Two, the plaintiff's conduct in the main suit and the claim of the said share certificates is questionable and leave a lot to be desired because the plaintiff is the director of Rombo Millers Company Limited, and no dispute he voluntarily pledged them as security in the three lines of credit after 2004, how comes he claims release in 2016.



That said and done, issue number one must be and is hereby answered in the negative.

This takes this court to issue number two which was couched that '*whether the defendant's action to report to the police and Dar es Salaam Stock Exchange on alleged loss of the share certificate was justified.*' I have dispassionately followed and considered the entire testimonies of the parties on this issue, but given what I have just found in respect of the status of share certificates, the report by the defendant in the main suit, whose the said share certificates were under her custody was justified to report to police as she did. I am fortified to find this issue in the positive, as quite rightly as defendant and rightly so in my opinion that no malice was established for the act to report because is quite a normal legal procedure to whoever lost a valuable and wants to get a replacement.

In the fine, this issue must be and is hereby answered in the positive that the defendant was justified to report to police on the missing share certificates.

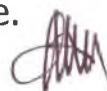
Third issue which relates to the second issue was couched that '*whether the act of the defendant to advice Dar es Salaam Stock Exchange to freeze dealing on plaintiff's TBL shares and other related acts like reporting to*

police and series of events against the plaintiff in any way capable of injuring or actually injured the reputation of the plaintiff.' Like the other issues above, after going through the testimony of the parties relating to this issue, I found this issue wanting in evidence on the part of the plaintiff in the circumstances of this suit. Guided by the provision of section 110(1) of the Tanzania Evidence Act, [Cap 6 R.E. 2019] which provides that:

110(1) whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists.

After going through the testimony of the PW1 and that of PW2 I failed utterly to find any proof of where the plaintiff ever testified that he was in any way injured save that the denial to deal with the shares affected his business with no further prove of injury. In my humble opinion, a mere denial to use something but a denial which is justified do not by itself causes any defamation of whatever nature, unless proved otherwise. No reputation damage or injury was proved at all.

On the above reasons coupled with reasons given in issue number three above, issue number three must be and is hereby answered in the negative.



This trickles to issue number four couched that *'whether prior to the defendant extending loan to the plaintiff, the plaintiff has obtained loan facility for the defendant and pledged the TBL share certificates.'* Having considered this issue and given the my holding in issue number one, it makes this issue not to detain this court much. Much as the first security by way of shares certificates was offered in 2005, then in my humble opinion, the plaintiff personal loan dated 1st June, 2006 referred as **Credit Line No.LO39** was not pledged by the disputed shares but by that time the plaintiff had already offered the disputed share certificates as security to Rombo Millers Company Limited as already held herein above.

Therefore, that said and done, this issue number 4 must be and is hereby answered in the positive.

The fifty issue was couched that *'whether the 2nd 3^d and 4th defendants in the counter claim issued/executed any bonds to secure a loan extended to the 1st defendant on 11/11/2005?'* This issue like the 4th issue will not much detain this court. The security in the loan agreement referred as 'Line of Credit No. 29' dated 11/11/2005 (exhibit D1f) clearly stipulates so in clause 6. The said clause provides as follows:

6.SECURITY

The facility is to be secured by the following:

6.1. Treasury Bonds amounting to Tshs.140.0 Million held in the name of Mr. Michael Shirima

6.2. Pledge of 75,609 shares in Tanzania Breweries Ltd(TBL) and 108,721 shares in Dar es Salaam Airport Handling Company Limited (DAHACO) to the Bank

6.3. Pledge of 714,285 units in Umoja Funds held in the name of Water Solutions Limited to the Bank

6.4. Pledge over the coffee stock financed by the Bank

6.5. Suretyship of Michael Ngaleku Shirima, Vicent Ngaleku Shirima and Triza Victoria Shirima.

6.6. Cession over all risks insurance policy on the stock financed vt ABCT.

From the above terms of the agreement, without much ado, is loud and clear that the 2nd defendant executed/issued his bonds to secure the said facility as stipulated under clause 6.1 but not the 3rd and 4th defendant.

Next is issue number six couched that, '*if the answer to issue number 5 is in the affirmative, whether the said bonds extended to other/subsequent loans.*' This issue has to be answered in the positive because clauses 6.1 of

exhibits D1d dated 15th March, 2006, exhibit D1e dated 30th January, 2006 is obvious that the said bonds were extended to other loans.

Therefore, that noted, the 6th issue must be and is hereby answered in the positive.

The seventh issue was couched that '*whether the plaintiff in the counter claim continue to advance the 1st defendant between 30th August 2010 to 28th March 2012 under any agreement.*' This issue will not detain this court much. I have carefully gone through the whole testimonies of the parties but I find no evidence on record to prove that, there was any more money advanced during that period.

On that note, issue number seven must be and is hereby answered in the negative.

