



**BHUSHAN BHALCHANDRA SAHASHRA DDHE .....4<sup>TH</sup> PLAINTIFF**  
**PATRICK BAGUMA BITATURE .....5<sup>TH</sup> PLAINTIFF**  
**NARASIMHA REDDY NANDYALA ..... 6<sup>TH</sup> PLAINTIFF**  
**VIJAYA NARASIMHA REDDY NANDYALA..... 7<sup>TH</sup> PLAINTIFF**  
**SIVA PRASADA SARMA MAMILA PALLI ..... 8<sup>TH</sup> PLAINTIFF**

**VERSUS**

**COMMERCIAL BANK OF**  
**AFRICA (TANZANIA) LTD .....1<sup>ST</sup> DEFENDANT**  
**BILO STAR DEBT COLLECTOR**  
**COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**  
**HARVEST TANZANIA LIMITED ..... 3<sup>RD</sup> DEFENDANT**

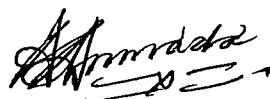
**(COUNTER CLAIM)**

**JUDGMENT**

**A.A. MBAGWA J,**

The plaintiff, Commercial Bank of Africa (Tanzania) LTD instituted this case against the defendants jointly and severally praying for judgment and decree as follows;

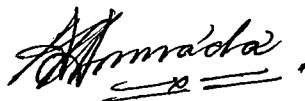
- i) For payment of the sums of Tshs. 3, 798,961,823/25 (say Tanzanian shillings Three Billion, Seven Hundred Ninety Eight Million, Nine Hundred Sixty One Thousand, Eight Hundred Twenty Three and



Twenty Five (cents) comprising the principal sum advanced to the 1<sup>st</sup> defendant by the plaintiff, interest and penalties whose payments were duly guaranteed by the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> defendants in their capacities as guarantors/sureties.

- ii) For payment of agreed interest rate of 23% which is the commercial rate, counting from the 19<sup>th</sup> day of September, 2018 the last date until the date the entire debt is paid in full
- iii) For payment of agreed interests at the court's rate of 10% to be charged post judgment until the date of judgment and decree is settled in full.
- iv) For payment of the costs of the case
- v) That in the event the defendants fail jointly and severally to repay the claimed sums herein stated under paragraphs 19(i), (ii), (iii) and (iv) the Hon. Court be pleased to allow and order the plaintiff to sell all the properties pledged as securities and the proceeds realized there from to be utilized to liquidate the claimed sums thereof.

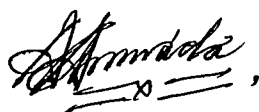
At paragraph 11.0 of the plaint, the plaintiff contended that the claims arise from four different banking facilities which she advanced to the 1<sup>st</sup> defendant and the same were guaranteed by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>,

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and 8<sup>th</sup> defendants. The plaintiff averred that, the said banking facilities include;

- a) An overdraft facility (O/D) in the sum of Tanzanian shillings two hundred fifty million (Tshs. 250,000,000/=) which was advanced to enable the 1<sup>st</sup> defendant to finance payment of import duty, VAT, freight charges and other related port charges
- b) A letter of credit (L/C) in the sum of seven hundred million (Tshs. 700,000,000/=) which was advanced to facilitate 1<sup>st</sup> defendant to import tyres from China.
- c) Post import loan (PIL) in the sum of nine hundred million (Tshs. 900,000,000/=).
- d) Term loan facility (T/L) in the sum of two billion, five hundred thirty-two million, six hundred sixty-three (Tshs. 2, 532,663,000/=) which amount was a matured post import loan facility that was converted into a term loan facility.

Upon service of the plaint to the defendants, the defendants severally filed their respective defences. However, later on i.e., on 5<sup>th</sup> May, 2021, before the hearing started, the defendants prayed and were granted leave to file a joint amended written statement of defence in which they wholly

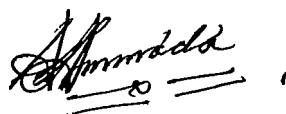


disputed the plaintiff's claims thereby beseeching the court to dismiss the entire suit with costs for want of merits.

