

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO.16 OF 2022

DELINA GENERAL INTERPRISES LIMITED.....PLAINTIFF

VERSUS

KCB BANK TANZANIA LIMITED.....1ST DEFENDANT

KCB BANK KENYA LIMITED.....2ND DEFENDANT

IN COUNTER CLAIM

KCB BANK TANZANIA LIMITED.....1ST PLAINTIFF

KCB BANK KENYA LIMITED.....2ND PLAINTIFF

VERSUS

DELINA GENERAL INTERPRISES LIMITED.....1ST DEFENDANT

DAVIS ELISA MOSHA 2ND DEFENDANT

NANCY DAVIS MOSHA 3RD DEFENDANT


Date of Last Order: 19/08/2022

Date of Judgment: 23/09/2022

JUDGEMENT

MAGOIGA, J.

The Plaintiff, **DELINA GENERAL INTERPRISES LIMITED** by a plaint
instituted the instant suit against the above-named defendants praying for



judgment and decree against the defendants jointly and severally for the following orders: -

- a) A declaration that the first defendant is in breach of credit facilities and in breach of banker's duties towards the plaintiff;
- b) A declaration that the Plaintiff have fully paid all loan facilities advanced to it by the first defendant;
- c) A declaration that the plaintiff does not have any liability to the second defendant;
- d) A declaration that all mortgages, debenture, corporate guarantee, personal guarantee and all other securities issued by the Plaintiff or the Guarantors of the Plaintiff's liabilities towards the defendants to secure the facilities granted by the defendants are null and void;
- e) An order to discharge the Mortgages, debenture, corporate guarantee, personal guarantee and all other securities issued by the plaintiff or the plaintiff's guarantors to secure the plaintiff's liabilities towards the defendants;
- f) A declaration that the second defendant is not licensed to carryout banking business or any business in Tanzania and is trading

- unlawfully, illegally and contrary to the rules and regulations governing the business of banking and business in Tanzania;
- g) A declaration that all credit facilities provided to the plaintiff by the second defendant are unlawful, illegal, null and void for non-compliance with the laws, rules and regulations governing issuance of foreign loans and the conduct of business in Tanzania;
 - h) A declaration and an order that the demands issued by the defendants are ill-motivated, unlawful, unwarranted and of no effect;
 - i) An order for the first defendant to refund the plaintiff the sum of USD 153,085.53;
 - j) A declaration that the first and second defendants are not entitled to recover TZS.9,416,862,946.22 and USD.2,991,677.27 respectively, from the plaintiff;
 - k) General damages to be assessed by the court;
 - l) Costs of the suits; and
 - m) Any other relief the court deems proper to grant.

Upon being served with plaint, the defendants filed a joint written statement of defence disputing all claims by the plaintiff on the rider that defendants loaned plaintiff in compliance of the law and banking practice as such all facilities are

legal and lawful and eventually prayed that the suit for plaintiff be dismissed with costs. Simultaneously, the defendants in their amended written statement of defence filed on 30th March, 2022 raised a counter claim against the plaintiff praying for judgement and decree in the following orders namely:-

- a. Payment of total sums of Tshs.8,293,080,095.38 as at 20th September, 2021 which money was advanced by the 1st plaintiff to the 1st defendant and dully secured by the 2nd and 3rd defendants;
- b. For payments of interests on the sums demanded at (a) above at the agreed rate of 17% from the date thereof until date of full payment;
- c. For payments of total sums of USD.3,012,663.33 as at 28th February, 2022 which money was advanced by the 1st plaintiff to the 1st defendant and dully secured by the 2nd and 3rd defendants;
- d. For payments of interests on the sums demanded at (i) above at the agreed rate of 9.725% from March,2022 until date of full payment;
- e. For payment of interest at court's rate of 7% from the date of delivery of judgement and decree until date of full settlement on both (i) and (ii) above;
- f. Payments of costs of the case;



g. Any other relief (s) the Hon. court will deem fit and equitable to grant.

The brief facts of this suit are imperative to be stated for better understanding the gist of this suit. According to the pleadings, it is averred and not disputed by and 1st and 2nd defendant that, in March 2012 Kenya Commercial Bank Tanzania Limited (to be referred as KCB-T) extended to the 1st plaintiff term loan facility of USD.2,600,000.00 for construction of residential apartment and on 18th March, 2013 another amount of USD.1,100,000.00) was advanced to partly take over the Asset based finance facility to Eco-bank Kenya Limited in the aggregate sum of USD. 3,700,000. It was agreed, among others, that the said facility was to be repaid over 72 months after grace period of 12 months with interest base rate of 9% per annum calculated on the basis of actual days elapsed and a 365-day year.

Facts go that, on 27th January, 2014 the plaintiff made an application to the 1st and 2nd defendants for increment of the existing facilities in agreement 1 and agreement 2. Following that request, there was an increase of USD.1,400,000.00 making the aggregate construction costs to USD. 4,000,000.00 and on top of construction facility it was extended with overdraft



facility to the tune USD.300,000.00. as a temporary overdraft facility which was to be converted in new term loan.

Further facts went on that, in addition at the request of the plaintiff, on 27th January, 2015 the existing term loan USD.4,000,000.000 and temporary overdraft USD. 300,000.00 were reviewed and plaintiff was availed short term of USD.500,000.00 for the purpose of terming out existing temporary overdraft, extension of the moratorium period for payment of construction loan facility of USD.4,000,000 and review of asset-based facility to the tune of 414,000.00 to facilitate takeover of an asset-based finance facility from Eco-bank Tanzania in accordance with terms and conditions in the first addendum to the facility agreement dated 27th January,2014.

It was further alleged that, on 30th December, 2015 plaintiff made an application for extension of payment tenure for the construction term loan from 49 months to 84 months and extension of payment tenure for short term loan of USD.500,000 from remained 7 months to 12 months. In addition to that at the request of plaintiff, facility agreement dated 30th December, 2015 was reviewed by extending payment tenure for six months from July 2016 to December,2016 also construction term loan and short loan were amalgamated into one loan with maturity date of December,2022 as per terms and



conditions contained in first addendum to the facility letter dated 30th December,2015. Again, on 28th September,2018 at the 1st plaintiff's request the 1st and 2nd defendants renewed the existing term KCBT facilities to the tune of USD.2,625,036.23 and Term loan facility KCB-K (to be referred as Kenya Commercial Bank- Kenya) USD.2,189,731.47 for 120 months tenure from the date of amalgamation as such all existing loan were converted into Tanzania currency but which money was not disbursed at all.

As a security for such facilities, the 1st plaintiff created a legal mortgage in favour of the defendants over his landed property located at Plot No 19, Sinza Area Kinondoni Dar es salaam, registered under CT No 186287/19, in the name of borrower and other related securities were used to secure the above facilities. It is further averred that in the course of business, the terms of the facility letters were frustrated by the dilatoriness of the 1st defendant by imposing unfair claims, giving false figures of the outstanding loans and providing predatory lending practices against the plaintiff. Upon plaintiff gone through his payments discovered that she has overpaid USD. 153,085.53 which the 1st defendant does not deserve, hence, this suit claiming the prayers as contained in the plaint.



On the other hand, the facts as to the counter claim were that, since 2012 up to 2018 plaintiff had a banker customer relationship with the 1st defendant whereby at the request of the 1st defendant in diverse times, plaintiff advanced a series of loan facilities. Facts go that, it was agreed among others that, the new loan term be converted and booked in Tanzania shillings with the interest base of 17% per annum and the existing term loan to continue to attract interest rate of 9.72%. It was plaintiffs' case that, at the request of 1st defendant conversion of the outstanding loan amount in USD was made on Tanzanian currency as such TZS. 6,044,256,025.50 was credited into 1st defendant loan account and debited on the same date. As a security for such facilities the 1st and 2nd defendants guaranteed payments against all money that shall fall due against the plaintiff cum defendants in the counter claim. Further facts were that, all defendants jointly and severally failed, neglected and ignored to repay the said credit facilities standing at TZS.8,293,080,095.38 as at 20th September,2021 and USD.3,012,663.33 as at 28th February, 2022, hence, this counter claim, claiming the prayers as contained in the amended written statement of defence and counter claim.

Plaintiff at all material has been enjoying the legal services of Mr. Frank Mwalongo, learned advocate from Apex Attorneys Advocates. On the other adversary part, the defendants at all material time were enjoying the legal

service Elisa Abel Msuya, learned Advocate from the legal clinic of Trustmark Attorneys.

Before hearing started, during Final Pre-trial conference, the following issues were framed, recorded, adopted and agreed between the parties for determination of this suit, namely: -

1. Whether the defendants are in breach of bankers' duty to the customer by mismanaging the plaintiff's bank account?
2. Whether the 2nd defendant is legally licensed to carry out business in Tanzania?
3. Whether the Credit facilities executed between the plaintiff and the 2nd defendant are valid, lawful and enforceable in Tanzania?
4. Whether the plaintiff has paid her loan liabilities to the defendants in full and is no longer indebted and the defendants' duty is bound to discharge securities pledged?
5. Whether the defendants are liable to the 1st plaintiff in the counter claim in the extent of TZS.8, 293,080,095.38 as at September, 2021?
6. Whether the defendants in the counter claim are liable to the 2nd plaintiff in the counter claim in the extent of USD.3,012,663.33 as at 28th February, 2022.



7. Whether the defendants jointly and severally are liable to pay interest at the rate of 9.725% on account of default as from the date of default to the date of full settlement;
8. What reliefs parties are entitled to.

