

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 110 OF 2021

BETWEEN

STANBIC BANK TANZANIA LIMITED PLAINTIFF

VERSUS

LAWRENCE KEGO MHINDA MASHA.....DEFENDANT

JUDGMENT

A.A. MBAGWA, J.

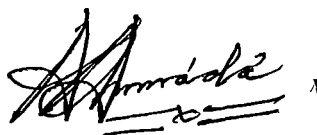
The plaintiff's claims against the defendant are USD 630,859 and USD 12,816.24 being the outstanding facilities and accrued interests advanced to the defendant for residential property loan (mortgage finance) and personal loan respectively as of 23rd July, 2021. It is contended that initially i.e., on 9th March, 2021, the defendant approached the plaintiff, requested for and was granted property loan of USD 400,000. Thereafter, the defendant continued to apply for and was granted several top up loans which until 19th September, 2013 stood at USD 927,214.49. However, the defendant could not repay the loan as per the agreement as such, on 13th November, 2014 and 22nd December, 2015, the plaintiff and defendant



executed credit facility variation deeds. According to the plaint, the defendant continued to default payment even after signing the variation agreements of 22nd December, 2015 the consequence of which he was issued with a statutory notice of default in 2017. Upon receipt of the default notice, at the defendant's instance, the parties executed deed of variation on 13th November, 2017 which was tendered in evidence and admitted as exhibit P7. No sooner had the parties signed deed of variation dated 13th October, 2017 than the defendant applied for and obtained personal loan of USD 22,000 from the plaintiff bank. The said personal loan was secured by the defendant's property under Plot No. 424 C.T. No. 31293, Mikocheni Medium Density Phase II Dar es Salaam. It was further contended that the defendant only managed to service the property loan from USD 987,000 to 630,000 and personal loan from USD 22,000 to 12,816.24 as of 23rd July, 2021.

In view of the above, the plaintiff instituted the instant suit praying for judgment and decree in the following orders;

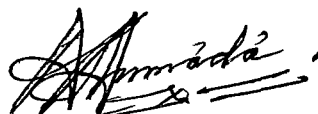
- a) Judgment in favour of the plaintiff against the defendant for USD 630,859.74 for property loan and USD 12,816.24 for personal loan.



- b) Interest at the aggregate rate of 24% per annum on the said sum of USD 630,859.74 and USD 12, 816.24 from the date of filing the suit until judgment and or sooner payment.
- c) Order that in the event the outstanding loan is not paid the mortgaged property under Plot No. 424 under C.T. No. 31293, Mikocheni Medium Density Phase II, Dar es Salaam be auctioned to realize the loaned amount.
- d) Interest at the Court rate post judgment.
- e) The defendant jointly and severally be ordered to pay costs of this suit, and
- f) Such other orders and reliefs which this Hon. Court deems just, equitable and convenient.

Upon service, the defendant filed a written statement of defence disputing the plaintiff's claims against him. The defendant stated that the facility in dispute had no connection with construction of a house in Plot No. 424 C.T. No. 31293, Mikocheni Medium Density Phase II Dar es Salaam. Although the defendant admitted taking property loan and personal loan, he lamented that the amount claimed was exaggerated. He stated that he offered for sale of his property in Plot No. 242 Block F Mbezi, Medium

/ the plaintiff's staff

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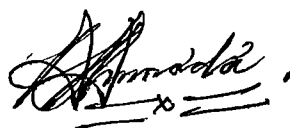
Miranda Lutenge and the same was purchased by Atu Patrick Mwakitwange who was financed by the plaintiff bank. In addition, the defendant stated that he sold his property in Plot No. 26 Block X, Capri Point Area in Mwanza under C.T. 033035125 and used the proceeds from sale to repay loan but the plaintiff did not apply the principle of early repayment instead, she continued to calculate interest based on a full fifteen (15) year term.

