

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

COMMERCIAL CASE NO. 113 OF 2020

BETWEEN

CRDB BANK PLC PLAINTIFF

VERSUS

MOHAMED SAID SINANI & SONS LIMITED1st DEFENDANT

MOHAMED SAID SINANI 2nd DEFENDANT

ASMA MOHAMED SINANI3rd DEFENDANT

JUDGMENT

A.A. MBAGWA, J

The dispute in this suit arises from the loan agreement allegedly entered into between the plaintiff and 1st defendant, and guaranteed by the 2nd and 3rd defendants. The plaintiff herein is a public limited liability company which is licensed to conduct lending business, among others whereas the 1st defendant is a construction company and a long-time customer of the plaintiff as it maintains account No 0150408390501 at the plaintiff bank. In the course of their business relationship, the 1st defendant applied for and



was granted loan which was guaranteed by the 2nd and 3rd defendants. In addition, the 2nd and 3rd defendants mortgaged their landed properties as collaterals to the loan.

However, things did not go the way it was agreed as such, the plaintiff bank, by way of plaint, instituted this suit against the three defendants jointly and severally praying for judgment and decree in the following reliefs;

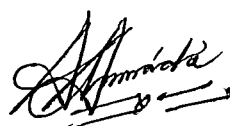
- a) Payment of the principal sum of Tanzania Shillings Six Hundred Fourteen Million Nine Hundred Forty-Six Thousand Forty-Three and Forty-Three Cents (TZS 614,946,043.43).
- b) Payment of interest on the amount at (a) above at the contractual rate of 18% per annum above from 26th May, 2020 till the date of judgment.
- c) Payment of interest on the decretal sum at the rate of 12% from the date of judgment till payment in full
- d) Costs of this suit;
- e) Any other or further relief(s) as this Honourable Court may deem just to grant

The plaintiff contended in the amended plaint that the claim for TZS 614, 946, 043. 43 is the outstanding loan amount as of 29th May, 2020 which the plaintiff advanced to the 1st defendant. It was stated that sometimes in 2014,

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the plaintiff advanced to the 1st defendant, Mohamed Said Sinani & Sons Limited, a term loan of Tshs 887,319, 503.00 say Tanzania Shillings Eight Hundred Eighty Seven Million Three Hundred Nineteen Thousand Five Hundred and Three and overdraft facility to a tune of Tshs 150,000,000/= say Tanzania Shillings One Hundred Fifty Million. The plaintiff added that the said two loans were secured by personal guarantees and mortgages of the 2nd and 3rd defendants. The plaintiff averred that the 2nd defendant executed mortgages over the landed properties namely, Plot No. 307, Market Area, Mtwara Region comprised under CT No. 1521, Plot No. 4 & 5, Block 'I', Industrial Area, Mtwara Region and Plot No. 102, Block 3, Viwandani Area, Mtwara Region whereas the 3rd defendant mortgaged two landed properties namely, Plot No. 165 and 167 Block 'I' Kisota Area, within Temeke Municipality.

The plaintiff further stated that the 1st defendant could not service the two loans as per the agreements as such, in 2017 the 1st defendant requested and the plaintiff agreed to restructure and merge the two facilities into one term loan of TZS 530,670,093.07. The plaintiff contended that in the facility letter (variation) dated 25th May, 2017, it was agreed that the defendant would be paying monthly instalments of Tanzania shillings Thirteen Million Four Hundred Fifty-Eight Thousand Five Hundred Sixteen and Fifty Four

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Cents (Tshs 13,458,516.54). The plaintiff continued that, the period for loan repayment was sixty (60) months that is to say from June, 2017 to May, 2022. She claimed that the 1st defendant defaulted payment and therefore the plaintiff issued default notices to the 2nd and 3rd defendants but to no avail. As such, the plaintiff was left with no option than instituting the present suit.

