

TANZANIA / JUDGMENT

a m steel iron mills ltd vs exim bank t ltd 2 others exim bank t ltd vs a m steel iron mills ltd 5 others 2023 tzhccomd 313 29 august 2023

COURT
TZHCCOMDDECIDED
29 August 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT
PAR ES SALAAM COMMERCIAL CASE NO, 22 OF 2022 BETWEEN A M STEEL & IRON MILLS
LTD..... PLAINTIFF VERSUS EXIM BANK (TANZANIA)
LIMITED.....1st DEFENDANT HARVEST (TANZANIA) LTD.....2ND
DEFENDANT BY WAY OF COUNTER CLAIM EXIM BANK (TANZANIA) LIMITED.....
PLAINTIFF VERSUS A M STEEL & IRON MILLS LTD..... 1st DEFENDANT S.S
TRADERS..... 2nd DEFENDANT SHEIKH SHAHID
MAJEED..... 3rd DEFENDANT SHEIKH SAJID MAJEED.....
4th DEFENDANT SHEIKH ZAHID MAJEED..... 5th DEFENDANT SHEIKH
HAMID MAJEED..... 6th DEFENDANT

JUDGMENT

A.A. MBAGWA J. The dispute in this suit stems from the alleged breach of loan agreement between the plaintiff, A. M STEEL & IRON MILLS LTD and the defunct UBL BANK (TANZANIA) LTD. According to the facts as gleaned from the i pleadings, the plaintiff, at different times, took credit facilities from UBL BANK (TANZANIA) LTD which, as of 31st day of March, 2022, stood at TZS 1, 129, 673, 875 and USD 514, 997.25. The said facilities were secured by mortgages over landed properties comprised in Plot No. 949 at Kawe, CT No. 92237 issued by A M STEEL & IRON MILLS LTD and, Plot No. 200 Block 6 Mbweni JKT, CT No. 71115 and Plot No. 202 Block 6 Mbweni JKT CT No. 70799 created by SHEIKH SHAHID MAJEED. In addition, the facilities were guaranteed by S.S. TRADERS, Sheikh Shahid Majeed, Sheikh Sajid Majeed, Sheikh Zahid Majeed and Sheikh Hamid Majeed who are the 2nd to 6th defendants in the counter claim respectively. Later on, i.e., on 22nd day of May, 2019, EXIM BANK (TANZANIA) LIMITED (1st defendant) acquired assets and liabilities of UBL BANK TANZANIA) LTD, as such, the plaintiff A. M STEEL & IRON MILLS LTD executed a deed of novation on 24th day of September, 2021 for purpose of transferring the facility rights to EXIM BANK TANZANIA LIMITED. It is alleged that the 1st defendant in the counter claim i.e., A. M STEEL & IRON MILLS LTD defaulted to repay the loan. Consequently, the plaintiff in the counter claim, EXIM BANK (TANZANIA) LIMITED issued a default notice to the defendants to no avail. 2 Following the defendants' failure to discharge their

contractual duties to wit, repayment of loan, EXIM BANK (TANZANIA) LIMITED commenced the procedures to exercise its rights under the mortgage deeds. Thus, EXIM BANK (TANZANIA) LIMITED, 1st defendant in the main suit hired HARVEST (TANZANIA) LTD, 2nd defendant in the main suit, to conduct sale of the deposited securities with the view to recover the outstanding loan amount. Consequently, HARVEST (TANZANIA) LTD issued a notice dated 8th February, 2022 to A. M STEEL & IRON MILLS LTD informing her its intention to sell the securities namely, Plot No. 949 at Kawe, CT No. 92237, Plot No. 200 Block 6 Mbweni JKT, CT No. 71115 and Plot No. 202 Block 6 Mbweni JKT CT No. 70799. On account of the notice of intention to sell the mortgaged properties, A. M STEEL & IRON MILLS LTD instituted the present suit against EXIM BANK (TANZANIA) LIMITED and HARVEST (TANZANIA) LTD praying for judgment and decree as follows;