In proof of the suit, the plaintiff called two witnesses. The first witness to testify was one, **Mr. DAVIS ELISA MOSHA** (to be referred in these proceedings as "**PW1**"). PW1 under oath and through his witness statement adopted in these proceedings as his testimony in chief told the court that, he is one of directors, shareholder and chairman of the plaintiff and his role among others is to oversee all operations of the company, hence, conversant with the fact of this case. PW1 went on to tell the court that, since 2012 the plaintiff and 1st defendant had banking relationship as such accessed several facilities from the first defendant. It was the testimony of the PW1 that, on 18th May, 2012 the plaintiff entered into 1st facility agreement with the 1st defendant whereby under paragraph 2.2.1 of the letter of facility it was agreed among others that, the facility may be utilized as a term loan facility of USD. 2,600,000.00. According to PW, this term is vague and uncertain because it suggests that the facility was not a term loan.

PW1 when expounding on the terms of the said facility told the court that paragraph 2.2.2 of the facility is to the effect that, the availability of facility is at all times subject to the availability of funds and the compliance by the bank with any and all restrictions, rules and regulations from time to time in force by the Bank of Tanzania or any other relevant regulatory authority. PW1 concluded that this clause makes the facility very uncertain on the following reasons; **one**, when the funds were to be disbursed to the plaintiff and whether it was disbursed; **two**, the performance of the agreement depended on the availability of the fund, means that if fund will be available the performance will be done if the fund not available there will no performance. **Three**, the content of clause 2.2.3 of the facility letter stated that the bank shall not be liable for any failure to perform its obligations caused by reasons beyond its control. Testifying further, PW1 told the court that, there is no evidence from the first defendant showing that amount of USD.2,600,000.00 was disbursed by the first defendant because the first defendant has failed in several instances to avail plaintiff with bank statement to trace the disbursement USD.2,600,000.00 in the loan statement.

PW1 admitted that, it is true on 18th March, 2013 the plaintiff executed a second facility agreement with the 1st defendant, which consolidated all



existing facilities of the plaintiff but the first facility dated 18th March, 2012 which was for USD.2,600,000.00 was never disbursed because there was only facility letter without disbursement to date. As such there was no consolidation of loan because there was no disbursement of 1st loan. It was testimony of PW1 that, when the second facility was executed, the 1st defendant was aware that the 1st facility was not yet performed. However, it went on consolidating the asset-based finance facility with the construction facility which never disbursed. However, she admitted the disbursement of USD.1,100,000.00 and which he told the court that plaintiff has paid the said loan in full. Further testimony of PW1 was that, on 27th January, 2014 the plaintiff executed a third facility agreement with the 1st and 2nd defendant consolidating the existing facility of USD.3,700,000.00 it arranged for new construction loan of USD.1,400,000.00 and overdraft of USD.300, 000.00. PW1 told the court that the amount of USD.3,700,000.00 includes USD.2,600,000.00 the amount which cannot be traced and USD.1,100,000 which has been paid in full. According to PW1, the 1st defendant is not able to prove disbursement of construction loan of USD.2,600,000.00 plus his additional loan of USD.1,400,000.00 which the 1st defendant also is unable to disclose its disbursement because it is not in the knowledge of the plaintiff

and defendant is unable to prove its disbursement. Testifying on clause 4.2 of third facility PW1 told the court that, the term loan of USD.300,000.00, partial construction loan of USD.550,000.00 and asset-based finance of USD. 1,025,000.00 was booked in first defendant while construction loan of USD. 3,450.000.00 was booked in second defendant but was quick to point that the loan alleged to have booked to second defendant was fabricated. According to PW1, out of USD.5,325,000.00 only USD 1,875,000.00 was booked to 1st defendant and USD. 3,450.000.00 was booked to 2nd defendant as such the 1st defendant is the lender of USD.1,875,000.00 and the second defendant is the lender of USD.3,450.000 therefore the total loan in third facility cannot be comprehended by the plaintiff but also the defendant has failed to account on how the said loan arose because bookings and terms of facility dated 27th January,2014 are confusing.

Testifying further on the facilities, PW1 told the court that, on 21st May, 2015 plaintiff and defendant executed the first addendum to the third facility agreement on which there was four variation and amendments as follows, extension of moratorium period for payments of principal and interest from January 2015 to May,2015 and start from 20th June, 2015, short term facility of USD.500,000.00, Review of construction loan of USD.4,000,000.00 and



review of asset based finance of USD.529,713.82. However, under clause 1 of the first addendum indicates that the said facility included short term of USD.500,000.00 construction loan of USD 4,000,000 asset based finance of USD.530,000.00 making the total loan to be USD.5,030,000.00. PW1 went on to tell the court that the booking at clause 3 indicated that short term of USD. 500,000.00 and asset based finance of USD.530,000.00 was booked to 1st defendant while construction loan of USD.4,000,000.00 was booked to 2nd defendant. PW1 testified that, out of the total loan of USD 5,030,000 the amount due and payable to 1st defendant is USD.1,030,000.00 and amount due and payable to 2nd defendant is USD.4,000,000.00 the amount which the defendant deliberated and out of unethical and unprofessional conduct keep maintaining that there is a facility of USD.4,000,000.00 which they cannot account on how it arose more short term of USD.500,000.00 was disbursed contrary to terms of first addendum to third facility.

Testifying to fourth facility and its addendum, PW1 admitted that, on 30th December, 2015 plaintiff executed a fourth facility agreement with the first and second defendant which consolidated all existing facilities of the plaintiff and thereafter executed one addendum. PW1 told the court that under clause 4.2 the existing short term loan of USD. 500,000.00, part of construction loan

of USD.1,763,046.00 and Asset based finance of USD.414,000.00 were booked in first defendant and part of existing construction loan of USD. 2,236,954.00 was booked 2nd defendant, however, PW1 pointed out that looking at facility agreement dated 27th January,2014 and its addendum and facility agreement dated 30th, December,2015 and its addendum there is confusion on how the loan was booked because in the 1st addendum of the facility dated 27th, January, 2014 the outstanding amount was USD.5,030,000.00 while in the facility agreement dated 30th December,2015 the outstanding was USD.4,914,000.00

PW1 went on to testify that the booking of short term and Asset base finance to 1st defendant it was alright, however, PW1 was quick to point that the booking of USD.1,763,046.00 which is part of the USD.4,000,000.00 in the loan term as construction loan was not known to plaintiff and its booking is contrary to 1st addendum of the facility dated 27th January,2014. The simple reason is that the booking in the facility letter dated 30th December, 2015 was USD.2,236,954.00. According to PW1, the defendant had been booking the construction of USD.4,000,000.00 either whole to second defendant or partly 1st defendant in a style that leaves not only questions but also no plausible explanation on how it changed to facility letter dated 30th



December,2015 which the booking became USD.1,763,046.00 in the 1st defendant and USD.2,236,954.00 to the second defendant.

PW1 insisted that in the first addendum to facility letter dated 30th December, 2015 only three things were reviewed, which are; sanctioned six-month moratorium on principal payments, amalgamate the construction loan of USD.4,000,000.00 and short-term loan of USD.500,000 making the total of 4,500,000.00 which, according to PW1, is a continuation of falsification and deceit by the defendants because the arrears are capitalized without indicating it how they are and after capitalization where does the facility stand.

PW1 went on to admit that on 28th September, 2018 the plaintiff executed a fifth facility agreement with the 1st and 2nd defendant which consolidated all existing facilities of the plaintiff. PW1 went further to tell the court that clause 4.2 of the facility indicates that there were two facilities, the new amalgamated of USD.2,625,036.23 in TZS with an interest of 17% and existing term loan of TZS.2,189,731.47 in USD with interest of 9.72%.PW1 further stated that it was agreed by the parties in the facility letter dated 28th, September,2018 that the loan on KCBT be booked in TZ and loan on KCBK at USD. According to PW1, the 1st defendant was posing as a lender in the



capacity of an agent of the 2nd defendant as such PW1 concluded that the amount of USD.2,625,036.23 in the facility dated 28th September, 2018 was fabricated because whereabouts of disbursement is unknown and the first defendant is unable to provide not only that but also the amount of USD. 2,189,731.47 that is said to be payable for 2nd defendant is vague and the 2nd defendant is unable to provide any evidence on disbursements.

PW1 testified that, all amount appearing as outstanding is not for the 1st defendant and the loan granted by the 1st defendant was paid in full and due to concealing of information, the plaintiff over paid the 1st defendant. PW1 further testified that, the 1st defendant has been mismanaging the plaintiff's facilities by booking them in the confusing manner. PW1 contended that defendants have no evidence which show that it disbursed any loan to plaintiff and what the 2nd defendant is doing is fabrication of the loan, deceit and unprofessional conducts in order to rob funds from the plaintiff.

Testifying on the securities PW1 admitted that the loan amounting to USD.2,600,000 was secured by mortgage dated 30th October,2012 on Plot No 19, Sinza Area Kinondoni Dar es salaam, registered under CT No 186287/19, in the name of borrower, however, was quick to point that on 18th May,2015 it was varied through the deed of variation of mortgage changed from

securing USD.5,030,000 to securing TZS.23,576,000,00. PW1 further testified that, the said facilities were secured by Specific Debenture dated 21st October, 2013, Specific debenture dated 19th February, 2015 Specific debenture dated 28th May ,2015 and guarantee and indemnity October, dated 28th May ,2015 between the 1st and 2nd defendants in counter claim and 1st and 2nd plaintiff in counter claim as a security agent.

