

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 87 OF 2023

DAJI DEVELOPERS LIMITED1st PLAINTIFF

RAJESH SHRIKRISHNA BHATTBHATT.....2ND PLAINTIFF

MEHREEN ANVERALI RAJPAN.....3RD PLAINTIFF

VERSUS

BANK OF INDIA (TANZANIA)LIMITED 1ST DEFENDANT

AND

BY WAY OF COUNTER CLAIM

BANK OF INDIA(TANZANIA)LIMITED..... PLAINTIFF

VERSUS

AKIRA LODGE AND BAR LIMITED.....1ST DEFENDANT

DAJI DEVELOPERS LIMITED2nd DEFENDANT

RAJESH SHRIKRISHNA BHATTBHATT..... 3rd DEFENDANT

MEHREEN ANVERALI RAJPAN.....4th DEFENDANT

CONSENT JUDGMENT

8th February 2024


L. HEMED, J.

The plaintiffs herein, **M/S Daji Developers Limited, Rajesh Shrikrishna Bhatt and Mehreen Anverali Rajpar** are the owners of landed properties comprised in five certificates of titles at Upanga Area within Dar es Salaam Region. The said titles are as follows:-

"(i) A Certificate of Title bearing Title No. 186162/47/35 Apartment No.124 on the 12th Floor (250 Square Meters) on Plot Number 498, Emerald Tower, Kalinga Street within Upanga Area in Dar es Salaam Region in the name of the 3^d Plaintiff.

(ii) A Certificate of Title bearing Title No.186170/4/63 Apartment No.B-141 on 14th Floor (280 Square Meters) in the building known as Canal Residency on Plot No. 572, Mindu Street, within Upanga Area in Dar es Salaam Region in the name of the 1st Plaintiff.

(iii) A Certificate of Title bearing Title No. 186170/4/66 Apartment No. B-161 on 16th Floor (420 Square Meters) in the building known as Canal Residency on Plot No. 572, Mindu Street, within Upanga Area in Dar es Salaam Region in the name of the 2nd Plaintiff.



(iv) A Certificate of Title bearing the Title No.186162/67/58 Apartment No.G-1 on Ground Floor (160 Square Meters) in the building known as Crystal Residence on Plot No.483, Mindu Street, within Upanga Area in Dar es Salaam Region in the name of the 2nd Plaintiff.

(v) A Certificate of Title bearing Title No.186170/15/45 Apartment No.A-73 on 7th Floor (150 Square Meters) in the building known as Richmond Tower on Plot No. 567, Mindu Street, within Upanga Area in Dar es Salaam Region in the name of the 3^d Plaintiff."

On 4th April 2023, the Plaintiffs filed the instant suit against, the defendant **Bank of India (Tanzania) Limited** challenging the notice of default informing them that **Akira Lounge and Bar Limited** defaulted repayment of the loan. They are thus seeking for the judgment and decree as follows: -

(a) A declaration that the Defendant herein misrepresented the plaintiffs leading to the unsigned Mortgage of right of occupancy and Deed of Guarantee.

(b) A declaration by this court that the mortgage Deed as well as Deed of Guarantee which the



Defendant executed with the plaintiffs herein have not met the required standards in accordance with the law for being procured by disqualified personnel from the Defendant and also for being unsigned by the Defendant and thus void and illegal.

(c) General damages as it can be assessed by the court itself.

(d) Costs of the suit.

(e) Any other relief(s) this Honourable court deems just and proper to grant."

On 11th May 2023, the Defendant **M/S Bank of India (Tanzania)**

Limited filed the written statement of defence disputing all of the Plaintiffs' claims. She also raised a Counterclaim against the Plaintiffs and **Akira Lounge and Bar limited** (the 1st, 2nd, 3rd and 4th Defendants in the counter claim) for breach of the loan agreement. In the counter claim, the counter claimant alleges that the defendants have defaulted in repaying the amount of USD 1,053,825.16 accruing from 01st February 2023. The counter claimant is thus seeking the following reliefs: -

"1) For a declaration that the 1st Defendant is in breach of its repayment obligation.

2) For a declaration that the 2nd, 3rd and 4th Defendants breached their repayment obligations as mortgagors.



3) (i) For an order for payment of the said USD 1,053,825.16 by the 1st, 2nd, 3^d and 4th Defendants plus interest as shown in paragraph 23 above.