At paragraph 4 of the amended written statement of defence, the defendants acknowledged receipt of the banking facilities advanced by the plaintiff but vehemently stated that the same were not disbursed within the agreed time and in full as such, the defendants lamented that the anomaly negatively impacted and frustrated the 1<sup>st</sup> defendant's business thereby contributing to the 1<sup>st</sup> defendant's failure to repay loans within the agreed time.

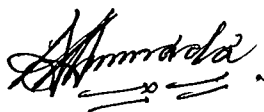
In addition, the defendants filed a counter claim against the plaintiff, Commercial Bank of Africa (Tanzania) LTD, Bilo Star Debt Collector Co. Limited and Harvest Tanzania Limited praying for the following reliefs;

- i) A declaration that the sale of properties pledged/mortgaged as security by the plaintiffs (defendants in the main suit) to the 1<sup>st</sup> defendant is null and void
- ii) A declaration that the seizure of fixed deposit under lien USD 209,300 (say United States dollars Two Hundred and Nine Thousand Three Hundred) was unlawful.



- iii) An order for payment of TZS 3,000,000,000/= (say Tanzanian shillings three billion) as compensation/damages for improper/irregular and unlawful disposal of mortgaged assets, mentioned under paragraph 11 above, below the market value.
- iv) An order for payment of TZS 500,000,000/= as general damages for loss of income/earnings or as may be assessed by the court.
- v) An order for payment of TZS 200,000,000/= as punitive damages or as may be assessed by the court
- vi) Payment of interest at commercial rate of 23% from the date of judgment till full payment.
- vii) Interest at court rate on the decretal sum from the date of judgment till full payment of decretal sum.
- viii) Costs of this suit be borne by the defendant.
- ix) Any other or further relief(s) as this Hon. Court may deem proper and just to grant in the circumstances of the case.

The plaintiffs, in the counter claim, lamented that Commercial Bank of Africa (Tanzania) LTD, Bilo Star Debt Collector Co. Limited and Harvest Tanzania Limited who are referred to as 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants in the counter claim disposed of the deposited securities in a non-transparent



and fraudulent manner as a result the assets were sold at a throw away price.

Upon completion of the pleadings and other preliminaries, the matter was called on for final pre-trial conference where the court, upon consensus of the parties, framed the following four issues;

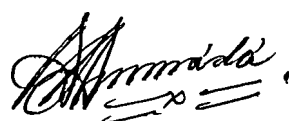
1. Whether the defendants are indebted to the plaintiff to the extent of TZS 3,989,961,823.25 as of 19/09/2018 on account of various banking facilities advanced by the plaintiff to the 1<sup>st</sup> defendant.
2. Whether the bank facilities advanced by the plaintiff to the 1<sup>st</sup> defendant was timely disbursed in full and if the answer is in negative, whether the delay negatively impacted and frustrated the 1<sup>st</sup> defendant's business thus contributing to its failure to repay the loan in time and in a contracted manner.
3. Whether the plaintiff in the main suit together with 2<sup>nd</sup> and 3<sup>rd</sup> defendants in the counter claim improperly or unlawfully disposed of defendants' mortgaged properties (chattel and legal).
4. To what reliefs are parties entitled.

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Throughout the trial of this case, the plaintiff was represented by Abel Msuya, learned advocate whereas the defendants had services of Anna Mareale, learned advocate.

In a bid to prove the claims, the plaintiff paraded one witness namely, PW1 Samwel Mangesho whose statement was adopted and admitted to form part of his testimony. Further, through PW1, the plaintiff tendered several documentary exhibits which were admitted and marked from exhibits P1 to P10. The documentary exhibits include letter of offer dated 15<sup>th</sup> March, 2017, extract board resolution of the 1<sup>st</sup> defendant, certificates of sale, 1<sup>st</sup> defendant's account bank statement, notices of default, publication of auction (newspaper), deeds of mortgage, deeds of variation and personal guarantees.