PW1 told the court that under the preamble lender is described as jointly between 1st and 2nd defendants in the main suit and that lender is required to notify the guarantors on any outstanding amount that is due in order the guarantor to guarantee and indemnity to come into play. More so, PW1 told the court that debt was cleared in fully as such no liability to guarantors. It was testimony of PW1 that the 1st defendant mismanaged plaintiff credit facilities by imposing unfair claims, giving false figures of the outstanding and providing predatory lending practices against the plaintiff. PW1 further testimony was that the total loan extended to plaintiff was USD.3,834,779.90 out of USD.4,136,563.52 which has been paid by plaintiff to defendants as such the overpaid is USD 153,085.53.

Further testimony of PW1 was that, the 2nd defendant with the help of the 1st defendant has been providing banking services to plaintiff in Tanzania

without banking license from the Bank of Tanzania, doing business without business license and also without compliance to foreign loan registration. PW1 went on to tell the court that the 2nd defendant is part to all loans except in the first loan. However, was quick to point out that despite the fact that 2nd defendant is part to all most loans but is not registered in Tanzania. According to PW1, since the 2nd defendant is not allowed to trade in Tanzania, and is not resident in Tanzania, had to process any loan facility to the plaintiff as a foreigner which loan unfortunately was not registered so.

PW1 went on to testify that, the absence of the foreign facility registration number from the Bank of Tanzania, the 2nd defendant has no right to claim the illegal loan it purports to have advanced to the plaintiff and the plaintiff has never effected any loan repayment to the 2nd defendant at any point of time. Testifying on deceits /misleading information, PW1 told the court that the 1st defendant wrote a letter to plaintiff indicating that all facilities were advanced by the 1st defendant the information which was not correct. PW1 went on to tell the court that defendants are duty bound to prove that there was facility letter and that there was actual disbursement. On the basis of the above testimony, PW1 urged this court to grant all payers as contained in the plaint and dismiss the counter claims with costs.



In proof of the plaintiff's suit, PW1 tendered in evidence the following exhibits, namely: -

- i. 5 facilities letters or Agreements and 2 addendums to the facilities letter or agreement are collectively admitted **as exhibit P1₁₋₇**
- ii. Mortgage of Right of Occupancy on plot No.19 Block 'B' Sinza Kinondoni Dar es Salaam, dated 28/5/2015, 2nd deed of variation of mortgage on the same plot dated 28/5/2015, specific debenture dated 21/10/ 2013, specific debenture dated 19/2/2014 and guarantee and indemnity agreement dated 28/5/2015 are collectively admitted **as exhibit P2₁₋₅**
- iii. Plaintiff's payment form admitted **as exhibit P3**
- iv. Letter dated 3.9.2019 admitted **as exhibit P4**
- v. 7 letters of communication between plaintiff, 1st defendant and BOT are collectively admitted **as exhibit P5₁₋₇**
- vi. 5 letters from KCBT to the plaintiff are collectively admitted **as exhibit P6₁₋₅**
- vii. Default notice dated 17/1/2022 admitted **as exhibit P7**
- viii. Board Resolution of the plaintiff dated 26/7/2022 admitted **as exhibit P8**



Under cross examination by Msuya, learned advocate for the defendants, PW1 told the court that, he is a businessman doing his business professionally and he has accountants who work for him in all accounts and use advocates where legal advice is needed. PW1 when shown exhibit P1 and asked to read page 16 read it and admitted to sign all exhibits because he understood them, however, he was quick to point that no performance was done. PW1 when asked on Mortgage he admitted that its true he mortgaged his plot at Sinza. PW1 when shown exhibit P4, exhibit P1₁₋₇ and asked to state how they relate, PW1 read them and admitted that he signed the contract but he was not given any money. PW1 when shown TM2 and asked what was the purpose of letter PW1 told the court that, he wrote a letter to request for change of currency because USD.2,600,000.00 was to be booked in Tanzanian Shillings and told the court that is what he was requesting and 1st defendant complied with.

PW1 when asked on the exchange rate, told the court that, he can't recall the exchange rate but he pointed out that for that time the exchange rate was USD 1 to 2295=. PW1 when shown TM1-3 Bank statement and asked to read entry dated 30/10/2018 read it and told the court that, it was on bank account and the amount shown is TZS.6 billion which was credited on

30.10.2018 while current account on 4/10/2018 had the balance was TZS.440,000. PW1 when shown TM1-3 on loan account told the court that, amount credited was TZS.6 billion but it was withdrawn. PW1 when asked further told the court that, there were two different statements which were at variance and that he never tendered any bank statement but it will be tendered.

PW1 when shown exhibit P2₁₋₅ and asked if he has other documents other than that, told the court that, he has no account loan with KCB-K but he wanted a proof of money which has never been given to him .PW1 when pressed with more questions told the court that, he has no evidence of money from Kenya. PW1 when questioned on loan told the court that as per agreement the existing loan as per 28.9.2018 was USD. 2.1 Million, PW1 insisted that he has no any other loan agreement other than that. PW1 when pressed with more questions told the court that, he has a bank statement showing that he has paid over and above what was owed to KCBT despite the fact that there is no evidence of Puma but the bank statement has cleared everything.

PW1 when shown TM1-4 and asked to show when he paid all debt, told the court that, he cannot see how much they paid, however, he pointed out



that they have their proof of payments which show that they overpaid and the said proof is computation done. PW1 when shown exhibit P3 and asked why they did computation alone, told the court that, they did computation together with KCB-T but they never signed it. PW1 when asked on the minutes of the meeting told the court that they did several meetings but he doesn't have the minutes with him and insisted that Puma paid on 1/2/2018 which was before September, 2018. However, he pointed out that according to his record and mismanagement which was going on in his account he paid more. PW1 when questioned on the contract of 2018, PW1 told the court that no money was deposited into his account and the money paid by Puma reduced the loan amount.

PW1 when shown loan statement, told the court that it indicates that 31/10/2018 Tshs.6 billion were credited in the loan account No. AA18303Z6C4P and withdrawn on the same day from the same account. Therefore, according to PW1, Tshs. 6 billion minus 6 billion brings balance to zero. PW1 admitted that in reality no cash was entered into this account. PW1 when generally cross examined on the bank statement, told the court that, he has a right to get a bank statement but when he requested for it

took time to be granted the same, however, it was given to his accountant and upon perusal Tshs.6 billion reflected thereon.

PW1 when shown exhibit P5 and asked to show where he wrote asking for Tshs.6 billion, PW1 denied to have asked for Tshs.6 billion and told the court that they requested for mismanagement of the account and balance as after reconciliation they discovered to have paid more and that is why they are before this court. PW1 when shown TMA-8 (letter from Delina signed by Kass on 2/12/2020) PW1 told the court that, it was asking for settlement of loan proposal as they thought that they were in arrears of USD.5 Million and that, they had no documents. PW1 when shown exhibit P5 told the court that the amount is not in the bank statement, but he was quick to point out that the accountant will testify on it.

PW1 when further question went on telling the court that, they used loan agreement to compute the balance but he denied to have taken loan in 2018 and no money was credited in their account. However, he acknowledged that he was a guarantor of 2018 loan. PW1 when asked on KCB-K, he was quick to point out that KCB-K had no license to do business in Tanzania and syndication is to follow BOT procedures, it was required to report to BOT and register the loan to get **registration number** .PW1



when asked what is the plaintiff's complaint, PW1 told the court that their complaint is that no deposit was made in their account. PW1 when pressed with more questions told the court that, he is aware how credit reference bureau work .PW1 went on to tell the court that, Central Bank was to know everything to the loan. PW1 told the court that Dun & Grad Street who are agents or vendors of KCB-T reported the plaintiff to Credit Information Bureau on 2016-2017. So to PW1, it KCB-T which reported her to credit bureau. PW1 went on to tell the court that KCB-T reported them but they made an apology of what they did.

PW1 hen asked on other loan he admitted to have other loan with UBA. PW1 when shown exhibit P4 and asked why the document has no date PW1 told the court that, the date is in the stamp and it was prepared before institution of the case. PW1 when pressed with questions told the court that, on 2nd July, 2020 they wrote to BOT because BOT was aware of the loan but never replied to them. Fortunately, later on it realized the whole loan has been paid fully. Expounding on the payments PW1 told the court that, he paid interest of USD1.5 Million and penalty interest of USD.9,000.00 which included the interest that the bank was to be paid.



Under re-examination by Mr. Mwalongo, PW1 when shown annexure TMA-4 specifically page 40-42 told the court that, on 30/10/2018 the amount of TZS. 6.044 billion was credited on current account and on the same date it was debited. PW1 when shown annexure TMA-3 told the court that it indicates that on 30/10/2018 the amount of 6.044 billion was credited as for construction and it was at the same time debited.

PW1 when asked questions for clarifications by the court told the court that, when a client is given the loan can only access it when loaned amount is credited into his/her current account. The money credited into loan account cannot be used. PW1 told the court further that the current account of the plaintiff is 3300243491 and loan account is No. AA18303Z6C4P.

The second witness to testify was one, **YUDA PANIEL MOSHA** (to be referred in these proceedings as "**PW2**"). PW2 under oath and through his witness statement adopted in these proceedings as his testimony in chief told the court that, he is among the directors of the plaintiff and works as the Director for Finance. Being a finance director is casted with roles to oversee all finance matters of the plaintiff, hence, conversant with the fact of this case. PW2 went on telling the court that, since early 2012 plaintiff



had a bank relationship with the 1st defendant as such the plaintiff has accessed several credit facilities from the 1st defendant.