Upon service, the defendants filed a joint written statement of defence in which they disputed all the plaintiff's claims. The defendants vehemently contended that there is no outstanding amount owed to the plaintiff in the sum of Tshs 614, 946, 043.43. The defendants further stated that the term loan to a tune of Tanzania Shillings Eight Hundred Million was advanced to the 1st defendant in August, 2013 and not in 2014 as stated in the plaint. They however affirmed that an overdraft facility of Tanzania Shillings One Hundred Fifty Million (150,000,000/=) was advanced in 2014. Whereas the defendants admitted that in May, 2017, the two loans were restructured and merged into one facility, they disputed the claimed outstanding loan amount on the ground that the said loan was fully repaid. The defendants thus prayed for dismissal of the suit with costs and release of the 2nd and 3rd defendants' collaterals.

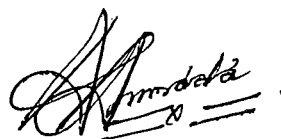
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Before commencement of hearing, parties proposed four issues which were adopted by the court namely,

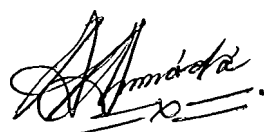
1. Whether the plaintiff advanced the credit facilities to the 1st defendant
2. If the 1st issue is answered in the affirmative, whether or not the plaintiff restructured the credit facilities
3. Whether there was any breach of the credit facilities by either party and to what extent.
4. What reliefs are parties entitled?

At the hearing of this case, the plaintiff was represented by Jonathan Wangubo, learned advocate whilst the defendants were jointly represented by Frateline Munale, learned counsel.

In a bid to establish its claims, the plaintiff paraded one witness namely, Jacob Mpozemenya (PW1) who introduced himself as Manager, Charge Off Portfolio from the plaintiff bank. In addition, the plaintiff tendered several documentary exhibits including loan facility letters dated 17th April, 2014 and 25th May, 2017 (exhibit P1 collectively), personal guarantees of the 2nd and 3rd defendants (exhibit P2), bank statements for accounts No 0150408390501 (exhibit P3) bank statement for 016S408390501 (exhibit P4) and demand notices to the 2nd and 3rd defendants (exhibits P5 and P6

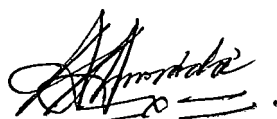


respectively). Through his written statement, Jacob Mpozemenya testified that the defendants owed the plaintiff a sum of Tanzania shillings Six Hundred Fourteen Million Nine Hundred Forty-Six Thousand and Forty-Three and Forty-Three Cents (TZS 614,946,043.43) being outstanding loan amount due as of 16th August, 2021. PW1 narrated that in 2014 the 1st defendant was granted two loans namely, term loan and overdraft facility but the 1st defendant failed to comply with repayment schedule as such in 2017, the 1st defendant requested for restructuring and merger of the two loans. Consequently, on 25th May, 2017, the plaintiff and 1st defendant entered in to a restructuring agreement through a facility letter dated 25th May, 2017 (part of exhibit P1) in which the two existing loans to wit, term loan and overdraft facility were merged into one term loan with the outstanding balance of TZS 530,670,093.07. say Tanzania Shillings Five Hundred Thirty Million Six Hundred Seventy Thousand and Ninety Three and Seven Cents. Mr. Jacob Mpozemenya tendered the facility letter dated 17th April, 2014 which varied the terms of the facility letter of 29th May of 2013 and facility letter dated 25th May, 2017 which restructured and merged the term loan and overdraft facility into one term loan and the same were admitted and marked exhibit P1 collectively. PW1 stated that according to the facility letter (restructuring) dated 25th May, 2017, the 1st defendant was allowed to