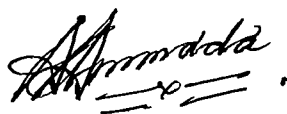
PW1 told the court that the business relationship between the plaintiff and 1<sup>st</sup> defendant, Simba Tyres Limited started early in 2011 and until March, 2017, the 1<sup>st</sup> defendant owed the plaintiff an outstanding loan amount of around Tanzanian shillings three billion. It was the plaintiff's evidence that through the offer letter dated 15<sup>th</sup> March, 2017 (exhibit P1) the plaintiff advanced the said four facilities.

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Further, the plaintiff evidence was to the effect that having executed the loan agreement dated 15<sup>th</sup> March, 2017 (exhibit P1), the 1<sup>st</sup> defendant defaulted to repay the loan as per the agreement as such, the plaintiff issued the defendants with notices of default but none of the defendant cleared the loan. PW1 tendered the notices of default along with the post receipts (exhibit P6) to prove the service of the same to the defendants. It was the plaintiff contention that correspondences via post office was one of the modes of communication agreed between the parties in the contract (exhibit P1).

PW1 continued that owing to the 1<sup>st</sup> defendant's default, the outstanding loan amount (principal and interest) accrued up to the sum of Tanzanian Shillings Three Billion, Seven Hundred Ninety-Eight Million, Six Hundred Sixty-One Thousand, Eight Hundred Twenty-Three and Twenty-Five Cents (Tshs. 3, 798,961,823/25) as of 19<sup>th</sup> September, 2018. It is worth noting that 19<sup>th</sup> day of September, 2018 is when the plaint was prepared and signed by the plaintiff. PW1 tendered the 1<sup>st</sup> defendant account statement of January, 2017 to 19<sup>th</sup> September, 2018 along which with calculation of interest and the same were admitted and marked as exhibit P10 collectively.



PW1 further stated that on account of continued default, later on, the plaintiff engaged Bilo Star Debt Collector Co. Limited and Harvest Tanzania Limited, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in the counter claim respectively to dispose of the deposited securities with the view to recover the outstanding loan. According to the evidence adduced, Bilo Star Debt Collector Co. Limited disposed of the deposited motor vehicles (movable properties) whilst Harvest Tanzania Limited was responsible for sale of the landed properties. PW1 tendered certificates of sale (exhibits P7 and P9) to prove sale of the movable and immovable securities. Further, PW1 tendered Habarileo newspaper dated 3<sup>rd</sup> November, 2018 (exhibit P8) in which a notice for the public auction of the landed properties was published.

It was the plaintiff's further contention that the proceeds from sale of the deposited securities did not fully set off the debt hence she prayed the court for payment of the remaining amount. It should be noted at this juncture that the deposited securities were disposed of by the plaintiff prior to the institution of the suit and during the pendency of this suit as hereunder indicated. Further it is equally worthwhile to note that throughout the evidence the plaintiff could not specifically tell the court



as to the amount of money she recovered from the proceeds of pledged securities.

According to the certificates of sale (exhibit P7), motor vehicles with Registration No. T 999 BUH Tata, T 999 CXF Toyota Harrier, T 999 DDY Toyota Vitz and T 469 DDZ Toyota Vitz were sold within July, 2018 whilst T 761 BBK Mercedes Benz, T 549 BUS Toyota RAV 4 and T 843 BUF Toyota RAV 4 were sold in October, 2018 and lastly, T 909 CVB Tata Xenon was sold in January, 2019.

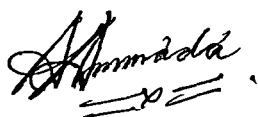
Further, as per exhibit P9, the landed properties were disposed of through public auction which was conducted on 24<sup>th</sup> November, 2018.