Upon conclusion of the pleadings, three issues were framed namely,

1. Whether there is a breach of loan agreements between the plaintiff and the defendant.
2. If the answer in No. 1 is answered in the affirmative, what is the outstanding amount of loan?
3. To what reliefs are parties entitled?

When the matter was called on for hearing, Mr. Paschal Kamala, learned counsel advocated for the plaintiff whilst the defendant was represented by a team of lawyers comprising of Victor Mwakimi, Lige James, Denis Kahana and Grace Mahuza.

In support of the claims, the plaintiff produced one witness namely, Noel Philip, Manager, Rehabilitation and Recoveries of the plaintiff along with seventeen (17) documentary exhibits including offer for residential




property loan dated 9th March, 2012 (exhibit P1), credit facility variation agreements, personal loan facility letter dated 27th October, 2017, mortgage deed in respect of Plot No. 424 Mikocheni, notices of default and bank statements for account No. 9120001413463, No. 9120000144644, No. 9120000831105 and No. 9120000488982 all in the name of Lawrence Masha.

PW1 stated through his witness statement that the defendant took property loan of USD 400,000 via credit facility dated 9th March, 2012 and thereafter applied for and was granted several additional loans which the defendant failed to repay. In consequences thereof, the parties executed various variation agreement deeds. To buttress his assertion, PW1 tendered an offer letter for residential property loan dated 9th March, 2012 (exhibit P1), credit facility variation agreement dated 16th August, 2012, (exhibit P2), credit facility variation agreement dated 23rd January, 2013 exhibit P3, credit facility variation agreement dated 19th September, 2013 (exhibit P4), credit facility variation agreement dated 13th November, 2014 (exhibit P5), and credit facility variation agreement dated 22nd December, 2015 (exhibit P6). Further, PW1 stated that the defendant had two loan accounts to wit, No. 9120002144644 for property loan and No. 9120001413463 for personal loan. He proceeded that owing to the



defendant's continued default, on 13th October, 2017 parties signed another variation agreement and soon thereafter i.e., 27th October, 2017, the defendant took another loan (personal loan) of USD 22,000 and the same was secured by the landed property comprised in Plot No. 424 C.T. No. 31293, Mikocheni Medium Density Phase II Dar es Salaam. The plaintiff stated that despite all these efforts, the defendant continued to default repayment of both property and personal loans. As such, the plaintiff issued the defendant a default notice dated 21st August, 2018. PW1 stressed that the defendant was not making timely repayment of loans. He also denied miscalculation of the claimed interest. PW1 insisted that the plaintiff calculated interest based on the proper rates as per the agreement. PW1 further stated that the defendant had never raised any query on the propriety of the interest prior as such, he was opined that the defendant's contentions on exaggeration of interests were mere afterthoughts. In addition, PW1 elaborated that it is not easy to see the exact figure such as USD 600,000 because the defendant was servicing the loan hence the amount was decreasing.

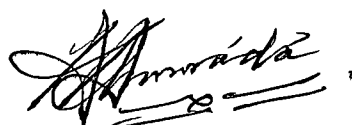
In defence, the defendant stood a solo witness and did not tender any document. In essence, the defendant did not dispute entering into agreements for property loan and personal loan as well as the subsequent

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variations. He, however, lamented that the plaintiff wrongly calculated the attending interests. The defendant also complained that the plaintiff reduced the loan tenure (period) from fifteen (15) years to ten (10) years without justification and notice to the other party. Besides, the defendant stated that he lost his position with IMMMA Advocates hence his earning capacity was affected but upon communicating the incident to the plaintiff, the latter did not see it fit to invoke the terms of the insurance cover for which the defendant had paid. During cross examination, Mr. Masha confirmed to the Court that he does not dispute signing the facility letters rather he contested the outstanding balance because according to him, he had fully repaid the loans. He also clarified that when he accused the plaintiff for unfair bank practice, he was referring to the incidents when he sold his properties to settle the loan amount but the plaintiff directed the money to repay the accrued interests instead of principal loan amount.