service the loan within a period of sixty (60) months by remitting monthly instalment of TZS 13,458,516.56. PW1 lamented that the 1st defendant failed to repay loan as per the agreement hence the plaintiff issued default notices to the 2nd and 3rd defendants who are guarantors and mortgagors to the said loan. PW1 continued to tell the court that despite service of the default notices, the defendants failed or neglected to remedy the default. PW1 tendered default notices issued and served upon the defendants and the same were admitted and marked as exhibits P5 and P6 respectively. Further, the plaintiff's witness tendered 1st defendant's bank statement for account No. 0150408390501 (exhibit P3) and bank statement for account No. 016S408390502 (exhibit P4) both in the names of MOHAMED S. SINANI & SONS LTD. He expounded that exhibit P3 is a current account used by the 1st defendant for banking transactions and which is used as settlement account whereas exhibit P4 is a loan account for the 1st defendant. The plaintiff's witness clarified that the transaction dated 6th May, 2020 was a write off of the debt and not repayment of loan debt. He finally prayed the court to grant the reliefs sought in the plaint.

In rebuttal, the defendants brought three witnesses namely, Medard Paul Mugisha (DW1), Asma Mohamed (DW2) and Mohamed Said Sinani (DW3). Besides, the defendants tendered six documentary exhibits to wit, loan

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facility letter dated 29th May, 2013 (exhibit D1), overdraft facility letter dated 22nd August, 2014 (exhibit D2), loan facility letter (variation) dated 25th May, 2017 (exhibit D3), account bank statement No. 0150408390501 (exhibit D4), loan analysis report in respect of loan facility from CRDB Bank (exhibit D5) and a letter from CRDB Bank titled 'RECONCILIATION ON LOAN FACILITIES WITH CRDB BANK I.R.O MOHAMED SAID SINANI AND SONS LTD'.


In essence the 1st defendant does not dispute borrowing from the plaintiff nor do the 2nd and 3rd defendants deny to have guaranteed and mortgaged their properties for securing the loan in dispute. What is contested is the alleged outstanding loan amount as the defendants claim that they fully repaid the loan. DW3 Mohamed Said Sinani lamented about disbursement of the loan money under the facility letter dated 29th May, 2013. DW3 said that according to the agreement, the money was to be disbursed in full immediately after the signing of the agreement but the plaintiff released the money in installments. He expounded that on 25th June, 2013 the plaintiff facilitated a drawdown of TZS 350,000,000/= which was settled on 14th August, 2013 after a drawdown of TZS 450,000,000/=. He continued that on 30th August, 2013, the plaintiff disbursed TZS 850,000,000/= to make a full credit amount from which they made settlement of TZS 450,000,000/=. It was the evidence of DW3 that, the loan had a grace period of six months



within which the 1st defendant was obliged to pay interests only but the plaintiff deducted both principal and interest before expiry of the grace period. DW3 opined that, based on the above facts, the loan officially started on 30th August, 2013 and therefore the grace period was expiring on 20th February, 2014 but the plaintiff started debiting monthly instalments before expiry of the grace period contrary to the terms of agreement. All the same, DW3 told the court that they paid all the debts. In addition, Medard Paul Mugisha (DW1) stated that the alleged outstanding amount was a result of miscalculation by the plaintiff bank. DW1 tendered a loan analysis report in respect of loan facility from CRDB (exhibit D5) to substantiate his assertion. In fine, the defendants prayed for dismissal of the suit on ground that it is devoid of merits.

Upon closure of evidence for both sides, counsel were allowed to file closing submissions.

It was the plaintiff's submission that the plaintiff's case was sufficiently proved. The counsel for plaintiff submitted that the facility letter dated 25th May, 2017 was a valid contract as it had a promise, on the one side and acceptance, on the other side. To support his argument on the validity of the facility letter, the plaintiff counsel heavily relied on the decision in the case of **Hotel Travertine Limited and others vs National Bank of**



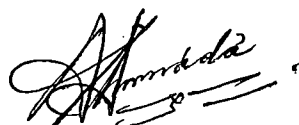
Commerce Limited, Civil Appeal No. 82 of 2020, CAT at Dar es Salaam.

More so, the counsel for plaintiff submitted that the partial disbursement of money was affirmed by the 1st defendant by accepting the second disbursement as such, the contract became valid by reason of acceptance and utilisation of the disbursed money by the 1st defendant.


