

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

COMMERCIAL CASE NO.110 OF 2020

CRDB BANK PLC.....PLAINTIFF
VERSUS

GODLISTEN ANDREW MSOFE..... DEFENDANT

Last Order: 20/10/2021.
Judgment: 03/12/2021.

DEFAULT JUDGEMENT

NANGELA, J.:

The Plaintiff prays for judgment and decree against the Defendant as follows:

1. An order for payment of TZS 103,813,769.36 (Say: Tanzanian Shillings One Hundred Three Million Eight Hundred Thirteen Thousand Seven Hundred Sixty Nine; Cents Thirty Six).
2. Interest on item No.1 above from the date of filing the suit to the date of judgement at the rate of 12% per annum.
3. Interest at the decretal sum from the date of judgement to the date of full

satisfaction of the decree at the rate
of 21% p.a

4. Payment of costs.
5. Any other relief as this honourable
Court deems fit and just to grant.

Unfortunately, the Defendant did not file any defence despite having the matter adjourned on several occasions when efforts to find his whereabouts were being made. On 27th April 2021, an order for substituted service of the Plaint was sought by the Plaintiff Bank and this Court granted the prayer. A substituted service was thus entered and published on Mwananchi Newspaper dated 7th May 2021.

On 10th of June 2021 the Court was informed of the publication as the Defendant had not filed his defence yet. However, I adjourned the matter to 15th July 2021. On the material date, the Defendant entered appearance. However, since time to file his written statement of defence was gone, the Plaintiff's counsel prayed for a default judgment under Rule 22 of the High Court (Commercial Court) Rules of Procedure, GN. No. 250 of 2012 (as amended by GN No.107 of 2019).

The Defendant sought leave to address the Court. He told this Court that, there has been a miscommunication between him and the Plaintiff but he was belatedly informed about the case. He said he was

not even aware of what the case was all about. He asked for time to engage with the Plaintiff. I adjourned the matter with a view to allow the parties to engage. I fixed the matter on 25th August 2021 at 10:00 am to see if the parties could have settled their dispute amicably as prayed by the Defendant.

As such, since there was no prayer or application to file defence out of time, and given the indication that the parties could settle their differences, the matter was scheduled for mention on 25th August 2021 and later to 22nd September 2021. On the material date, the Defendant did not show up and, that, being the case, the Plaintiff's counsel, Mr Matia, prayed to proceed as per Rule 22 of the High Court (Commercial Court) Rules of Procedure, GN. No. 250 of 2012 (as amended by GN No.107 of 2019).

The prayers were granted with an order that the Plaintiff should file Form No.1. The form was to be filed within 14 days. The said Form No.1 was duly filed and, as per the requirements of Rule 22(1) (a) it has been supported with an affidavit of one Ms Clementina Kinabo. The same has attachments which are in their original form to evidence the application and disbursement of the loaned amount to the Defendant.

Looking at the said Form No.1 and its supporting affidavit and annexure, I am satisfied that the prayers for judgment and decree against the Defendant are warranted. In view of above finding, this Court enters a default judgement in favour of the Plaintiff as follows:

1. THAT, the Defendant is hereby ordered to payment the Plaintiff a sum of of **TZS 103,813,769.36** (Say: **Tanzanian Shillings One Hundred Three Million Eight Hundred Thirteen Thousand Seven Hundred Sixty Nine; Cents Thirty Six**).
2. THAT, the Defendant is to pay the above mentioned sum on item No.1 with interest from the date of filing the suit to the date of judgement at the rate of 12% per annum.
3. THAT, the Defendant is to pay the Interest on the decretal sum from the date of judgement to the date of full satisfaction of the decree at the rate of 7% p.a
4. THAT, the Defendant is to pay costs.

Further that,

5. That, in terms of Rule 22 (2) (a) and (b) High Court (Commercial Division) Procedure Rules, 2012 (as amended,

2019), the Court makes further orders that the decree emanating from this suit shall not be executed unless the decree holder has, within a period of ten (10) days from the date of this default judgment, publish a copy of it (the decree) in at least two (2) widely circulated newspapers in the country and after a period of twenty one days (21), from the date of expiry of the said ten (10) days, has elapsed.

It is so Ordered

**DATED at DAR-ES-SALAAM, THIS 03RD DAY OF
DECEMBER, 2021**



**HON. DEO JOHN NANGELA
JUDGE
HIGH COURT, COMMERCIAL DIVISION.**