

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 69 OF 2022

BETWEEN

AZANIA BANK LIMITEDPLAINTIFF

VERSUS

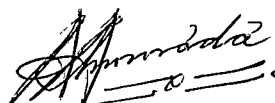
ANGELINA JOSEPHAT SHIRIMA DEFENDANT

JUDGMENT

A.A. MBAGWA J.

The plaintiff is a corporate body duly established under the laws of Tanzania and licensed to carry on banking business including lending. On the other hand, the defendant is a natural person and customer of the plaintiff bank with bank account No.001001044963370001 at the plaintiff bank. The dispute in this suit arises from breach of loan agreements between the parties.

Briefly, the plaintiff case is that at different times between 2012 and 2014, the plaintiff, at the request of the defendant, advanced credit facilities which until 28th January, 2014 stood at TZS 91,745,448.84. According to the evidence in particular, a letter of offer dated 28/01/2014



(exhibit P3), the loan amount was payable within forty-eight (48) months. However, the defendant defaulted in repayment of loan. After several reminders to no avail, the plaintiff resolved to institute the present suit against the defendant praying for judgment and decree in the following orders, namely;

- a. For payment of a total sum of Tanzania Shilling 114,607,643.22 (Tanzania Shillings One Hundred Fourteen Million Six Hundred and Seven Thousand Six Hundred Forty-Three and twenty-Two Cents.
- b. For payments of penal interest computed an agreed interest of 18% per annum on outstanding amount referred in (a) above computed from the date of default to the date of judgment.
- c. For payment of general damages suffered by the plaintiff for business loss and other resultant losses and damages suffered by plaintiff as a result of the defendant's failure to heed to the terms and conditions of the loan agreement and guarantee.
- d. For payment of interest on decretal sum at court's rate from the date of judgment till full satisfaction of the entire decretal sum.
- e. For costs of this suit and
- f. For any other relief(s) the court may deem fit to grant.



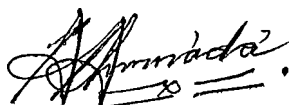
Upon service, the defendant on 22nd August, 2022 filed the written statement of defence disputing all the plaintiff's prayers. The defendant stated that she entered into loan agreements but the money was never disbursed to her. She further contended that, the agreement was between plaintiff and defendant's employer namely, National Identification Authority (NIDA). Eventually, the defendant implored the Court to dismiss the instant suit with costs.

Upon completion of pleadings, the Court, with consensus of the parties, framed three issues;

1. Whether the loan was disbursed to the defendant by the plaintiff
2. If the 1st issue is answered in affirmative, whether the defendant defaulted repayment.
3. What reliefs parties are entitled to.

During hearing, the plaintiff was in the legal services of Ms. Upendo Mmbaga and Magati Nyarigo, learned advocates whilst the defendant was ably represented by Ms. Marietha Mollel, learned advocate.

The plaintiff, in proving its case, called one witness, **Daniel Assenga (PW1)** and produced several documents which were admitted and marked from exhibit P1 to P16. PW1 under oath and through his witness



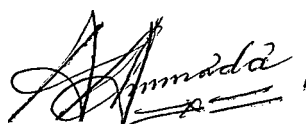
statement which was admitted by this Court and adopted to form part of his testimony in chief told the Court that, he is a relationship officer of the plaintiff, hence conversant with the facts of this suit. It was the testimony of PW1 that Angelina Shirima who is the defendant in this case is the holder of A/C No. 001001044963370001 which was migrated from an old A/C No. 001001044963370001 both maintained at Azania Bank. It was further the testimony of PW1 that on 26th June, 2012 defendant applied for a loan to the tune of TZS 24,800,000 from the plaintiff's bank which later on was followed by top up loan of TZS 10,000,000/= granted on 26th March, 2013 to be repaid within 48 months thereby making the total new loan TZS 32,092, 564.86. PW1 tendered in evidence letter offer dated 27/3/2013 which was admitted as **exhibit P1**.

PW1 further testified that on 4th June, 2013 defendant made an application and plaintiff approved TZS 35,000,000 while the existing loan amount was at TZS 31,601,226.72. As such, the total amount of loan became TZS 66,601,226.72. PW1 tendered in evidence enhancement letter offer dated 04.6.2016 which was admitted and marked as **exhibit P2**. PW1 proceeded that, on 28th, August, 2013 plaintiff made another request of TZS 13,000,000 at that time the existing loan was TZS 63,939,612.67. Again, on 30th August 2013 defendant requested for



another loan and was disbursed with TZS 10,000,000 making the total facility to the tune of TZS 76,939.612.67. And lastly PW1 told the Court that, through the letter dated 28th January 2014 (exhibit P3) the defendant requested for TZS 20,000,000. At this time the outstanding loan amount was TZS 71,745,448.84 hence upon grant of TZS 20,000,000 the total existing loan amount stood at TZS 91,745,448.81. As the witness tendered the copies of offer letters, he also tendered in evidence request letter for loss report dated 28/8/2020 and police loss report No. DAR/CEN/RB/638320/2020 to establish the loss of originals and the same were admitted and marked **exhibit P4 and exhibit P5** respectively.