The defendant's counsel, on his part, submitted that the case was not proved to the required standard in civil cases. He said that the alleged outstanding loan balance was a result of the plaintiff's miscalculation. The defendant's counsel continued that there was no evidence to prove that the defendant requested for restructure of loans. As such, according to him, the facility letter dated 25th May, 2017 was not a valid contract. Finally, the counsel beseeched the court to dismiss the suit with costs.

Having narrated the evidence for both parties and their rival submissions albeit in a nutshell, let me proceed to consider the issues framed.

The 1st issue is whether the plaintiff advanced the credit facilities to the 1st defendant. I have keenly scanned the evidence of both parties along with the documentary exhibits tendered. It was established through a loan facility letter dated 29th May 2013 (exhibit D1) that the plaintiff and 1st defendant entered into a loan agreement of Tshs 850,000,000/= for purposes of



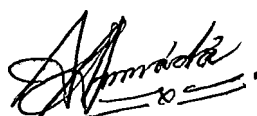
financing purchase of IVECO tractor units and seven fuel tanker air suspension with tents compartments from Malaika Traders and Simba Trailers. The loan period was forty-two (42) months which was expiring on 31st July, 2017. However, before the expiry of the credit period, on 17th April, 2014 the plaintiff and 1st defendant entered into an agreement via exhibit P1 to vary the terms of the previous facility letter dated 29th May, 2013. Consequently, by virtue of exhibit P1, the outstanding loan amount stood at TZS 887, 319, 503/= and the same was to be repaid in thirty-six (36) monthly installments of Tshs 32,078,726/=. According to clause 1.4 of exhibit P1 (dated 17th April, 2014), the loan was expiring on 31/07/2017. In mean time, the 1st defendant and plaintiff through a facility letter dated 22/08/2014 (exhibit D2) entered into an agreement for an overdraft facility of Tshs 150,000,000/= which was to be repaid up to 30/09/2015. According to the contents of the facility letter dated 25th May, 2017 (part of exhibit P1) the overdraft facility dated 22/08/2014 was extended on 18th May, 2015. Later on, i.e., on 25th May, 2017, the two facilities namely, term loan dated 17th April, 2014 and overdraft facility dated 18th May, 2015 were restructured and merged into one term loan facility whose outstanding balance stood at TZS 530,670,093.07 via a facility letter dated 25th May, 2017 (part of exhibit P1) herein to be referred to as 2017 facility letter.

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According to clause 8 of the 2017 facility letter (exhibit P1), the loan was to be repaid within sixty (60) months effectively from June, 2017 by monthly instalments as indicated in the loan repayment schedule.

The 2017 facility was secured by legal mortgages over landed properties of Mohamed Said Sinani namely, Plot No. 307, Market Area Mtwara Municipality under CT No. 1521, Plot No. 4 and 5, Block I, Industrial Area, Mtwara Municipality under CT No.28925 and Plot No. 102 Block 3, Viwandani Municipality under CT No.22700. Also, the loan was secured by landed properties of Asma Mohamed Sinani to wit, Plot No. 165 Block I Kisota Area, Temeke Municipality under CT No. 61085 and Plot No. 167 Block 'I' Kisota Area Temeke Municipality under CT No. 22700. In addition, Mohamed Sinani deposited trucks No. T684 CLV, T 852 CQF, T101 ATX, T329 CPT, T677 CLV, T 680 CLV.