Whereas the plaintiff contended in the plaint that the outstanding debt was Tshs. 3, 798,961,823/25 as of 19/09/2018, PW1, through calculation of interest which is part of exhibit P10 said that by 5<sup>th</sup> April, 2022, the debt amount had accrued up to Tanzanian shillings eight billion, five hundred twenty million, four hundred thirty-two, four hundred fifty-nine and five cents (Tshs 8, 520,432, 459.05). PW1 thus prayed the court to enter judgment and decree in favour of the plaintiff, Commercial Bank of Africa (Tanzania) LTD.



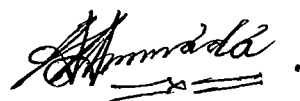
Upon closure of the plaintiff's case, the defendant's counsel Ms. Anna Mareale informed the court that their solo witness one Patrick Baguma Bitature was, at the material time, in Uganda hence unable to appear for cross examination. Upon probed by the court, Ms. Anna Mareale told the court that Bitature could not appear in person nor was he ready to testify via video conference. As such, the counsel prayed the court to admit the witness statement of Patrick Baguma Bitature in evidence without availing him for cross examination under Rule 56 (3) of the High Court (Commercial Division) Procedure Rules, 2012 hereinafter referred to as the Rules. The prayer was granted by the court thus the witness statement was adopted and admitted as part of evidence in chief. However, it is apposite to mention that according to rule 56(3) of the Rules, a witness statement whose maker fails to appear for cross examination is accorded lesser weight.

Upon conclusion of the hearing, the counsel prayed and were allowed to file final written submissions. I commend both counsel for their enriching submissions and compliance with the filing schedule. I had occasion to thoroughly read the counsel's submissions hence I will be referring them where necessary to avoid making this judgment unnecessarily long.

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Having recounted the evidence from both parties, it is now opportune moment to determine the issues framed.

To start with the 1<sup>st</sup> issue namely, whether the defendants are indebted to the plaintiff to the extent of TZS 3,989,961,823.25 as of 19/09/2018 on account of various banking facilities advanced by the plaintiff to the 1<sup>st</sup> defendant. There is no dispute that the 1<sup>st</sup> defendant entered into a loan agreement with the plaintiff. This is clearly established through the pleadings and exhibit P1 that the plaintiff agreed to advance to the 1<sup>st</sup> defendant various banking facilities to wit; an overdraft facility (O/D) in the sum of Tanzanian shillings two hundred fifty million (Tshs. 250,000,000/=), a letter of credit (L/C) in the sum of Seven Hundred Million (Tshs. 700,000,000/=), post import loan (PIL) in the sum of Nine Hundred Million (Tshs. 900,000,000/=), term loan facility (T/L) in the sum of Two Billion, Five Hundred Thirty-Two Million, Six Hundred Sixty-Three Thousand (Tshs. 2, 532,663,000/=). In addition, the plaintiff witness one Samwel Mangesho testified that the plaintiff disbursed the facilities accordingly but the defendants failed to repay the loan as per the agreement as such, by 19<sup>th</sup> September, 2019 the defendants were indebted to the plaintiff in the sum of Tshs. 3, 798,961,823/25. PW1

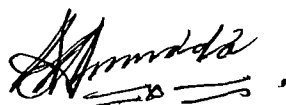


tendered the calculation of interest and 1<sup>st</sup> defendant's loan and current account bank statements (exhibit P10) to support his claims.

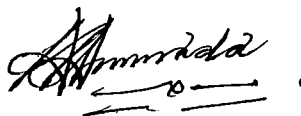
The defendants, on their part, admitted entering into loan agreement (exhibit P1) with the plaintiff in respect of various bank facilities as pleaded by the plaintiff. Further, the 2<sup>nd</sup> to 8<sup>th</sup> defendants do not dispute guaranteeing the said loan. However, the defendants vehemently claimed that the loan amount was not disbursed in time and in full.

It is a cardinal principle of the law that a party who alleges must prove. See the case of **Paulina Samson Ndawanya Vs. Theresia Thomas Madaha** Civil Appeal No. 45 of 2017, CAT at Mwanza and section 110 of the Evidence Act. It was therefore incumbent to the plaintiff to prove, on the balance of probabilities, that she disbursed the banking facilities to the 1<sup>st</sup> defendant which until on 19<sup>th</sup> September, 2018 had accrued to Tshs. 3, 798,961,823/25. In proving this fact, PW1 tendered exhibit P10 which comprises 1<sup>st</sup> defendant's loan account No. MG1708805007, current account No. 100107100019 and calculation of interests.