It was the testimony of PW1 that, 1st and 2nd facilities of 2012 and 2013 respectively was between the plaintiff and the 1st defendant only while facilities of 2014 to 2018 were between the plaintiff on one party and the 1st and 2nd defendants on the other party. Further testimony of PW2 was that, the 1st defendant has at all material time refused to avail the plaintiff with, bank statements and loan statement so as to know the loan status of 2012 to 2016 which has been the main cause of troubles and confusion on what loan amount has been disbursed by the 1st defendant and what loan amount is due for payments.

PW2 when testifying on asset-based finance of USD.1,100,000.00 told the court that the plaintiff on 8th December, 2016 paid that loan in full. Explaining further on the asset-based finance, PW1 told the court that, the above facility was disbursed by the 1st defendant on 5th July, 2013 and was repaid on 12th August, 2016 and the unpaid balance was USD.114,593.96 was transferred to loan statement of 13th August,2016 to which plaintiff repaid it on 8th December,2016 and there was zero balance on Account No. MG 1318600007 and loan statement with ID AA1622XWJT.



Testifying further PW2 told the court that, around 2017 the plaintiff and the 1st defendant had a long deliberation and finally agreed to restructure the plaintiff's existing loan. Following that agreement, the payment schedule was extended from 30th June,2017 to 28th June 2029. Further testimony of PW2 was that, the outstanding balance on principal amount plus interest was USD.3,983,477.99 and after the said restructure the plaintiff paid a total USD.4,136,563.52 before the maturity date as such it over paid USD. 153,085.53 to 1st defendant which it does not deserve.

Expounding on how plaintiff repaid the loan PW2 said that payment were made like as follows; Through loan statement with ID No AA162264KS6W plaintiff paid USD.115,490.43 through loan statement with ID No AA16226CJF4V plaintiff paid USD.179,164.94,through loan statement with ID No AA16278FSZ6D plaintiff paid USD.312681.06, through loan statement with ID No AA171814WFWR plaintiff paid USD.339,492.02, through loan statement with ID No AA16226SSJCF plaintiff paid USD. 698,721.13, through loan Statement with ID No MG11235500004 plaintiff paid USD 475,664.76 through the loan statement with ID No MG11514900013 plaintiff paid USD.801,387.65 through loan statement with ID No MG1535500003 plaintiff paid USD.138,648.26., through loan



statement with ID No MG14069001001 plaintiff paid USD.364.346.03 and through loan statement with ID No AA18303Z6CYPplaintiff paid USD. 117,636,754.18,

PW2 when testifying on the allegation of mismanagement of plaintiff loan account, PW1 told the court that, 1st defendant has been mismanaging plaintiff's credit by imposing unfair claims, giving false outstanding balance, providing predatory lending practices against plaintiff and it has failed to act transparent despite the plaintiff's request on the information. PW1 told the court that after the computation of principal sum, interest and penalties plaintiff discovered that it has overpaid the 1st defendant more than what it deserves. PW1 went on to testify further that, the total amount which was advanced to plaintiff was USD.3,983,477.99 out of which plaintiff has paid USD.4,136,563.52 which is higher than the amount due as such plaintiff overpaid USD.153,085.53 to 1st defendant as per account No 3300246105.

PW2 testified further that through the letter dated 3.9.2019 the 1st defendant gave false information to plaintiff that all facilities were advanced by the 1st defendant. According to PW2, there was deceit and predatory behavior on the part of 1st defendant as a result he has failed to



prove the disbursement of USD.4,000,000.00, USD.1,100,000.00 of March 2018, USD.300,000.00, USD.500,000.00 of January 2014, Overdraft of USD.150,00000 of March 2018 and invoice discounting for USD.200,000.00 of March 2018. PW2 admitted that, there has been a chain of emails back and forth on requesting for facility particulars, however, the defendants have all the time been reluctant to avail the particulars for reasons best known to themselves, have remained silent by not responding to email and when they respond they could not address issues raised. It was further testimony of the PW1 that on 20th April, 2020 he received the letter from Barry Dismas requesting plaintiff to share its loan position report, following that request on 21st July, 2020, PW2 responded to the said letter and the same requested for clarification on conflicting loan statement because the loan statement dated 30th January,2019 had two different outstanding amount TZS.5,987,574,266.55 and TZS.6,044,356,025 in the same loan statement No AA18303Z6CYP. PW1 went on to tell the court that, even on 28th January 2019 there were different on outstanding of TZS.5,894,616,660 and TZS.6,044,356,025 on the same loan statement No AA18303Z6CYP and there was no clarification made on the conflicting statement following non response from the defendant on 25th April, 2020.



PW2 wrote a letter to Suzan John Mayala, requesting for clarification of the outstanding of TZS.7,605483,757.79 from the defendant and TShs.5,810,513,755 from credit bureau. According to PW1, conflicting of outstanding amount on the loan statement was a clear indication that the first defendant was manipulating the plaintiff loan information to its advantage.

Further testimony of PW2 was that, the plaintiff made an inquiry for its credit status with the Credit Reference Bureau by the name of Credit info Tanzania Limited. PW1 told the court that, Credit Reference Bureau on 5th March, 2018 issued a report showing that, the outstanding balance as per 31st August, 2017 was USD.300,000,000.00 while on the same report which was 5th March, 2018 by Credit info indicate that plaintiff had an outstanding facility of USD.56,500,000.00 as per 31st January, 2018. According to PW2, it was incorrect report on plaintiff's outstanding debts as such BOT directed Credit info to correct the information which was wrongly supplied by the 1st defendant and it informed the credit reference bureau on incorrect reporting done by the first defendant.

It was the testimony of PW1 that, due to incorrect reporting that was wrongly reported by the 1st defendant to the Credit Reference Bureau,



Alios Finance Tanzania declined to offer ten units of Mercedes Benz Actros to the plaintiff and he was low rated. PW2 testified that, on 20th December, 2021 the plaintiff wrote a demand notice to the 1st defendant and prior to that on 3rd June, 2020 the plaintiff had written a demand notice to the defendants stating that the credit facilities were all cleared and there is nothing outstanding and the defendants have been uncertain. PW2 went on to testify that, the 2nd defendant through the assistance of the 1st defendant has been providing banking services to the plaintiff in Tanzania, without a business license and has not complied with foreign loans registration requirements in Tanzania, then, the 2nd defendant has no right to claim the illegal loan from the plaintiff because there is absence of foreign facility registration. On the basis of the above testimony PW2 prayed that this court to grant all payers in the plaint and dismiss the counter claims.

In proof of the plaintiff's suit, PW2 tendered in evidence the following exhibits, namely: -

- i. Payment summary admitted **as exhibit P9**;
- ii. An affidavit authenticity electronic communication, two emails and summary of loan admitted **as exhibit P10_{I-IV}**;



- iii. One affidavit of authentication of computer printer **and** 11 account statements admitted **as exhibit P11_{I-XII}**;
- iv. An affidavit and 14 emails communication between plaintiff and defendant's officials are admitted **as exhibit P12_{I-XV}**;
- v. An affidavit authenticating printer and email, consumer report plus, inquiring report and complaint **information** plus credit information are admitted **as exhibit P13_{I-V}**;
- vi. Later dated 20/3/2018 from Alios to Delina is admitted **as exhibit P14**;
- vii. 3 demand letters are admitted **as exhibit P15_{I-III}**;

Under cross examination by Msuya, PW2 when shown exhibit P1vii recognized it and told the court that it was signed by Davis Elias Mosha and Nancy Mosha and he saw it before it was signed. PW2 when asked to read page 4 of exhibit P1_{VII} read it and told the court that, according to the contract term, loan facilities, accrued arrears and interest were amalgamated. PW2 when pressed with questions told the court that, according to contract, there was term loan plus accrued areas, interest and penalties with KCB-K. PW2 when pressed with more questions told the court that, according to the contract, there was existing debt at the date of



booking, the purpose of the loan was to book liability exposure which was to be booked in Tanzanian Shillings and time for payment was extended to more than 10years.

PW2 when asked on restructure told the court that restructuring is a normal banking process and told the court that exhibit P1V is a facility which existed before exhibit P1vii and under clause 2 of the facility is short term loan of USD.500,000.00, existing term loan of USD.4 million, existing Asset Based Finance facility.PW2 insisted that no new loan which was extended to plaintiff. According to PW2, in order the loan to be new money has to be disbursed.PW1 when pressed with more questions told the court that, the period from payment was not stated.

PW2 when shown exhibit P5 identified it and told the court that it was signed by Mr. Mosha and the impact of signing is to agree with terms.PW2 when asked on the restructure told the court that at page 2, Delina was asking for restructuring of the loan. PW2 when further cross examined told the court that, restructure was done and a period of payment was extended to 7 years and the loan of USD.500, 000.00 was structured as well.PW2 when further pressed with questions told the court that, the document of 2018 and of document of 2015 are not related on amount



therefore are just documents which don't tally to each other. PW2 further told the court that, plaintiff paid USD.4 Million which it was confirmed by reconciliation through email dated 25th August,2020.PW2 when shown exhibit P3, identified it and told the court that, exhibit P3 is dated 3/2/2022. PW1 when asked on reconciliation told the court that, reconciliation shows how much has been paid and it was not signed because it is internal document of other company.PW2 when shown exhibit P12 and asked if the email dated 25/8/2020 is among the email told the court that, it is not among the email they were confirming the figures of Kilimanjaro and not Delina. However, he pointed out that, Kilimanjaro oil and Delina are sisters' company but are two different companies. PW2 admitted that he is aware that there is a case between Kill Oil and KCB-T.