The plaintiff evidence was further to the effect that, it was agreed among others, that the above loan facility would be repaid within 48 months from 28th January, 2014. However, defendant did not fulfil her contractual obligation as agreed. PW1 tendered in evidence account statement No. 001001044963370001, loan schedule repayment and certificate of data accuracy which were admitted in evidence and marked as **exhibit P6, exhibit P7 and exhibit P8** respectively. Moreso, PW1 told the Court that, defendant through the letter dated 8th May, 2018 committed herself to repay the loan and on 6th June 2018 plaintiff deposited TZS 500,000/= . PW1 tendered in evidence the letter dated 8/5/2018 written by the



defendant acknowledging the loan which was admitted in evidence and marked as **exhibit P15**. Testifying on the reminder letters, PW1 told the Court that, on 24th August, 2018 plaintiff wrote a reminder letter to defendant and the same was copied to National Museums of Tanzania but the defendant did not heed to the reminder as such, the plaintiff issued a demand notice dated 12/11/2018 which was received on 13/11/2018. PW1 told the Court that the plaintiff made several efforts including reminder letters to the defendant but all these endeavours proved futile. PW1 testified that the plaintiff also wrote to the defendant's subsequent employers but none of them could help the defendant liquidate the debt. PW1 tendered various correspondence with the defendant's various employers and the same were admitted and marked from exhibit P9 to P16 respectively. Following the defendant's continued default, the outstanding loan stood at TZS. 114,607,643.22.

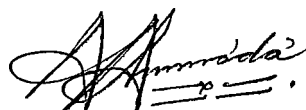
In defence, defendant, **Angelina Josephat Shirima (DW1)** stood a solo witness. DW1's evidence was that sometimes in June 2012 while working with the National Identification Authority (NIDA), her employer entered into loan arrangement with the plaintiff, Azania Bank in which interested employees could apply for loan. The defendant stated that, she, being interested, applied for and was granted home loan of TZS



24,800,000. DW1 went on telling the Court that, the employer was required to deduct the defendant's emoluments and remit the same to the plaintiff bank. DW1 told the Court that, unfortunately, she was transferred to Central Establishment Office as such, all the emoluments were stopped. Consequently, she was no longer capable to service the loan hence a default. According to DW1, the plaintiff's claim is unfounded because the arrangement was between Azania Bank and defendant's employer (NIDA) in which she has no mandate to interfere. On that note, she urged this court to dismiss the suit with costs.

While under cross examination, DW1 admitted to have entered into loan agreement with Azania Bank. She added that it was mandatory for salary to go through Azania Bank and she had bank account with Azania Bank for loan purpose. DW1 also admitted to have taken the alleged facilities but stated that the same were fully paid by her former employer NIDA. DW1 lamented that she requested for loan history in order to figure out the outstanding amount but the plaintiff declined to provide her the loan history.

At the conclusion of hearing, parties were allowed to file final written submissions in terms of rule 66(1) of the Rules. I have gone through the rivaling submissions and I am grateful to the counsel for their inputs.



A. Amuda

However, for avoidance of making this judgment tedious, I will not reproduce them. Suffice it to say that I have considered them in arriving at my decision. That said and done, I proceed to determine the issues as follows.

The first issue is whether the loan was disbursed to the defendant by plaintiff. The learned counsel for plaintiff had it that, plaintiff advanced the defendant bank facilities as depicted under exhibit P1, exhibit P2, and exhibit P3. In rebuttal, the learned counsel for defendant was opined that there is no dispute that the plaintiff advanced the loan to plaintiff but what is in dispute is the amount advanced. With greatest due respect to Ms. Marieta Mollel, learned counsel for the defendant, her argument that, the issue in dispute is the amount disbursed is untenable and misplaced. This is because it was not among the issues framed and agreed upon between the parties. The law is very clear that court should confine itself to issues which were framed. See case of **Frank M. Marealle vs Paul Kavauka Njau [1982] T.L.R No. 32**. I am live to the fact that, the court, may, *suo motu* or upon application by a party, raise new issue at any time before judgment but that depends on the context of the case and it is upon hearing of both parties. It is worthwhile to note that even where the Court raises the issue *suo motu*, the parties have the right to be heard.