I have keenly scanned exhibit P10. The loan account No. MG1708805007 is clear that on 29<sup>th</sup> March, 2017, that is after the signing of loan agreement (exhibit P1), the plaintiff disbursed to the 1<sup>st</sup> defendant a sum

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of Tanzanian Shillings Two Billion, Five Hundred and Seven Million, Two Hundred Ninety-Six Thousand Five Hundred Thirty Eight and Fifty Three Cents **(Tshs 2,507,296,538.53)**. The same amount is reflected in the current account No. 100107100019. Further, the said loan account which PW1 told the court that it was automatically generated from the bank system and therefore authentic indicates that on 30<sup>th</sup> August, 2018, the outstanding loan amount was (Tshs 2, 293, 114, 643.65) being the principal amount and interest. Apart from the loan account statement there is no other piece of evidence that proves the disbursement of other banking facilities. During final submissions, Mr. Msuya argued that the other facilities which were disbursed to the 1<sup>st</sup> defendant such as letter of credit (L/C) and post import loan (PIL) could not be reflected in the bank statements because they were directly paid to the third parties. However, the plaintiff failed to adduce any evidence be it physical document or electronic to prove the disbursement of the alleged other facilities eg. alleged payments to the third parties as contended by the plaintiff. It is inconceivable that with modern technology in the banking operations and considering the colossal amount of loan involved, the plaintiff would have disbursed the facilities to the plaintiff without any documentation. PW1 also tendered the so-called calculation of interest which is part of exhibit



P10. Having dispassionately examined this document, I noted that it had no supporting documents. In my view, the only reliable evidence is the 1<sup>st</sup> defendant loan account (exhibit P10) which was produced by the plaintiff. Further, the plaintiff did not explain as to how she arrived at the findings of the outstanding sum of TZS 3,989,961,823.25 as of 19<sup>th</sup> September, 2018 which is reflected in the calculation of interest whereas the loan account statement clearly tells it all that by 30<sup>th</sup> August, 2018, the 1<sup>st</sup> defendant was indebted to the plaintiff the sum of Tanzanian Shillings Two Billion, Two Hundred Ninety Three Million, One Hundred Fourteen Thousand, Six Hundred Forty Three and Sixty Five Cents (**Tshs 2, 293, 114, 643.65**) being the principal and interest. More so, I find the calculation of interest not credit worth because it did not take into account the fact that the plaintiff had disposed of the securities between July 2018 and January, 2019 to recover the loan amount. The so called calculation of interest is silent on the proceeds from the sale of deposited securities.

On the other hand, the defendants could not tell the court as to what exact amount they managed to repay nor did they state the exact amount

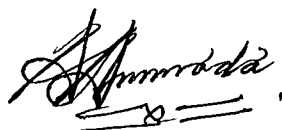
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of loan they received from the plaintiff. The defendants provided evasive statement that the facilities were not disbursed in time and in full.

After scrutinizing the adduced evidence in whole as above indicated, it is my findings that the plaintiff has only proved that the defendants were indebted to the plaintiff to a tune of **Tshs 2, 293, 114, 643.65**. (say Tanzanian Shillings Two Billion, Two Hundred Ninety Three Million, One Hundred Fourteen Thousand, Six Hundred Forty Three and Sixty Five Cents) as of 30<sup>th</sup> August, 2018.