PW2 when shown exhibit P11_{XI} and asked to read the entry of 30/10/2018 in loan account, read it and told the court that, instruction Tshs.6, 044, 356, 025.00 which is equivalent to USD 2.6 at exchange rate of 2293. PW2 when further cross examined told the court that, USD.2,636,000.88 when compared to exhibit P1_{VII} while amalgamated is 2, 625, 036.23 a difference of amount USD.1,100,012. PW2 went on telling the court that, on that date there was a booking and it was Delina who requested for conversion from



USD to Tanzania Shillings in 2018, Delina acknowledged being indebted, however, the amount is different. PW2 when questioned on the emails told the court that, email was sent to them on 20/3/2020 and upon realizing that there was conflict of amount then they wrote the defendant to explain but it never replied. PW2 when shown exhibit P4 identified it and told the court that, it was before noting some differences so they thought it is best to draw the attention of the court because by the time it was written they has no doubt. PW2 when asked on the loan statement told the court that, the purpose of loan statement is an internal document of the bank which shows the movement of the loan and it all depends on the system of the bank.

PW2 when shown exhibit P11_{XI} identified it and told the court that, on 30/10/2018 entry balance was zero which means that there were no balance. However, PW2 told the court that, he can't know if it was a new loan statement. PW2 when asked on the current account statement told the court that it is not his area of focus but he pointed that the current account will show the current liabilities and expenditure. PW2 when shown TMA-4 in WSD at page 42 of 42 identified it and told the court that it shows negative balance of Tshs of 1, 878, 987.76 on 29/2/2020. PW2 when

pressed with more question told the court that, in those documents there are 3 columns that is debit, credit and balance. PW2 admitted that since in 2016 there was debit of TZS.8,846, 886, 582.22, credit of TZS.8,846, 868, 683.46 and negative balance of 187,898.76 .Explaining further PW2 told the court that, on 30/10/2018 at page 40 of 42 there was a credit of 18,000,000/= and on 12/2/2019 cash was deposited to loan repayment of Tshs.17, 950,000/=, On 5/3/2019 deposited 95,352,000/= loan repayment of Tshs.93, 785, 946.23, on 10/4/2019 deposited Tshs.20,000?=?, on 10/5/2019 deposited Tshs.5,555, 000/= and the same date loan repayment Tshs.5,470,000/=. According to PW2, the account balance become zero. PW2 went on that, on 10/5/2019 they deposited Tshs.265,000/= and on 17/1/2020 deposited Tshs.7,119,519.03. PW2 when shown exhibit P11_{XII} identified it and told the court that, it ended in 2.6.2018 and they asked for conversion on 21st March, 2018.

PW2 when asked on parallel account he responded that, they never operate parallel account of Tanzanian shillings and USD. PW2 when shown P13_{III}, PW2 admitted that KCB-T blacklisted the plaintiff and reported it to BOT. PW2 when pressed with more questions told the court that, the owner of the information to credit is the bank, however, he pointed out

that, the credit info is a loan regulator which monitors the loaners and credit info works together through the bankers. PW2 when further cross examined told the court that, the creditors choose of their own vendors as such DNB was a vendor of KCB-T and what he brought was not of DNB. According to PW2, page 134 of the report indicates that KCB-T Ltd is the one who rated plaintiff badly because Delina has never borrowed USD. 300,000,000.00 but plaintiff was reported by KCB-T for money never been given to it. PW2 when shown exhibit P14 told the court that, the main complaint was for being rated from rejection of facility requested due to low credit rating on Bureau. PW2 when shown TMA-10 in amended Written Statement of Defence told the court that, UBL rated them no negative status.

Under re-examination by Mr. Mwalongo, PW2 when shown annexure TMA-4 to the amended Written Statement of Defence at page 40 of 42 read it and told the court that, there are two transactions, one is from credit arrangement settlement instruction of Tshs.6,044,356,025.05 credited to Delina account while on the same date Delina had the balance of Tshs.440,807.95, but on the same date it was debited to the tune of Tshs.6, 044, 356, 025.05 and the balance of 440,807.95 was left.



PW2 went on telling the court that to credit means money entered into the account and debit means the money has been removed from the account. PW2 when shown page 42 read it and told the court that, the status of the account on 29/2/2020 was Tshs.187, 898.76 and the company is indebted to that amount of money. PW2 when shown annexure TMA-3 to the amended Written Statement of Defence at page 1 of 2 on 30/10/2018 told the court that, there are entries of Tshs.6,044,356,025.05 and on the same date the negative entry was entered on the same amount. PW2 went on telling the court that, the 1st statement is either deposited but this time was withdrawn from the same account by the bank, that the money was entered and taken without their instructions.

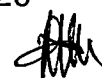
PW2 when asked questions for clarification by the court, told the court that, in both accounts no booking was done because all accounts were credited and debited on the same date of 30.10.2018 on current account the same applies to loan account.

This marked the end of hearing of plaintiff case and same was marked closed.



In defence, the defendant was defended by one, **Ms. SUZAN JOHN MAYALA** (to be referred in these proceedings as '**DW1**'). DW1 under oath and through her witness statement adopted in these proceedings as her testimony in chief told the court that, she is the Principal Officer of the 1st defendant bank holding position of Corporate Relationship Manager and duly authorized to conduct the case for the 2nd defendant. DW1 went on telling the court that she is aware that 1st and 2nd defendants has raised counter claim. It was the testimony of DW1 that since early 2012 Delina, KCB-T and KCB-K have been in a banker customer relationship and various banking facilities were offered to Delina and accepted.

Further testimony of DW1 was that, on 28th September, 2018 Delina was still indebted to KCB-T and KCB-K as such they executed another facility letter which was signed by both parties to constitute binding arrangement. Testifying further on the facilities extended to plaintiff in main suit, DW1 told the court that all outstanding loan facilities were amalgamated into new amalgamated term loan of USD.2,625,036.23 which was booked to Tanzanian shillings to then prevailing rate of 1 USD to 2, 293.00. DW1 went on telling the court that it was agreed, among others, that the term loan will attract interest rate of 17% per annum payable within period of 120



months from the date of amalgamation while the existing term loan of USD.2,189,731.47 which was to be payable with interest rate of 9.725% per annum. Not only that but also it was agreed that, the securities held previously shall continue to secure Delina's obligation to KCB-T and KCB-K and in case it failed to perform its obligation the same shall constitute an event of default and KCB-T and KCB-K shall be entitled to terminate their obligation and recall the entire loan facility and shall have the rights to realize the securities.

DW1 went on to tell the court that, plaintiff through the letter dated 21st March, 2018, letter dated 2nd December,2020 and letter dated 12th December, 2021 she acknowledged that he is indebted to defendants, that the loan is in USD and requested the loan currency be converted from USD to Tshs in order to comply with the directions of the Bank of Tanzania and that the interest be reduced to 11% as such all request were accepted. Further testimony of DW1 was that the new amalgamated loan of 28th September, 2018 superseded all previously facilities which composition of USD 150,000.00 realigned to Delina from Kilimanjaro Oil company Limited who had a loan to the extent of USD.900,000.00, construction term loan dated 30th December,2015, Asset based loan dated 30th December,2015



which had an outstanding balance of USD.209,238.22. According to DW1, the total amount of new amalgamated loan was USD.2,636,003.50 and when converted into Tanzania currency the total outstanding was TZS.6,044.356,025.50 which was credited and debited on the same date.

Testifying on the allegation of mismanagement of plaintiff facility, DW1 told the court that defendants have never breached any banker's duty to the customer by mismanaging the plaintiff's bank account because if Delina was not aware of the state affairs of the account she could have not sanctioned amalgamation of previous loan facilities as she did. Further testimony of DW1 was that, the allegation that the outstanding loan amount has been repaid in full is not true because on 28th September, 2018 Delina acknowledged to be indebted and she could not have executed addendum and sign it at first place.

DW1 went further testifying that, on 27th January, 2014 when loan facility was offered, Board Resolution of Delina sanctioned the borrowing and the securities offered and which same were signed by Davis and Nancy as the Directors and Sureties. DW1 insisted that Delina is still indebted and did not service her loan facility satisfactory as is evidenced with letters dated 2nd December, 2020 and 12th December, 2021. According to DW1, the debt



due as against KCB-T is in extent of Tshs.8,293,080,095.38 and debt due against KCB-K is in extent of USD.3,012,663.33 as per current statements.

It was the testimony of DW1 that loan due and owing to KCB-T by Delina was charged off in order to comply with BOT regulations, however, debt owing to KCB-K still continues to accrue interests and penalty until the date Delina make full payment. It was further testimony of DW1 that, the allegation that KCB-K is not licensed to do banking business with customers having offices in Tanzania is misconceived because the loan between KCB-K and Delina was syndicated loan between KCB-T and KCB-K which was under the supervision of KCB-T and BOT. According to DW1, the Banking laws and practice allow loan syndication by local and foreign banks as such no wrong was committed. DW1 went further testifying that, Delina is obliged to pay back her outstanding liabilities because the allegation that it has paid the loan facility in full to a bank trading illegally is other than admission that she accepted the banking facilities and she is now estopped to deny the transactions she legally contracted to perform with KCB-K.

DW1 went further to testify that the allegation that Delina was wrongly reported to credit reference bureau are also misconceived on the following folds, one, Delina is indebted to KCB-T as such KCB-T has the reasons to



report to Credit reference bureau. Two, KCB-T has no reporting relationship with Credit info Tanzania Limited instead KCB-T is vendor to M/s Dun & Bradstreet Credit bureau who updates and uploads all data on debt liabilities. On the basis of the above testimony, DW1 prayed that this court to grant all payers in the counter claim and dismiss plaintiff suit with costs.