This takes me to issue number eight couched that '*whether the 1st defendant in the counter claim breached any of the terms of the loan extended to the 2nd defendant to the counter claim.*' This issue I guess was supposed to read '*whether the 1st defendant in the counter claim breached any of the terms of the loan extended to the 1st defendant in the counter claim.*' I am entitled to consider this issue so because the 2nd defendant is



or was just a guarantor of the 1st defendant and has at all material time been sued in that capacity in the counter claim and not as borrower. The changes I have made in this issue do not significantly change the issue to bring any prejudice to any party but rather enhance the delivery of justice. I take this as a slip of the pen and mind of the trial judge in recording this issue. The counter claimant alleges that the 1st defendant breached the terms of the facilities given and enjoyed and there remain unpaid amount of USD.2,993,867.10. In proof of this issue the plaintiff in the counter claim tendered in evidence exhibit D4 - a bank statement of the account maintained by the 1st defendant with the plaintiff. The balance shown in this exhibit as unpaid is USD.2,970,474.59. This amount was not seriously disputed save that the questions were directed to the amount that was debited to other payees, but which will be answered in the last but one issue. Since the balance remain unpaid as proved in exhibit D8, without much ado, this issue must be and is hereby found in the positive that failure to pay the whole amount advanced plus interest is a breach of the contract. Nevertheless, even if I wanted to answer the 8th issue as framed above for the sake of answering it, still I will find the same in the positive because the issue of share certificates was answered in the 1st issue herein above. More



important to note, the personal loan of the 2nd defendant in exhibit P3a and P3b were secured by the Treasury Bills held in his name and not the share certificates.

Next is issue number 9 couched that *'whether the plaintiff in the counter claim breached the terms of the loan agreement and if so in what manner?'*

The defendant faulted the plaintiff in the counter claim over the amount that was paid to other payees other than Tanzania Coffee Board. Further argument was that since there was no deed of variation, then, the plaintiff in the counter claim breached the terms of the facility letters and is not entitled to any payment of the balance due.

On the other hand, the plaintiff in the counter claim seriously disputed to breach any term of the contract.

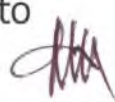
Having considered the evidence on record and what transpired I am going to answer this issue in the negative. The reason I am taking this stance is not far to fetch. **One**, all the money allegedly paid other than TCB was paid under the instructions of the borrower (Rombo Millers Company Limited). **Two**, DWC1 admitted under cross examination that, he had access to the account and the funds and that he was the director of the companies that were paid including but not limited to Water Solutions which the second and

third defendants are directors. **Three**, DWC1 when asked if he raised the issue of money paid to those companies replied that, he never raised such issue with the plaintiff in the counter claim, hence, an afterthought but futile exercise on the part of the defendants. **Four**, DWC1 whose statement was adopted by other defendants admitted under cross examination that the contents of exhibit D4 -bank statement was correct.

In the totality of all these reasons, I hereby without much ado find that issue number 9 must be and is hereby answered in the negative that the plaintiff in the counter claim never breached any term of the loan agreement.


The last issue is number ten was couched that '*what reliefs are parties entitled to.*' Based on my findings in issues number 1-4 which basically was answering the plaintiff's claim in the main suit, I am prepared without much ado, to hold as I do here that this suit must be and is hereby dismissed in its entirety for want of evidence.

As to the counter claim, based on what I have found in issues number 1-10; I find prayer (a) to the counter claim positive and declare that the 1st, 2nd, 3rd and 4th defendants are in breach of the terms of the facility agreements as agreed and guaranteed by the defendants for leaving the loan unpaid to date.



Equally, on the claim of USD.2,993,867.10 I decline to grant that much but I grant the amount of USD.2,970,474.59 proved vide exhibit D4 must be and is hereby granted being principal and interest as claimed. The plaintiff in the counter claim prayed for interest at court's rate on the decretal amount from the date of judgement to the date of full and final payment. This prayer is granted and this court grant an interest rate of 7% per annum from the date of this judgement till full and final payment.

The plaintiff further claimed a declaration that the 2nd defendant has no lawful right over the share certificates 75,609 in Tanzania Breweries shares that the 2nd defendant had pledged as security for the outstanding loan issued for plaintiff by the 1st defendant. This limb of prayer is equally granted based on what I found above when dealing with the issue on shares. It is further directed and ordered that the 2nd defendant to hand over to the plaintiff the in the counter claim share certificates 75,609 with Tanzania Breweries that was pledged as security for the outstanding loan and in case he does not have them, then, the plaintiff in the counter claim to follow all laid down procedure to be issued with new certificates for the same purposes.



It is further ordered that in case the defendants don't pay the loaned amount with interest as ordered herein above within six months from the date of this judgement, the plaintiff in the counter claim is hereby allowed to exercise all his rights to realize the amount of loan with interest in accordance to the laid down procedures.

That said and done, the counter claim must be and is hereby allowed as ordered above with costs.

It is so ordered.

Dated at Dar es Salaam this 10th day of December, 2020.



S. M. MAGOIGA

JUDGE

10/12/2020