

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL CASE NO 13 of 2017**

NMB BANK PLC -----PLAINTIFF

VERSUS

FADHILI MBEYE NSOLODEFENDANT

JUDGEMENT

Date of last order: 20.12.2019

Date of Judgement: 28.02.2020

Ebrahim, J.:

The Plaintiff in this suit was in employment relationship with the defendant and his place of employment was NMB Mahenge Branch Morogoro. In the course of his employment, the defendant was availed unsecured staff loan to the tune of Tshs. 30,000,000/-. As it could be gathered from the plaint, the said loan was advanced on the conditions that the defendant shall be charged interest at the rate of 9% per annum and the entire principle and interest shall be paid in 72 months at Tshs. 540,766/- per month. According to the terms and conditions of the loan agreement, it was agreed that in the event the Plaintiff and Defendant

employment relationship ceases to exist in whatsoever manner, the Defendant shall continue to serve the loan while the Plaintiff shall be at liberty to charge commercial interest. When the Defendant's employment was terminated, the Plaintiff claims to have informed the Defendant in the termination letter his obligation to pay the outstanding amount. However the Defendant has not done so to date; hence the present suit. The Plaintiff prays for the judgement and decree against the defendant as follows:

1. Payment of Tshs. 33,905,495/97 being principle balance and interest of the loan granted to the Defendant.
2. Payment of Commercial interest rate at 23% per annum of the above sum from the date of filing this suit to the date of judgement
3. Interest at Court's rate of 12% per annum from the date of judgment until payment of decretal amount in full.
4. General damages of not less than Tshs. 50,000,000/-
5. Costs of the suit; and
6. Any other or further relief this Honourable Court may deem fit and proper.

This case proceeded exparte following the defendant failure to enter appearance despite being served via court process server on 19th March 2018 and there being proof of service filed in court and the order of this court of 18.06.2018.

In this case issues agreed and adopted for determination are:

1. Whether the parties herein entered into a loan agreement.
2. If the first issue is answered into affirmative then whether the defendant breached the loan agreement
3. To what Relief (s) if any parties are entitled to.

The Plaintiff was represented by advocate Emmanuel Mbuga.

In support of their case the Plaintiff called one witness, Ms. Julieth Kinabo (**PW1**), Senior Loan Recovery Officer of the Plaintiff.

Whether the parties herein entered into a loan agreement.

In a bid to prove the existence of a loan agreement between the Plaintiff and the defendant, PW1 began by explaining the procedure of issuing unsecured loan to the employees. She testified that the loan is secured by the employee's job however after termination such employee is supposed to pay the whole loan amount. She explained further that the Defendant in this case filled in Loan Application Form where loan analysis was conducted approved and eventually he signed the loan agreement. The Plaintiff then deposited the amount of Tshs 30,000,000/- into the Defendant's account. PW1 tendered in court a Standard Staff Loan Application Form – **exhibit PE1** and a Letter Agreement/Loan Agreement – **exhibit PE2**. Referring to Clause 4.0 of **exhibit PE2**, PW1 averred that

the agreed interest rate was 9% at the time when the Defendant is the employee of the Plaintiff. The Plaintiff shall have the right to change the interest rate to a commercial rate that shall be applicable at that time in the event of termination of employment. PW1 also tendered Loan Statement in respect of Account No. 101CL20151060004 – **exhibit PE3** in showing loan amount due from the date of filing this case and also that the Defendant last payment was on 25th January 2016. PW1 prayed for the court to order the Defendant to repay the loan amount as it is financial loss to the Plaintiff and it injures the reputation of the Bank. PW1 also prayed for costs of the case.

Indisputably is the fact that the Defendant was availed a loan amount of Tshs. 30,000,000/- by the Plaintiff as it could vividly be gathered from **exhibit PE1 and Exhibit PE2**. The records are clear and as clearly provided under **section 100 (1) of the Law of Evidence Act, CAP 6 RE 2002**, when the terms of contract have been reduced into writing, such document shall speak for f itself. Again there is no gain saying that according to **Clause 4.0 of exhibit PE2**, the Defendant loan was charged interest on loan at the rate of 9% being that he was an employee of the Plaintiff. However there was a covenant that once the employment of the

Defendant seizes, the commercial rate shall be charged to the loan amount and the Defendant shall be liable to pay the loan amount to the agreed term of 72 months.

Thus, I need not belabour much but rather find that certainly there was a loan agreement between the Plaintiff and the Defendant.

In response to the second issue of *Whether the defendant breached the loan agreement*, PW1 told the Court under oath that the Defendant lastly paid the loan on 26th January 2016. The same transaction is well articulated in **Exhibit PE3** on 26th Jan 2016 to the tune of **Tshs. 205, 549.17**. It is the position of the law that each party to a contract must fulfil its obligation to the agreed promises as provided under **section 37(1) of the Law of Contract Act, CAP 345**. Thus, since there is clear evidence that the Defendant did not pay the remaining loan amount indeed he breached the terms of the loan agreement.

Now coming to the reliefs; the Plaintiff has prayed for judgement and decree against the Defendant of payment of **Tshs. 33,905,495.97** being the balance of the principle sum and the interest of the loan granted to the Defendant. The said amount is well articulated in **exhibit PE3** i.e. the loan statement which shows that as of 24th October 2017 principle balance was

Tshs. 27, 071,339.15 and the interest was **Tshs. 6,834,156.82** making a total loan balance of **Tshs. 33, 905,495.97**.

The Plaintiff also have prayed to be awarded general damages of not less than Tshs. 50,000,000/-. In essence General damages are those elements of injury that are the proximate and foreseeable consequence of the defendant's conduct. It was stated in the case of **Anthony Ngoo & Another V Kitinda Maro**, Civil Appeal No. 25/2014 that "*general damages are those presumed to be direct or probable consequences of the act complained of*".

I am alive to the principle that general damages are awarded by the court after consideration and deliberation on the evidence on record able to justify the award. The court has discretion in the award of general damages, the discretion that must be exercised judiciously, by assigning reason. It follows that, there has to be some evidence to justify the award of general damages. PW1 simply told the court that failure by the Defendant to pay the loan amount has caused them financial loss and damage their reputation. However she has not evidenced to the court as to how they suffered such loss because the court was not even availed with evidence of efforts they exerted to find the Defendant before taking the

matter to Court. No letter was tendered in court to show that the Defendant was reminded about the loan balance in a bid to mitigate such loss. I therefore see no justification for the claimed general damages. However the Plaintiff is entitled for payment of commercial interest being that it was a commercial transaction.

From the above background and reasoning, I find that the Plaintiff's case has merits and it succeed as per the following order:

1. The Defendant to pay the Plaintiff the balance of loan amount of **Tshs. 33, 905,495.97.**
2. Being a commercial transaction, the adjudged sum at (1) above to carry interest of **17% commercial rate per annum** from the date of filing the suit to the date of judgement.
3. The Defendant shall also pay interest on the adjudged sum at the rate of 7% per annum from the date of judgement to the payment in full.
4. Costs of this suit shall be borne by defendant.

It is accordingly ordered.



R.A. Ebrahim

Judge

Dar Es Salaam

28.02.2020