In disproof of the plaintiff claims, DW1 prayed exhibit P1(vii) to form part of his evidence and he tendered the following exhibits, namely: -

- i. Letter dated 21/3/2018 admitted **as exhibit D1;**
- ii. Two letters dated 2/12/2020 and 12/12/2021 from the plaintiff to the defendant are admitted as **exhibit D2 (I)-(II);**
- iii. The 2nd addendum to the facility letter dated 2/3/2018 is admitted **as exhibit D3;**
- iv. Board resolution of the plaintiff dated **2/1/2014** is admitted **as exhibit D4;**
- v. Affidavit of authentication of electronic data and commercial credit report by Dun and Bradstreet are admitted **as exhibit D5_{I-II};**



Under cross examination by Mr. Mwalongo, DW1 told the court that, she doesn't know all claims but what she knows is that, plaintiff have claims against the defendants. DW1 when pressed with questions told the court that, she is aware of plaintiff's claims that he claims for being reported to credit reference bureau; however, DW1 pointed out that plaintiff owes the defendants nothing. DW1 when pressed with more questions admitted to be aware of plaintiff claims and that KCB-K never loaned plaintiff, however, he pointed out that she is before this court to prove that, through internal procedure and regulations plaintiff was able to get money from KCB-K. DW1 when questioned on the regulations responded that, the regulations limit single limit and it is regulated by BOT as such if the amount is above the limit the local banks syndicate with other banks to enable the borrower to get the amount above the limit and that is how KCB-K entered into these transactions.

Expound on the loan syndicate DW1 told the court that, when the money comes from syndicated bank, both banks join hand to give the client that is why KCB-K sent USD.2 Million Dollars plus to KCB-T. According DW2, KCB-K advanced money through syndication as such nowhere KCB-K deposited any amount of money to plaintiff. DW1 when pressed with more question



told the court that, she can't recall when the transaction was done and the exactly amount.

When DW1 was shown exhibit P1_{VII} identified it and told the court that in exhibit P1_{VII}, KCB-K is a lender and now herein exhibit P1_{VII} it stated that KCB-K will transfer money to KCB-T and then to Delina. DW1 when shown exhibit P1_{V1}, P1_{III}, and P1_{VII} identified them and told the court that those exhibits show that, KCB-K is a lender, however, she said it was agreed that the loan from Kenya will come through KCB-T and then to client. However, she admitted that, under syndication it is not like that way. DW1 told the court that the evidence she has is the signing of that facilities. DW1 when pressed with more questions told the court that, bookings were done to reflect the amount but she can't the recall exact amount that was transferred to the client's account.

DW1 when further questioned, she admitted that, it is true there were some misunderstandings on the loan but after reconciliation they got exact amount on interest and amount paid and it had all details of what happened. DW1 went on telling the court that, the custodian of all reports of the loan is the bank. DW1 when asked on loan details told the court that the current and loan account had all details. DW1 when shown her witness



statement identified it and told the court that, she denied to have said she deposited some amount into plaintiff, however, she was quick to point out that the entry will be seen in the current account. DW1 shown exhibit P1_{II} identified it and admitted the amount reflected is USD.2.6 Million and when shown exhibit P1_{II} DW1 read it and told the court that the amount reflected is USD.1 Million as existing to exhibit P1_(I). DW1 when pressed with more questions told the court that, she can't recall how much has been given to plaintiff when exhibits P1(I) was debited and she can't recall when the amount started to be disbursed or how much were disbursed and how much was given to them but it was given. According to DW1, the loan statements were showing how transactions were being done, however, those statements are with KCB-T.DW1 when shown exhibit P1_(III) identified it and admitted that the loan was enhanced to the tune of USD.4 Million; USD. 3 million for KCB-K and what was done was syndication but she was quick to point out that she doesn't know the relationship between those amounts in exhibit P1_{III} and P1_I. DW1 told the court that the amount of USD.3,450,000 in exhibit P1_(III) includes USD 2.6 Million in exhibit P1_(I) amount in exhibit P1_(II) and it is part of the USD.1,450,000 in exhibit P1_(I). According to DW1, the facility was added and syndication started.



DW1 when further pressed with more questions told the court that, the single limit does vary from time to time, what was done is relocation of the amount which was an internal arrangement so as meet the requirement of regulation. DW1 when shown exhibit P1 (iv) read it and told the court that, it was booked to KCB-K and not KCB-T. DW1 when shown exhibit P1 (v) told the court that, it was booked in Kenya and relocation was done. DW1 when shown exhibit P1 (vii) told the court that, the amount disbursed to Kenya and Tanzania to meet the single limit. DW1 when further questioned told the court that on 2018 the 1st restructure of USD 2.6 Million and Kenya USD 2.1 Million were done.

DW1 when shown exhibit P4 and asked to read page 2' read it and told the court that the approved limit was to be given all amount subject to availability of funds. DW1 when further pressed with questions told the court that they were responding to their clients' request with summary of the loans as such 4 restructurings were approved. DW1 went on to tell the court that, the 1st restructuring was done on 4/10/2016, the 2nd on 30/6/2017, the 3rd on 19/9/2017 and the 4th on 30/10/2018 and the amount was USD. 2,636,003.50 but in exhibit P1 (vi) it reads USD.2,625,036.23. DW1 admitted that figures were at variance but by the

date of booking it included the exact amount of USD.2,636,003.50 which is an amalgamated loan.

DW1 when shown exhibit P6 (II) identified it and told the court that, it was true there was a need but the aim was to serve time, however, the exercise did not function but later they sit on their own. DW1 when questioned on loan repayment she admitted that, some loans were fully paid up particularly USD.500,000 was paid up fully, USD.4 Million was partly paid and the rest is unpaid up to date. DW1 went on telling the court that, on their own reconciliation it revealed that the unpaid amount and outstanding amount. When pressed with more question told the court she doesn't remember. DWI when asked further told the court that, the audit exercise was not successful because the audition was not conducted according to their interest, among others, time so they opted to sit on their own. DWI when asked further question on the report told the court that, she doesn't know if the bank will allow to bring the report to court.

DW1 when pressed with question told the court that, in their system there are two features of printing loan statements one feature brings variation because of its setup and the 2nd one, is correct. DW1 when asked on the plaintiff request told the court that, she doesn't recall if she replied in



writing but she replied. DW1 pressed with more questions told the court that, all loans to Delina were before 2016 and nowhere she said KCB-K gave money to Delina directly but money came through KCB-T and letter given to Delina through internal arrangements. According to DW1, that is how syndication operates. DW1 when pressed with more questions on loan syndication told the court that, she did not say KCB-K is not a lender because the offer letter is clear, however, she pointed out that there is nowhere in the offer letter stating that the money from KCB-K will go first to KCB-T but clause 4 is clear on what happened. DW1 when further cross examined insisted that, syndication is arrangement of two banks which team up to give a specified loan that it can be done locally or internationally that, in this case, it was between KCB-K and KCB-T. According to DW1, two or more banks join hands in advancing the loan and when the foreign bank offers loan it is called foreigner facility but she pointed out that she is not aware with the terms and conditions of the foreign loan. DW1 when pressed with question told the court that, she doesn't know that if foreigner facility has to registered and be given number. Not only that but also, she is not aware that the foreign loan can only be paid if it was registered.



DW1 went on telling the court that, KCB-T is an agent of KCB-K in their documentation and she admitted that KCB-K is not registered in Tanzania. DW1 told the court that, KCB-K has two systems of storing data but is technical because each system when printed is not the same. DW1 when pressed with more question told the court that, a technical reason can be explained by an IT man but not by her. DW1 when shown exhibit D5 dated 2/3/2022 read it and told the court that it was per the printing date and time, however, the credit info report is BOT and other agent. DW1 denied to have involved in the reporting of Delina as such she had never heard it to date.

Under re-examination by Msuya, DW1 when shown exhibit P1 (I) & (II) identified it and told the court that, it was KCB-T to Delina and the other facilities the lender was KCB-T and KCB-K as per exhibit (P_{III-VII}) extending loan to Delina. According to DW1, the facility agent and security agent which was done between the two banks was syndication of loans and KCB-T being the security agent her role was to facilitate the funds and security. DW1 when questioned on loans extended to plaintiff told the court that, the 1st facility was on 18/3/2013 and the last one was on December, 2015 however, she pointed out that exhibit P1_{VII} is an amalgamation of all



existing facility, conversion from USD to Tanzania currency and extension of tenure but in general it was restructuring of the loans. DW1 went on to insist that the said facility was for confirming two things; one, amalgamated of existing USD loans, Conversion of USD to Tshs and to book the existing term loan in KCBT, however, she pointed out that under this facility no money was credited to borrower but for existing loans. DW1 when shown exhibit P11_{X1} and exhibit P1_{VII} at page 4 identified it as a loan statement of Delina. DW1 shown two exhibits (P4 and P5) read them and told the court that plaintiff wanted audit to be done as it asked for reconciliation. DW1 when shown exhibit D5_{II} identified it and told the court that, the report dated 2013-2018 in the foreign facility the beneficiary was Delina.

DW1 when asked questions for clarifications by the court told the court that, booking is manifestation of the loan in the account in terms of loan restructuring. DW1 went on clarifying to the court that the client can access the current account but has no access to loan account, however, upon requesting for bank statement it is allowed to be availed. Also, DW1 clarified to court that by mere looking between the two statements one cannot differentiate the statement from the two systems.



This marked the end of hearing of the defence case and same marked closed. The learned advocates for parties prayed for leave to file final closing submissions under Rule 66(1) of this Court's Rules. I granted the prayer. I have had time to go through the rivaling submissions, and I truly commend them for their immense research and contribution which will assist this court on resolving the disputed issues. However, to avoid this already long judgement, I will not repeat each and every thing argued but here and there will refer to them. And where I will not, it suffices to say all have been taken and considered in determination of this suit.