ALTERNATIVELY;

ii) For orders that the plaintiff is entitled to sell by way of action the mortgaged properties namely:-

f) Apartment No. B-141, 14th Floor (Area 280Sqmts) Canal Residence Building, Plot No. 572, Mindu Street Upanga, Dar es salaam (sub tittle No.186170/4/63; Land Office No. 25106);

g) Apartment No.124, 12th Floor (Area 250 Sqmts), Canal Residency Building, Plot No. 498, Kalinga Street Upanga, Dares salaam (Certificate of Tittle No.186162/47/35; Land Office No. 25106;

h) Apartment No. A-73, 7th Floor (Area 150 Sqmts) Richmond Tower Building, Plot No. 567, Mindu street Upanga, Dares salaam (Certificate of Title No. 186170/15/45);

i) Apartment No. B-161, 16th Floor (Area 420 Sqmts) Canal Residency Building, Plot No. 572, Mindu Street, Upanga, Dar es salaam (Certificate of Title No. 186170/04/66; Land Office No. 23936); and

j) Apartment No. G-1 on the Ground Floor (Area 160 Sqmts) Crystal Residency Building, Plot No.



*483, Mindu Street, Upanga, Dar es salaam
(Certificate of Title No.186162/67/58; Land
Office No.23936).*

*4) For general damages against the 2nd 3^d and 4th
Defendants arising out of fraudulent
misrepresentations whose particulars are given in
paragraph 26 above.*

*5) For general damages arising out of the 1st, 2nd,
3^d and 4th Defendants' breaches demonstrated in
the Counterclaim.*

6) For the costs of the suit; and

*7) For any other relief that this court may deem fit
to grant."*

The defendants in the counterclaim filed the joint written statement of defence disputing all claims. While the matter was still pending in this Court, the parties reached amicable settlement of the matter and filed the Deed of Settlement on 29th December 2023. On the 8th day of February 2024 the counsel for the parties appeared to record the settlement. **Mr. Bakari Juma**, learned advocate represented the Plaintiffs in the original suit and the defendants in the counterclaim while, the counter claimant and the defendant in the original suit enjoyed the legal service of



Dr. Abduel Kitururu, learned advocate. The parties through their advocates recorded the following as the terms of settlement: -

1. That the 1st, 2nd and 3rd plaintiffs in the original suit relinquish all claims made in the original suit.
2. That the 1st, 2nd, 3rd and 4th Defendants in the counter claim shall jointly and severally pay the plaintiff in the counter claim a sum of USD 800,000.00 (United States Dollars Eight Hundred Thousand Only) the settlement Amount within 12 months from the date of signing of this settlement Deed as follows: -

a) USD 340,000.00 (United States Dollars Three Hundred Forty Thousand Only) shall be paid by 31st December 2023.

b) USD 60,000.00 (United States Dollars sixty Thousand Only) shall be paid by 31st March 2024.



c) The balance that is USD 400,000.00 (United State Dollars Four Hundred Thousand Only) shall be paid within 12 months from the date of signing of this settlement Deed.

d) That once the Settlement Amount as mentioned in 2(a), (b) and (c) above has been fully settled then the plaintiff in the counter claim shall have no further claims against the 1st, 2nd, 3rd and 4th Defendants and this settlement Deed shall be final.

3) No interest will be charged for the first three months.

After the lapse of the initial three months, the residual settlement Amounts shall attract simple interest at the rate of 7.50% per annum.



4)The 1st,2nd,3rd and 4th Defendants in the counterclaim agree that, up on breach of the terms that is failure to repay the lump sum of USD 340,000.00 by 31st December 2023 or failure to pay any of the instalment, the whole outstanding amount shall become due and payable immediately and the plaintiff in the counterclaim shall be at liberty to file for execution of the decree against the 1st,2nd,3rd and 4th Defendants jointly and severally without any notice to the 1st,2nd,3rd and 4th Defendants.

5)The 2nd,3rd 4th Defendants in the counterclaim intend to sell the properties kept as collateral for the payment of the Settlement Amount. Hence, part by part of the collateral security shall be released upon receipt of proportionate Settlement Amount as under against the respective security.Those security and minimum amount to be deposited are as follows: -

(i) Legal mortgage of
Apartment No. 124,12th Floor Emerald

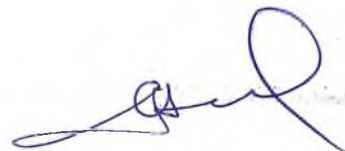


tower, kalinga street Upanga Area. Tittle
No. 186162/47/35 in the name of Mrs
Mehreen Anvarali Rajpar (to deposit
USD 157,480.00).