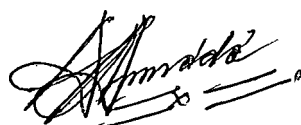
I have carefully scrutinized the said facility of 2017 and satisfied myself that the same was signed by Mohamed Said Sinani (2nd defendant) and Abdulrahman Mohamed Sinani on behalf of the 1st defendant. This is to say that on 25th May, 2017 when the parties entered into a restructuring agreement, the 1st defendant acknowledged that it was owing the plaintiff a sum of TZS 530, 670, 093.07. This fact is substantiated by the contents of the 2017 facility letter specifically at the introductory statement and clause



1 which clearly tell it all that after a merger of the two loans the outstanding loan amount stood at TZS 530, 670, 093.07 say Tanzania shillings Five Hundred Thirty Million, Six Hundred Seventy Thousand and Ninety Three and Seven Cents. In addition, clause 11.1 and 11.2 of the 2017 facility attracted registration costs of Tshs. 1,100,000/= which was to be charged on the borrower's account.

Following the restructuring agreement, a sum of TZS 531, 842, 887.61 was credited into the 1st defendant's account No. 0150408390501 on 30th May, 2017 as indicated in exhibit D4, exhibit P4 and exhibit P3. Further, clause 6 of the 2017 facility letter is loud and clear that the agreement did not involve disbursement.

It should be noted that a restructuring agreement is a fresh and independent contract from the previous agreements though it is intended to vary some terms and conditions in the previous agreements. It is against this background parties do sign and deposit securities afresh. The law is very clear that parties are bound by the terms of contract they freely entered into. See case of **Simon Kichele Chacha vs Aveline M. Kilawe**, Civil Appeal No. 160 of 2018, CAT at Dar es Salaam. In that regard, the 1st defendant is bound by the terms of the facility letter dated 25th May, 2017 to the effect that on the date of signing the agreement i.e., 25th May, 2017 the

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outstanding loan amount was TZS 530, 670, 093.07. Similarly, the 2nd and 3rd defendants through the personal guarantees and indemnities signed on 30th May, 2017 (exhibits P2 collectively) expressly guaranteed the loan to the tune of TZS 530, 670, 093.07. As such, the contentions by the defendants that the money in the facility letters preceding 25th May, 2017 was not fully disbursed is unfounded.

Further, I have carefully analysed the bank statement for loan account No. 016S408390502 in respect of the 1st defendant (exhibit P4) and noted that on 30th May, 2017 the said amount of TZS 531, 842, 887.61 was debited to the account. More so, it indicates that on 6th May, 2020 a sum of TZS 453, 340, 571.84 and 161,605, 471.59 which make a total of Tanzania Shillings Six Hundred Fourteen Million Nine Hundred Forty-Six Thousand Forty-Three and Forty-Three Cents (TZS 614,946,043.43) was written off as non performing loan.

In view of the above, I find that plaintiff advanced the credit facilities to the 1st defendant which were ultimately merged into one term loan facility via a facility letter dated 25th May, 2017 (part of exhibit P1) and whose outstanding balance was Tanzania Shillings Six Hundred Fourteen Million Nine Hundred Forty-Six Thousand Forty-Three and Forty-Three Cents (TZS

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614,946,043.43) as of 6th May, 2020 according to exhibit P4. Thus, the first issue is answered in affirmative.

The 2nd issue is if the 1st issue is answered in the affirmative, whether or the plaintiff restructured the credit facilities. PW1 tendered the loan facility letter (variation) dated 25th May, 2017 (part of exhibit P1). Similar exhibit was tendered by DW1 Medard Mugisha as exhibit D3. The opening statement of the said exhibits unequivocally reads;

'This is to inform you that, the Bank has approved restructuring of your term loan merged with overdraft making a total balance of TZS 530,670,093.07 (Say Tshs. Five Hundred Thirty Million Six Hundred Seventy Thousand Ninety Three and Cents Seven only) with interest thereon on terms and conditions provided hereunder. Approval of this restructuring will lead into variation of the term loan agreement dated 17th April, 2014 and 18th May 2015 and subsequent additions thereof of which the bank granted you a total term loan exposure of TZS 887, 319, 503 (Say Tshs Eight Hundred Eighty Seven Million Three Hindred Nineteen Thousand Five Hundred and Three) and the overdraft of TZS 150,000,000/= (Say One Hundred Fifty Million only).