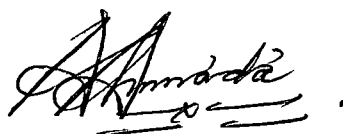
I have dispassionately scanned the evidence adduced and paid due consideration to the rival submissions made the learned counsel for both parties. It is therefore the right time to determine the issues framed.

The 1st issue is 'whether there is a breach of loan agreements between the plaintiff and the defendant'. I have keenly evaluated the evidence of



both parties. There is no dispute that the parties entered into property loan agreement and personal loan agreement. Exhibit P1 titled 'Offer of Residential Property Loan' dated 9th March 2012 is loud and clear that the defendant took a loan of USD 400,000 for the purposes of refinancing the property on Plot No. 424, under C.T. No. 31293 Mikocheni Medium Density Phase II, Dar es Salaam City. Thereafter the defendant applied for and was granted three additional loans at different times to wit, USD 200,000, USD 250,000 and USD 100,000 as exhibited in the credit facility variation agreements dated 16th August 2012 23rd, January, 2013 and 19th September, 2013 which were tendered and admitted in evidence as exhibits P2, P3 and P4 respectively. Nonetheless, the defendant could not service the loan as per the agreement as such, on 13th October, 2017 the parties entered into a restructuring agreement titled 'Sixth Letter of Variation' (exhibit P7). According to clause 1 and 2 of the sixth letter of variation (exhibit P7), all the preceding facility letters and variation agreements were varied and replaced with exhibit P7.

Exhibit P7 is also very clear under clause 3 to the effect that at the time of signing i.e., 13th October, 2017, the outstanding balance stood at USD 472, 451.53. Further, the loan term was agreed to be 151 months which is equivalent to 12 years and 7 months. In addition, under clause 3.6, the



defendant was duty bound to repay equal monthly instalment of USD. 5,511.15.

Hardly had the parties signed the restructuring agreement (exhibit P7) than the defendant took a personal loan. Through a facility letter dated 27th October, 2017 (Exhibit P8), the defendant took a personal loan in the sum of USD 22,000 payable in sixty (60) months. According to clause 4 of exhibit P8, the loan was to be repaid in sixty (60) equal monthly instalments of USD 467.43.

I have thoroughly scanned the transactions in the bank statement for account No. 9120000488982 (exhibit P17) which shows the defendant's repayment trend of the property loan. The transaction dated 7th November, 2017 at page 3 tallies with the restructuring agreement (exhibit P7) in the sense that it shows clearly that the outstanding loan balance was USD 472, 451.53. From 7th November, 2017 onwards the statement tells it all that the defendant did not comply with the contract terms of monthly repayment of USD. 5,511.15. Similarly, I looked at the bank statement for account No. 9120001413463 (exhibit P14) which is in respect of repayment of personal loan and observed that the defendant did not remit monthly instalments of USD 467.43.

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Further, the plaintiff through exhibit P17 told the Court that on 29th May, 2020, the bank wrote off the defendant's debt by crediting the defendant's account in order to reconcile the accounts. In contrast, the defendant contended that he fully repaid the loan that is why the balance in his loan account read zero. I have scrutinized the contents of exhibit P17 and satisfied myself that the credit transactions dated 29th May, 2020 were not loan repayment by the defendant rather a mere accounting procedure known as writing off which was intended to reconcile the bank books. It is worth noting that writing off is a procedure or rather a bank practice which is recognized in law. Thus, what is indicated on exhibit P17 does not mean that defendant discharged his liability as he wants this Court to believe. In the case of **National Bank of Commerce vs Universal Electronics and Hardware & 2 Others [TLR] 2005 at page 258**, the court held that: -

"The writing off debt was just mechanism intended to clear bank books but not to discharge debtors from liability, it was an exercise allowed by the bank deadline vide GN 39 of 2001 proving debt or loss write off but they do not discharge customer liabilities"

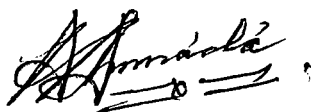
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From the foregoing deliberations, it is common cause that the defendant is still indebted to the plaintiff bank.