(ii) Legal Mortgage of
Apartment No. B141, 14th Floor Canal
Residence, Mindu Street, Upanga Area.
With tittle No.186170/4/63 in the name
of M/S Daji Developers Limited. (to
deposit USD 176,378.00).

(iii) Legal Mortgage of
Apartment No. B161, 16th Floor, Canal
Residency, Mindu Street, Upanga Area,
Tittle No. 186170/4/66 in the name of
Mr. Rajesh S. Bhatt Bhatt (to deposit
USD 264,566.00).

(iv) Legal Mortgage of
Apartment No. G1, Ground Floor Crystal
Residency Mindu Street, Upanga Area.



Title No. 186162/67/58 in the name of
Mr. Rajesh S. Bhatt Bhatt (to deposit
USD 100,788.00).

(v) Legal Mortgage of
Apartment No. 73, 7th Floor, Richmond
Tower, Mindu Street, Upanga Area.

Title No. 186170/15/45 in the name of
Mrs Mehreen Anvarali Rajpar (now Mrs
Mahreen Rajesh Bhatt Bhatt (to deposit
USD 100,788.00).

6) The following terms shall be followed by the
plaintiff and the 2nd, 3rd, and 4th Defendants in the
counterclaim in selling the collateral securities: -

a) The proportionate share of the
settlement Amount shall be
deposited either by the buyer
directly or from the 1st, 2nd, 3rd and
4th Defendant own source to make
the property eligible for release



from the bank charge and for any
residue amount that shall remain
from the proportionate share of the
settlement amount after the
collateral has been purchased then
the 1st, 2nd, 3rd and 4th Defendants
shall reverse the right to use that
residue amount to discharge some
properties which are under bank
charge.

b) To facilitate the selling of the
property, the plaintiff and the
1st, 2nd, 3rd, and 4th Defendants in the
Counterclaim may enter into an
arrangement with the potential
buyer providing for special terms
under which the transaction may be
realised.


7) This Deed shall be recorded as a consent judgement.



8) No. failure or delay by the plaintiff in the counterclaim to exercise any of its power or rights herein granted shall operate as a waiver thereof nor shall any single or partial exercise of any such powers or rights preclude exercise thereof.

Having recorded the above terms and in view of the Deed of Settlement dated 29th December, 2023, this court do hereby enter Consent Judgment and orders that: -

- 1) All claims by the 1st, 2nd, and 3rd Plaintiffs in the original suit are renounced.
- 2) The 1st, 2nd, 3rd and 4th defendants in the counterclaim, jointly and severally to pay the plaintiff in the counterclaim a sum of USD 800,000.00 within 12 months from 28th December, 2023.
- 3) No interest to be charged for the first three months and after the lapse of three months the



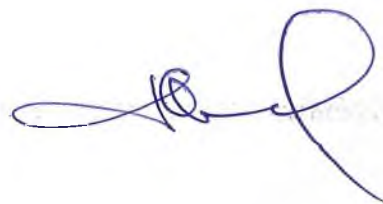
residual settlement Amount to attract interest of
7.50% per annum.

4) In case the 1st, 2nd, 3rd and 4th defendants in counterclaim fail to pay lump sum of USD 340,000.00 by 31st December 2023, the plaintiff in the counter claim to be at liberty to execute the decree against them jointly without any notice.

5) The 2nd, 3rd and 4th Defendants in the counter claim to sell the properties kept as collateral for the payment of the Settlement Amount. Part by part of the collateral security to be released upon receipt of proportionate Settlement Amount as against the respective security.

6) In selling the collateral securities, the parties in the counterclaim to be guided by the following terms:-

(i) The proportionate share of the Settlement Amount to be deposited



by buyer directly or from the 1st, 2nd, 3rd and 4th defendant's own source to make the property eligible for release from the Bank charge and for any residue amount that shall remain from the proportionate share of the settlement amount after the collateral has been purchased then the 1st, 2nd, 3rd and 4th defendants to reserve the right to use that residue amount to discharge some properties which are under bank charge.

- (ii) To facilitate the selling of the property, the Plaintiff and the 1st, 2nd, 3rd and 4th defendants in the counter claim may enter into an arrangement with the potential buyer providing for



special terms under which the
transaction may be realized.

(iii) The failure or delay by the plaintiff in
counterclaim to exercise any of its
power or rights herein granted shall
not operate as a waiver thereof nor
shall any single or partial exercise of
any such powers or rights preclude
further exercise thereof.

7. Each party to bear its own costs.

It is so ordered.

DATED at DAR ES SALAAM this 8th day of February, 2024.




L. HEMED

JUDGE