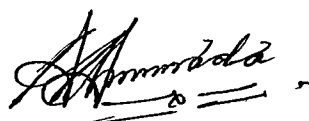
The second issue is whether the bank facilities advanced by the plaintiff to the 1<sup>st</sup> defendant were timely disbursed and in full and if the answer is in the negative, whether the delay negatively impacted and frustrated the 1<sup>st</sup> defendant's business thus contributing to its failure to repay the loan in time and in a contracted manner. This issue was framed following the claims raised in the counter claims. It was therefore imperative on the plaintiffs, in the counter claim, to prove their claims. Mr. Patrick Baguma Bitature simply stated, in his witness statement, that the loan amount was not disbursed in full and within time whereas the plaintiff witness testified to the contrary. There is no evidence from the defendants as to when the facilities were supposed to be disbursed nor did they prove the amount

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or type of facilities allegedly disbursed to the 1<sup>st</sup> defendant. As such, the only evidence as to the amount of loan disbursed to the 1<sup>st</sup> defendant remains to be the loan account statement No. MG1708805007 (exhibit P10) which indicates that on 29<sup>th</sup> March, 2017 the plaintiff disbursed to the 1<sup>st</sup> defendant **Tshs. 2,507,296,538.53.**


As to whether partial disbursement of the banking facilities negatively impacted the 1<sup>st</sup> defendant's business, Mr. Bitature could not, in his statement, tell the court how the 1<sup>st</sup> defendant was adversely impacted. These were claims raised by the defendants hence they were duty bound to prove them. Nonetheless, there was no evidence adduced to prove the alleged negative consequences arising from partial disbursement. In the premises, I am opined that the defendants failed to establish the alleged negative impacts caused by partial disbursement.

The 3<sup>rd</sup> issue is whether the plaintiff Commercial Bank of Africa (Tanzania) LTD in the main suit together with 2<sup>nd</sup> and 3<sup>rd</sup> defendants in the counter claim namely, Bilo Star Debt Collector Co. Limited and Harvest Tanzania Limited improperly or unlawfully disposed of the defendants' mortgaged properties (chattel and legal). The defendants faulted the sale of the deposited securities on two grounds; one, that they were not served with



notice of default and two, that the mortgaged assets were sold below 25% of the market value.

Conversely, the plaintiff contended that the mortgaged assets were lawfully disposed of at a market price. PW1 tendered the notices of default accompanied with the post receipts to establish that the defendants were served with the requisite default notices via post office which was one of means of communication as per the agreement (exhibit P1). Besides, PW1 tendered Habarileo newspaper dated 3<sup>rd</sup> November, 2018 (exhibit P8) in which the public auction for sale of landed properties was advertised. However, there was no proof of advertisement of public auction for movable securities (motor vehicles) as PW1 only tendered certificates of sale (exhibits P7) in respect of the movable properties to wit, the motor vehicles. The defendants' counsel in her final submissions argued that by taking into account the proceeds obtained from the sale of pledged securities together with insurance bond, it was enough to settle the plaintiff's claims. Additionally, Ms. Anna Mareale, while citing the decision of this court in the case of **Bank of Africa Tanzania Limited vs Rose Mihayo Assea**, Commercial Case No. 138 of 2017, submitted that where the plaintiff opts to dispose of the pledged securities without court order,



she cannot recover beyond the proceeds of the mortgaged properties. The defendant's counsel was thus opined that the plaintiff was estopped from claiming the unrecovered loan amount after selling the pledged securities.

Having canvassed the evidence herein, it is common cause that the disposal of the movable properties (the motor vehicles) was done without public notice (publication) although PW1 told the court that the sale was by public auction. This is because the plaintiff failed to produce any evidence to that effect. Exhibit P8 which is Habarileo newspaper contained public notice in respect of landed properties. Whereas it is a common practice to publish a notice of public auction before the due date, I was unable to get a provision or case law that compels publication of a notice in respect of movable properties especially where the lender exercise her right to dispose of the securities without court order. My reading of the provision of section 12 (2) of the Auctioneers Act, tells me that public notice of fourteen days is only mandatory in the disposal of landed property. In view of the foregoing deliberations, it is my findings that the sale of chattels was lawful.

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With regard to the sale of landed properties, (immovable properties), I am of unfeigned opinion that the sale was properly done. PW1 tendered notices of default (exhibit P6) which were served to the defendants via mail (post office). Further, exhibit P8 proved that the auction was publicly advertised through Habariero newspaper (exhibit P8). Besides, PW1 stated that the pledged securities were sold at the market price through public auction.