However, having gone through pleadings, testimonies of the witnesses, exhibits tendered and rival submissions for and against the parties, I wish to point out that there are some facts not in dispute in this suit, which in a way will narrow down the contentious issues. These are; **one**, it is not disputed between parties that the plaintiff applied and 1st defendant on various dates advanced credit facilities for several commercial activities. **Two**, it is not disputed between parties that on 21st March, 2018 the plaintiff requested for conversion of the outstanding loan in USD into local currency in compliance to directives of Ministry of Finance. **Three**, it is not disputed between parties that on 30th



October,2018 the sum of Tshs 6,044,356,025.00 was credited and debited on the same day in the loan account of the plaintiff.

However, in the circumstances, what is in serious dispute between parties' is apparent blames to each other for breach of long-term loan agreement; plaintiff believes that the 1stdefendants breached, banker's customer relationship and that has repaid her debt in full while on the 2nd defendant it alleged that KCB-K was illegally and unlawfully carrying banking business in Tanzania contrary to rules governing banking business. On the other hand, plaintiff in the counter claim believes that defendants failed to perform their obligation according to the terms and conditions of the facility letter agreement. With the above contention, therefore, it is imperative to determine each issue agreed against the evidence in the record.

The first issue was couched whether the defendants KCB-T and KCB-K are in breach of banker's duties to the customer by mismanaging the plaintiff (Delina) bank account. The learned counsel for plaintiff strongly submitted that defendants did breach banker's duties to customer by mismanaging plaintiff's bank accounts on the following folds, **one**, booking of loan were made according to defendants wish without plaintiff knowledge which is clear indication that defendant breached duty, **two**, presence of two different

outstanding loan amount on the loan statements printed on the same date, **three**, refusal to avail plaintiff information concerning her loan status, **four**, concealing to disclose findings of an independent third party after having conducted audit, **five**, Misleading information and incorrect reporting of plaintiff's credit worthiness status to the credit reference Bureau are clear indication that defendants are in breach of banker's duty to customer. On the totality of the above reasons, Mr. Mwalongo invited this court to find issue number one in the affirmative.

On the other hand, the defendants counsel joined issues number one and four in his final submissions and argues that according to exhibits P1i-vii, then, monies in those exhibits were advanced to the plaintiff and pointed out that exhibit P11(xi) was booked as Tshs.6,044,356,025.00 and much as documents were duly signed then the plaintiff is bound with the terms. The learned advocate for the defendants challenged the evidence on the part of the plaintiff in a number of ways and conclusively invited this court to find negative in this issue.

Having considered both the pleadings, the issue at hand, the evidence tendered and final submissions of the learned advocate with a very keen legal mind and eyes, I am inclined to answer this issue in the affirmative. I will explain. **One**, going by the contents of exhibit P11(xi) which is loan account and which DW1

admitted the plaintiff had no access was on 30th October 2018 booked with Tshs.6,044,356,025 but going through it has a different balance than what is said to have been unpaid to date of Tshs.1,027,458,787.12. This figure was not explained by the DW1 why this account which under the control of the 1st defendant was availed to the plaintiff had these figures given her admission that the 1st defendant has two printing system which when printed brings different figures. **Two**, it should be noted that the born of contention on this issue and in this suit is not signing the exhibit P1 but disbursement and management of the account. **Three**, exhibit P4 which was relied by Mr. Msuya that it established that the plaintiff admitted to be indebted to that tune is misconceived because this was just a company resolution and had nothing to admission of debt at all. **Four**, in banking business when an issue is on management of the accounts, in my considered opinion, the bank who is the custodian of bank statements has burden to prove that it was not mismanaged and by production of the disputed bank statement and explain to the satisfaction of the court that indeed no mismanagement. For clarity is that it is the bank that has control of all entries and prints out to be availed to the client. **Five**, as correctly argued by Mr. Mwalongo, admitted by DW1 and rightly so in my opinion, the fact that the 1st defendant has two printing systems and DW1 failure to explain how the system




works with two variant output is irresistibly doubtful as to the intention of the 1st defendant having two printing system and without bringing an IT person to explain the discrepancies, then, an adverse inference has to be drawn from the conduct of the 1st defendant. I will comment on this issue later as I wind up my judgement in this uncalled conduct of the 1st defendant.

Six, denial of the independent auditor to conduct the investigation and give a report which was denied on the simple reasons that the audit was not working at the interest of the 1st defendant all considered was that there was something the custodian of the accounts was hiding and has remain to be known alone to herself.

In the totality of the above reasons, the first issue must be and is hereby answered in the affirmative that the defendant mismanaged the accounts of the plaintiff by booking wrong figures in her several accounts but which the plaintiff has no access to. This conduct cannot escape any just court or tribunal and it amounts to abusive debt recovery.

This takes me to the 2nd issue couched that **'whether the 2nd defendant is legally licensed to carry on business within Tanzania?** Both advocates for parties joined issue 2 and 3 and argued them jointly. Mr. Mwalongo argued that



much as 2nd defendant is reflected in exhibits P1(i)-(vii) as lender but went on to point out that much as DW1 admitted that the 2nd defendant is not registered in Tanzania with no Tax Identification Number(TIN), and hence, with no license all what was done by him is illegal under section 3 of the Business Licensing Act,[Cap 208 R.E.2002] and that even if what was done was foreign loan but did not meet the guidelines of Foreign Exchange Circular No.6000/DEM?EX.REG?58 dated 24th September 1998 which set three conditions of not opening foreign account, swift messages with local banks to evidence outflow of funds and Debt Registration Number but which, according to Mr. Mwalongo, none was complied with. To buttress his pointed cited the cases of JAPHARY GASTO GWIKOZE vs. WAMUHILA FUTURE GROUP, CIVIL APPEAL NO 22 OF 2019 and GROFIN AFRICA FUND LIMITED vs. H. FURNITURE AND ELECTRICAL LIMITED, COMMERCIAL CASE NO. 81 OF 2017.

Also was the case of STATE OIL TANZANIA LIMITED vs. EQUITY BANK TANZANIA LIMITED AND ANOTHER, COMMERCIAL CASE NO 105 OF 2020 DSM (HC) (UNREPORTED) in which it was held that power to create mortgage by foreign entity must comply with the foreign lending requirements, most important seek consent of the Commissioner, which is not the case here.



On the totality of the above reasons, Mr. Mwalongo invited this court to find and hold that the 2nd defendant transactions, if any, were illegal and unenforceable in all intents.

On the other hand, Mr. Msuya had different view and arguing the 2nd and 3rd issues jointly, strongly argued that no requirement for foreign lender to have TIN, License and registration with BRELA to be able to lend a Tanzanian, as in the case in dispute and that the lending done by 2nd defendant is lawful. According to Mr. Msuya, the Foreign Exchange Act, [Cap 271 R.E. 2002] no prohibition imposed by law to that effect. Therefore, all what was signed between parties in exhibit P1 were lawful and enforceable.

On the above reasons, Mr. Msuya invited this court to find in the negative issues 2 and 3.

Before answering these issues on syndicated loans, I find prudent to define what a syndicated facility is. According to the learned author Mark Largan in his book titled "**Corporate Banking – Practice and Law Bankers Workshop Series** the phrase syndicated facility is defined to mean **is one that is provided to a single borrower by a group of lenders.**" The learned author observed further that is an arrangement that gives the borrower access to very large



sums, which could not be provided by a sole lender. Therefore, in any case there must be there **borrower, managing bank and the agent bank**. Worth to note, the lenders must have authority to lend in accordance to law.

Now back to the issues and with that in mind, I have carefully considered the rivaling arguments of the learned advocate for parties on these issues which are basically legal issues and with due respect to both learned advocates, the 2nd issue must be answered in the negative and the 3rd issue in the negative. I will explain. **One**, as to the 2nd issue, I agree with Mr. Msuya arguments that it not a legal requirement for foreign bank lending a Tanzania company to have TIN, License and registration to qualify to loan. Much as the agent bank is allowed to conduct banking business its roles is to facilitate upon complying with legal requirement as stipulated and directed by Bank of Tanzania.

However, as to the 3rd issue will answer it in the negative that the credit facilities executed between the plaintiff and second defendant were not valid, lawful and enforceable in Tanzania. The reasons are abound. **One**, as correctly argued by Mr. Mwalongo and rightly so in my own view, failure to comply with section 3(1) of Foreign Exchange Circular No.6000/DEM/EX>REG/58 renders the whole transaction invalid, unlawful and unenforceable. **Two**, failure by the 2nd defendant to prove disbursement of funds as directed by Bank of Tanzania and



same be booked in the current account of the plaintiff, then the validity of the facilities remains a mere intention which was not executed to the end. In the absence of swift transfer of foreign funds to the agent bank draws to one conclusion that no valid transaction was carried between parties herein. **Three**, going by the wording of the exhibits P1(i-viii) nowhere the same introduced KCB-K as syndicated lender but just a as lender which amounts to conducting business in Tanzania without license.

On the totality of the above reasons, I am inclined to find in the negative that the no license is required to lend money to Tanzanian individual and in further negative that the facilities letters signed between the plaintiff and 2nd defendant were of no effect, invalid, unlawful and unenforceable.