See the case of **Barclays Bank Tanzania Limited vs Sharaf Shipping and Agency (T) Limited & Another, Consolidated Civil Appeals No. 117/16 of 2018 and No. 199 of 2019, CAT**. In view thereof, I will not delve into the amount disbursed as an issue though it can be discussed in the course of determining the framed issues.

Now coming back to the real issue of whether the loan was disbursed, there is evidence of exhibit P1, P2 and P3 as well as the account bank statement (exhibit P6). Exhibit P3 in particular is the last letter of offer and it is quite elaborate that upon grant of top up loan of TZS 20,000,000/= the total outstanding loan stood at TZS 91,745,448.84 as of 28th January, 2014. This was because there was outstanding loan of TZS 71,745,448.84 prior to disbursement of TZS 20,000,000/=. In addition, exhibit P6 on the transactions dated 29th January, 2014, it is clear that the account was credited TZS 20,000,000/= being new loan. During cross examination, the defendant admitted all the facility letters namely, exhibit P1, P2 and P3. In the upshot, I am satisfied that the loan amount was disbursed to the defendant.

The next issue is whether the defendant defaulted repayment of the loan. Exhibit P3 on the first page (front page) is very clear that the loan was payable within 48 months. PW1 testified that the defendant defaulted to

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service the loan as per the agreement. This fact was also admitted by the defendant as she clearly admitted that she stopped repaying the loan following her employment transfer from NIDA to Central Establishment. She testified that all her emoluments were stopped upon her transfer. Furthermore, there is a letter dated 24/03/2023 (exhibit P16) in which the defendant admits the outstanding debt. In addition, PW1 tendered loan payment schedule (exhibit P7) which tells it all that the outstanding amount is TZS 114, 607, 643.22. Thus, the defendant's argument that her outstanding loan was fully paid by her former employer (NIDA) is without merits and contradicts her own evidence. The learned counsel for plaintiff had it that, to date the defendant is yet to make payment of TZS 114,607,643.22, an event which constitutes breach of contract under the provision of section 37 of the Law of Contract Act. On the other hand, the learned counsel for defendant was opined that, if at all there is breach, the National Identity Authority being a guarantor should be responsible. I have keenly gone through the facility letters tendered in evidence and marked exhibit P1, P2 and P3 and noticed that though National Identification Authority is mentioned as guarantor at page 2 on security, there is no endorsement of the said National Identification Authority. It is against both common sense and logic that a person can be bound by the terms of contract to which she is not a party. Notwithstanding, it should

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be noted that even if the National Identification Authority (NIDA) had legally guaranteed the loan as contended by the defendant, still that would not have exonerated the defendant from discharging the contractual obligations. This is because as a principle of law, the guarantor's liabilities are co-extensive with those of the principal debtor. See section 80 of the Law of Contract Act and the cases of **Patrick Edward Moshi vs Commercial Bank of Africa (T) LTD**, Civil Appeal No. 376 of 2019, CAT at Dar es Salaam and **Exim Bank (Tanzania) Limited vs Dascar Limited and Johan Harald Christer Abrahamsson**, Civil Appeal No. 92 of 2009, CAT at Dar es Salaam. In sum, I answer the 2nd issue in affirmative.

The last issue is what reliefs parties are entitled to. The learned advocate for the defendant prayed this Court to dismiss the suit with costs. On the other side, the plaintiff invited and strongly urged this Court to grant the reliefs sought in the plaint. Following the deliberation in the two issues above, it is clear that the defendant breached the contract whose consequences are to compensate the plaintiff.

In the event, having considered the evidence in whole, it is my considered findings that the plaintiff has proved its claims to the required standard. Consequently, I enter judgment and decree in favour of the plaintiff.



Considering the circumstances which caused the defendant's default, I make the following orders;

- (i) The defendant is ordered to pay a sum of Tanzania Shillings Tanzania Shillings One Hundred Fourteen Million Six Hundred and Seven Thousand Six Hundred Forty-Three and twenty-Two Cents. (TZS 114,607,643.22) being outstanding loan amount and accrued interest.
- (ii) Payment of interest on decretal sum at court's rate of 7% from the date of judgment till full satisfaction of the entire decretal sum.
- (iii) Costs of this suit be borne by the defendant.

It is so ordered

The right of appeal is explained.




A.A. Mbagwa

JUDGE

08/09/2023