On all this account, it necessarily follows that the disposal of the deposited securities both movable and immovable was lawfully done hence the 3<sup>rd</sup> issue is answered in the negative.

The 4<sup>th</sup> and last issue is about the reliefs which the parties are entitled to. It is undisputed that the plaintiff disposed of the deposited securities before and during the pendency of this case. According to the plaintiff's evidence (exhibits P7 and P8), the deposited securities were sold in July 2018, November 2018 and January, 2019 whilst the case was instituted in September, 2018. The plaintiff did not tell the court as to how much remained outstanding after selling the securities. Further, PW1, during cross examination, admitted that the plaintiff seized the fixed deposit under lien of USD 209,300 after the 1<sup>st</sup> defendant defaulted to pay. I have



keenly gone through the evidence adduced in particular the documentary exhibits but I could not find the exact total amount that the plaintiff recovered from disposal of the securities. Further, I glanced at the calculation of interests (part of exhibit P10) which purportedly indicates the outstanding loan amount and interest as of April, 2022 to be (Tshs 8, 520,432, 459.05) but I could not see deductions of fixed deposit under lien of USD 209, 300 and proceeds realized from sale of deposited securities. This explains that the purported calculation of interest is not worth to be relied on as it did not take into account the proceeds from sale of deposited securities. The defendants' counsel during submissions was opined that the plaintiff was estopped from claiming unrecovered amount after she had disposed of the securities. She relied on the decision of this court in the case of **Bank of Africa Tanzania Limited vs Rose Mihayo Assea (supra)**. With due respect to the learned counsel for the defendants, it should be noted that this is no longer the correct position of law. The Court of Appeal in **CRDB Bank PLC vs True Colour Limited and another**, Civil Appeal No.29 of 2019, CAT at Dar es Salaam, has recently settled it clearly that a lender is entitled to claim in court for unrecovered loan amount after disposing of the deposited securities. Nonetheless, in the instant case it is very difficult to figure out the



unrecovered amount taking into account that the securities were disposed of during the pendency of the case and there was no amendment of the plaint to reflected unrecovered amount. Further, the plaintiff did not bring evidence to prove the total sum collected from sale and seizure of the pledged securities.

The plaintiff prayed for an alternative relief to dispose of the securities in order to recover the outstanding loan amount. After critically analysing the circumstances obtaining in this case, I find that the appropriate relief for the plaintiff is an order for disposal of securities. Now, since the plaintiff decided to dispose of the said securities before determination of the case, I proceed to order that the proved outstanding debt of Tshs. 2, 293, 114, 643.65 be recovered from the proceeds of disposed securities. Concomitantly, I find no justification to grant the plaintiff costs of this suit as she opted to recover the loan amount by sale of securities without court order. As such, the plaintiff had no valid reasons to bring this suit in court praying for a disposal order of the deposited securities which she had already sold.

In the final analysis, I dismiss the counter claim by the defendants for want of merits, on the one side. On the other side, I enter judgment and



decree in favour of the plaintiff, Commercial Bank of Africa (Tanzania) LTD and consequently order as follows;

1. The plaintiff is entitled to Tanzanian shillings two billion, two hundred ninety-three million, one hundred fourteen thousand, six hundred forty-three and sixty-five cents (Tshs. 2, 293, 114, 643.65) being the outstanding loan amount owed by the defendants jointly and severally.
2. The plaintiff to recover the said amount of Tanzanian shillings two billion, two hundred ninety three million, one hundred fourteen thousand, six hundred forty three and sixty five cents (Tshs. 2, 293, 114, 643.65) from the proceeds of deposited securities which the plaintiff already disposed of.
3. Each party should bear its own costs.

It is so ordered.

Right of appeal is fully explained.

Dated at Dar es Salaam this 30<sup>th</sup> day of November, 2022.



  
**A.A. Mbagwa**

**JUDGE**

**30/11/2022**