This takes me to issue number 4 which was couched that **'whether the plaintiff has paid her loan liabilities with the 1st defendant in full and is no longer indebted to the defendants and the defendants are bound to discharged the securities legded?'** Mr. Msuya for the defendants argued this issue along with issue number one and concluded that plaintiff is indebted to the plaintiff after drawing long history of the series of loans between parties. It was the argument by Mr. Msuya that the plaintiff was to prove that she has paid all the money as indicated in exhibit P1. Also, was the arguments of Mr. Msuya that

vide exhibit P11 (iv) the plaintiff paid some money and if no disbursement why was she paying as indicated in exhibit P11(vi).

On that note, concluded that the balance due is USD.3,012,663.33 and Tshs.8,293,080,095.38 which comprised of principal and interest as of 2020.

On that note concluded that this issue should be answered in the plaintiff is still indebted to that extent.

On the other hand, Mr. Mwalongo jointly arguing issues number 4, 5 and 6 pointed out that they revolves around loan mismanagement of which each party had obligations to do. According to Mr. Mwalongo, the plaintiff tendered exhibit P3 which shows the amount disbursed and the amount paid which includes principal, interest and penalties which sum up to USD.4,136,563.52 over and above the amount of USD.3,983,477.99, hence, overpaid by USD.153,085.53 as per exhibit P3 and P9 which were not controverted by the defendants. Mr. Mwalongo relied on DW1 testimony that she is unable to trace and show to the court when and how the 1st defendant disbursed and that mere signing of exhibit P1 alone is not enough but prove of disbursement which is on the defendants. More so, no proof of money changing hands from the 2nd defendant to the 1st defendant then to the current account of the plaintiff.



On the totality of the above arguments, Mr. Mwalongo argued that the defendants utterly failed to prove to disbursement any money to the plaintiff than what was admitted and have repaid in full and over and above the advanced money.

Having dutifully considered the pleadings, the evidence tendered and exhibits alongside rivaling arguments by the learned advocates for parties on issue number 4, I am inclined, with due respect to Mr. Msuya, to find this issue in the affirmative that the plaintiff had paid her loan liabilities in full and no longer indebted and the defendants are bound to discharge the securities and refund back the excessive amount paid of USD.153,085.53. I will explain. **One**, Mr. Msuya heavily relied on exhibit P1 read together with exhibit P11(iv) and (vi) to show that some disbursements were done but having gone through exhibit P11(iv) and (vi) the balance is zero meaning all monies due were fully paid. **Two**, as to exhibit P11(vi) same reads a zero balance indicating that no balance is unpaid by 12/08/2016. **Three**, much as no prove of any money disbursed to the plaintiff from the 2nd defendant, then, no money was supposed to be repaid in so far as the evidence on record is concern.



On the totality of the above reasons, I find this issue in the positive that the plaintiff paid her loan liabilities with the defendants in full and the defendants are bound to discharge the securities pledged.

This trickles down this suit to the fifth and sixth issues couched that **'whether defendants are liable to the plaintiff in the counter claim in the extent of TZS.8,293,080.38 as at 20/09/2021?'** and **'whether the defendants in the counter claim re indebted to the 2nd plaintiff in the counter claim in the extent of USD.3,012,663.33 as at 28th February, 2022?.'** Mr. Msuya strangely submitted nothing on issues 5, 6 and 7 because to him contrary to the court records and what parties agreed there were only 5 issues instead of 8 issues which he submitted on 1st and 4th jointly and 2nd and 3 jointly and jumped to the last issue on reliefs.

On the other hand, Mr. Mwalongo submitted on issues 4, 5, and 6 jointly. In respect of issues number 5 and 6 it was submitted that much as DW1 utterly failed to trace and show how the loans were disbursed to the plaintiff, then, concluded that the plaintiffs in the counter claim failed to prove their case to the standard set out in section 110 of the Evidence Act [Cap 6 R.E. 2019] for failure to discharge their legal burden to prove their claims. According to Mr. Mwalongo, the claims by the defendants were specific claims which were to be strictly

proved. To buttress this point cited the case of TANZANIA SARUJI CORPORATION vs. AFRICAN MARBLE CO LTD [2004] TLR 155.

Mr. Mwalongo went on to submit that DW1 agreed that exhibit P1- facility agreements was not enough but actual funds transfer into the accounts of the defendant was imperative without which no claim can stand, in particular, in serious disputed management of the same.

Having carefully considered the one sided final submissions on this point and carefully considered as well evidence on record, I have no doubt, these two issues are on counter claim by plaintiffs against the defendants in the counter claim and I am going to answer them in the negative. Before explaining why I found them in the negative, I also noted that by their nature these issues are on specific claims and need not only specifically pleaded but also strictly proved. The plaintiffs in the counter claim tendered 5 exhibits and prayed that exhibit P1(vii) to form part of their defence and in the counter claim. **One**, going by the exhibits tendered by the plaintiffs in the counter claim nothing proves the amount of TZS.8,293,080.38 and USD.3,012,663.33. Exhibit D1 was on request to change the repayment currency, exhibit D2(i) and (ii) was on restructuring and reflected quite different figures and on ongoing negotiation between parties, exhibit D3 was just a facility letter, exhibit D4 was a company resolution way

back in 2014, exhibit D5 is on reporting of the plaintiffs to Credit Reference Bureau and lastly was exhibit P1(vii) which is facility letter dated 2018. Apart from the above exhibits nothing was put on evidence for claims of the amounts in dispute. **Two**, the plaintiffs being custodians of all loan documents between parties was bound to bring in evidence the proof by documentary evidence that indeed not only parties signed exhibits P1 but also that the monies were disbursed to the current accounts of the defendants in the counter claim. In the absence of such proof, the plaintiffs' claims in the counter claim have to crumble on its face value.

In the totality of the above reasons, as correctly argued by Mr. Mwalongo and rightly so in my own considered opinion, the plaintiff utterly failed to prove the amounts claimed in respect of issues 5 and 6 in this suit.

That said and done, therefore, without much ado, therefore, issues numbers 5 and 6 must be and are hereby answered in the negative that the defendants in the counter claim are not liable to pay the plaintiffs in the counter claim any of the money claimed in the counter claim.

This takes me to the 7th issue which was couched that **'whether the defendants jointly are severally liable to pay interest at rate of 9.725%**



on account of their default from the date of default to the date of full payment?.' As noted above, Mr. Msuya had nothing to submit on this issue. On the other hand, Mr. Mwalongo was of the firm submissions that much as issues 5 and 6 crumbled down, this issue also has to die natural death.

In deed all considered and with fair mind and legal mind, this issue depended much on issues number 5 and 6 but which have failed. Without much ado, then, this issue will not detain this court but I hereby find it wanting in the circumstances of this suit.

With that note, it is my humble findings that the defendants in the counter claim jointly and severally are not liable to pay interest at the rate of 9.725% on account of default.

Before going to the last issue let me pose here and by the way make few remarks on some issues that need the attention of the parties and Bank of Tanzania inclusive, as regulator of the banking business. **One,** The way the plaintiff's loans were handled by the defendants leave a lot to be desired. It is very unfortunate for a bank under the regulation of Bank of Tanzania to have two systems on details of the bank statement of a customer but which systems when printed out expose two different figures in bank statements with two



different figures and a bank officer cannot explain the difference between the print out of such systems. The testimony of DW1 on the bank statements of the plaintiff cannot escape the regulator on this point.

Two, foreign loans if not registered should be treated with stern measures otherwise may turn out to be good money laundry with its undesired effect to the economy. Disbursements done without compliance with the guidelines should be discouraged at its inception.

Three, truly the testimony of DW1 for 2nd defendant was wanting in all respects without authority to do so. But much as the counter claim fails, I bet not indulge into it anymore.

This takes me to the last issue and usual that **'what reliefs parties are entitled to?** I will start with the counter claim, the plaintiff in the counter claim prayed for payment of specific damages of TZS.8,293,080,095.38, USD.3,012,663.33, interests and costs of the counter claim. The defendants in the counter claim prayed that I dismiss the counter claim with costs. From my findings in issues 5, 6 and 7 above the counter claim in this suit must be and is hereby dismissed for want of merits.



As to the main suit, the plaintiff prayed that the suit be allowed as prayed with costs. The defendants in the main suit as well prayed that the main suit be dismissed with costs. However, based on my findings in issues 1, 2, 3, 4, 5, 6, and 7 above, this suit cannot be dismissed. In the vein, this must be and is hereby allowed in the following orders, namely:-

- a. I declare that the 1st defendant is in breach of the credit facility and breach of the banker's duties towards the plaintiff;
- b. I declare that the plaintiff has fully paid all loan facilities advanced to it by the 1st defendant;
- c. I declare that the plaintiff does not have any liability to the second defendant;
- d. I order discharge of the mortgages, debenture, corporate guarantee, personal guarantee and all other securities issued by the plaintiff to secure the loans in dispute;
- e. The business by the 2nd defendant in the disputed loans by the 2nd defendant is unlawful, illegal and contrary to the rules, guidelines and circulars governing the banking business in Tanzania;
- f. I order the 1st defendant to refund the plaintiff the sum of USD.153,085.53 which was overpaid in course of repayment of the loans in dispute;



g. The defendants are hereby jointly and severally ordered to pay the plaintiff general damages to the tune of USD.400,000.00 for torture and for anxiety caused due to mismanagement of the plaintiff's account and loans and for negligently reporting the plaintiff in the Credit Reference Bureau.

h. The plaintiff shall have costs of this suit.

It is so ordered.

Dated at Dar es Salaam this 23rd September, 2022.



A handwritten signature in black ink, consisting of a series of vertical, slightly wavy lines that form a stylized 'M' and 'G'.

S.M.MAGOIGA

JUDGE

23/09/2022