It is a clear position of law that parties are bound to perform the contractual terms which they freely entered. See the case of **Simon Kichele Chacha vs Aveline M. Kilawe**, Civil Appeal No. 160 of 2018, CAT at Dar es Salaam. It was therefore incumbent on the defendant to service loans by submitting monthly instalments as per the agreements.

All the above considered, it is my unfeigned findings that the defendant breached the loan agreements for his failure to repay the said loans according to the agreement terms.

The 2nd issue is if the answer in No. 1 is in the affirmative, what is the outstanding amount of loan? According to exhibit P14, the outstanding balance for personal loan stood at USD 12, 816.24 as of 9th August, 2021. With respect to the property loan, exhibit P15 is to the effect that the outstanding balance was USD 631, 837.33 as of 8th August, 2021. The defendant contended that the outstanding amount was arrived at, based on wrong calculation of interests. However, he did not adduce any evidence apart from his verbal to controvert the plaintiff's documentary evidence. In addition, the defendant did not dispute the restructuring agreement (exhibit P7) in which he admitted that outstanding amount



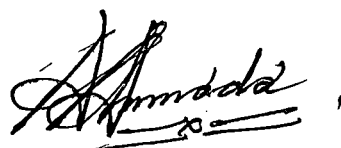
was USD 472, 451.53 as of 13th October, 2017. As such, I am at one with the plaintiff that the defendant is indebted to plaintiff in the sum of USD 630,859.74 and USD. 12,816.24 for property and personal loans respectively.

The 3rd and last issue is to what reliefs are parties entitled? It is a settled position of law that a party who fails to perform his contractual obligation is deemed to have breached the contract and a party suffering from such a breach is entitled to compensation. Section 73 of the Law of Contract Act is quite clear on this aspect. It provides;

"73. -(1) Where a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it"

This position was further reinforced in the case of **Simba Motors Limited vs John Achelis & Sohne GMBH and Another**, Civil Appeal No. 72 of 2020, CAT at Dar es Salaam.

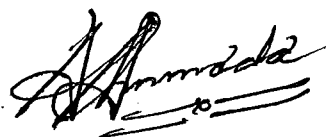
As alluded to, in this case the defendant has breached the terms of loan agreements for his failure to repay according to the contract as such, he



is liable to compensate the plaintiff. I have appraised the provisions of the agreements (exhibits P7 and P8) and observed that the agreed interest was 9% and 10% for property and personal loans respectively. In that regard, the interest rate of 24% requested by plaintiff is, in my view, on high side. Instead, I am opined that interest of 10% would meet justice.

On all the above account, I am satisfied that the plaintiff has proved its case on a balance of probabilities. In consequences therefore, I enter judgment and decree in favour of the plaintiff with the following orders;

- a) The defendant is hereby ordered to pay the plaintiff USD 630,859.74 and USD 12, 816.24 being outstanding amount for property loan and personal loan respectively.
- b) The defendant to pay interest rate of 10% per annum on the said sum of USD 630,859.74 and USD 12, 816.24 from the date of filing the suit until judgment date.
- c) In the event the outstanding loan is not paid the mortgaged property under Plot No. 424 under C.T. No. 31293, Mikocheni Medium Density Phase II, Dar es Salaam be auctioned to realize the loaned amount.
- d) The defendant to pay interest at the Court's rate of 7% from the date of judgment to the date of full payment; and.




e) The defendant is ordered to pay costs of this suit.

It is so ordered.

The right of appeal is fully explained.




A.A. Mbagwa

JUDGE

30/06/2023