As hinted above, this facility letter (dated 25th May, 2017) was duly signed by Mohamed Said Sinani (2nd defendant) and Abdulrahman Mohamed Sinani on behalf of the 1st defendant, on the one side, and Mussa Thomas Lwila and Xavery Mataba Mkwi on behalf of the plaintiff, on the other side. It is



noteworthy that there is no scintilla of evidence from the defendants to dispute the 2017 facility letter (exhibit P1). Following this restructuring, on 30th May, 2017 a sum of TZS 531, 842, 887.61 was credited into the 1st defendant's account No. 0150408390501 (exhibit D4, and exhibit P3) and the same amount was debited in the loan account (exhibit P4). Thus, on the strength of a Facility Letter (Variation) dated 25th May, 2017, it necessarily follows that plaintiff restructured the credit facilities.

The 3rd issue is whether there was any breach of the credit facilities by either party and to what extent. The plaintiff has alleged that the defendants defaulted repayment of loan as per the agreed schedule thereby breaching the terms and conditions of the facility letter dated 25th May, 2017. On the adversary, the defendants contended that the loan was fully repaid hence there was no any outstanding amount as claimed by the plaintiff. According to the repayment schedule contained in the Facility Letter dated 25th May, 2017, the 1st defendant was required to remit monthly instalment of Tshs 13, 458, 516.54 for sixty (60) months. The plaintiff alleged that the 1st defendant defaulted payment hence she issued default notices to the 2nd and 3rd defendants (exhibits P5 and exhibit P6 respectively). The defendants contended that the loan amount was fully paid but they did not adduce any evidence to that effect. It was established through the 1st defendant's loan



account (exhibit P4) that as of 6th May, 2020, the total outstanding amount was Tanzania Shillings Six Hundred Fourteen Million Nine Hundred Forty-Six Thousand Forty-Three and Forty-Three Cents (TZS 614,946,043.43). I have also scanned the 1st defendant's bank statement (exhibit P3 and exhibit D4) particularly the credit transactions and found that from 30th May, 2017 to 6th May, 2020 there were no credit transactions sufficient to set off the loan debt.

It is clear in the bank statement for 1st defendant's loan account No. 016S408390502 (exhibit P4) that a sum of Tanzania Shillings Six Hundred Fourteen Million Nine Hundred Forty-Six Thousand Forty-Three and Forty-Three Cents (TZS 614,946,043.43) was written off as non performing loan as per transaction dated 6th May, 2020. It should be noted that writing off a debt is not the same as liquidation of debt. Rather, writing off is an internal bank procedure aimed at clearing the bank books and does not exonerate the borrower from payment liabilities. 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


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proving debt or loss write off but they do not discharge customer liabilities”

In view of the above, I am of the considered findings that the 1st defendant failed to repay the loan. Similarly, the 2nd and 3rd defendants being guarantors to the said loan failed to settle the loan after they were served with default notices. In consequence thereof, the defendants breached the terms and conditions of the facility letter dated 25th May, 2017 as well as deeds of guarantee and indemnities by their failure to service the loan as per the repayment schedule indicated therein.

On all the above account, it is my findings that the plaintiff has managed to establish its claims, on balance of probabilities, that the defendants breached the terms and conditions by failure to repay the loan as agreed in the facility letter dated 25th May, 2017. Consequently, I enter judgment and decree against the defendants jointly and severally in the following orders;

1. Payment of the principal sum of Tanzania Shillings Six Hundred Fourteen Million Nine Hundred Forty-Six Thousand Forty-Three and Forty-Three Cents (TZS 614,946,043.43).
2. Payment of interest on the amount in (1) above at the contractual rate of 18% per annum from 26th May, 2020 till the date of judgment.



3. Payment of interest on the decretal sum at the court rate of 12% from the date of judgment till the date of payment in full.
4. Costs of this suit;

It is so ordered

The right to appeal is fully explained.



A.A. Mbagwa
A.A. Mbagwa
JUDGE
29/03/2023