- a) A declaration that the 1st and 2nd defendants' intention to sell the properties i.e.; Plot No. 949 at Kawe, CT No. 92237, Plot No. 200 Block 6 Mbweni JKT, CT No. 71115 and Plot No. 202 Block 6 Mbweni JKT CT No. 70799 is unlawful. 3
- b) Payment of general damages as may be assessed by the Honourable Court.
- c) Costs of the suit be borne by the defendants.
- d) Any other relief which the Honourable Court may deem fit and just to grant. Upon service, the defendants EXIM BANK (TANZANIA) LIMITED and HARVEST (TANZANIA) LTD filed an amended written statement of defence disputing the plaintiff's claims. In addition, EXIM BANK (TANZANIA) LIMITED filed a counter claim against the defendants. The plaintiff in the counter claim contended that the 1st defendant, A. M STEEL & IRON MILLS LTD to pay loan which stood at TZS 1, 129, 673, 875 and USD 514, 997.25 as of 31st day of March, 2022. The plaintiff alleged that it issued a default notice to the defendants but none of them bothered to clear the outstanding loan. As such, the plaintiff in the counter claim prays for judgment and decree against the defendants severally and jointly as follows;
 - (i) An order for payment of TZS 1, 129, 673, 875 and USD 514,997.28. 4 (ii) Interest on (i) above at the rate of 18% for Tanzania Shillings, and 8% for United States Dollars from the date of filing the suit to the date of judgment. (iii) Interest on the decretal amount at the court rate from the date, of judgment to the date of final satisfaction of the decree. (iv) An order for sale of mortgaged properties.
 - (v) General damages and costs of the case. (vi) Any other relief as the Court may deem fit and just to grant. Upon completion of the pleadings, this Court (Hon. Agatho J.), with consensus of the parties framed and recorded the following three issues in respect of the main suit;
 1. Whether the defendants are justified to pursue their intention to sell the plaintiff's mortgaged properties.
 2. Whether the credit facility by the defendant is legally connected with UBL Bank.

3. What reliefs are the parties entitled to? Further, with respect to the counter claim, upon consent by the parties, the Court framed the following four issues; 5 .i
1. Whether after acquisition of UBL Bank Tanzania Limited by Exim Bank Tanzania Limited, UBL Bank Tanzania Limited became a non-existent legal entity thus, incapable of transferring the mortgages and credit facilities of the defendants to Exim Bank.
2. Whether the defendants are indebted to the plaintiff.
3. If the 2nd issue is answered in the affirmative, then to what extent?
4. To what reliefs are the parties entitled to? Thereafter, each side filed one witness statement. Whereas the 1st to 6th defendants filed the statement of Sheikh Shahid Majeed, Exim Bank (Tanzania) Limited and Harvest (Tanzania) Limited filed the witness statement of Jacob Sanga. Initially, the plaintiff in the main suit and the defendants in the counter claim were represented by Captain Ibrahimu Mbiu Bendera but before commencement of hearing, this Court was informed by Sheikh Shahid that Mr. Ibrahimu Bendera was terminated and instead Mr. Godfrey Ukongwa was engaged. On the other side, EXIM BANK (TANZANIA) LIMITED and HARVEST (TANZANIA) LTD were represented by Gabriel Simon Mnyele, learned advocate. 6 After several adjournments, the matter was fixed for hearing on 24/5/2023. On the hearing day, the plaintiff and its counsel were present whereas neither the defendants nor their counsel appeared despite the fact that Mr. Gabriel Mnyele was present on 23rd May, 2023 when the matter was adjourned and fixed for hearing on 24th May, 2023 at 11:00hrs. Consequently, Mr. Godfrey Ukonga, learned counsel for the plaintiff successfully prayed for ex parte hearing. In a bid to prove its case, the plaintiff in the main suit paraded one witness namely, Sheikh Shahid Majeed (PW1) and tendered two documents to wit, demand notice from Harvest Tanzania Limited to A.M. Steel & Iron Mills dated 8th February, 2022 and a reply to demand notice from A.M. Steel & Iron Mills Ltd to Exim Bank which were admitted and collectively marked exhibit P1 collectively. In his witness, PW1 admitted that A. M STEEL & IRON MILLS LTD took loan from UBL Bank (Tanzania) Limited on 27th day of September, 2013. He further stated that and on 28th September, 2019 and 24th October, 2019 the plaintiff was informed through letters from UBL Bank (Tanzania) Limited that its accounts were transferred to Exim Bank (Tanzania) Limited. Consequently, on 24th day of September, 2019 the plaintiff signed a deed of 7 novation and deed of variation of corporate guarantee with Exim Bank (Tanzania) Limited and UBL Bank (Tanzania) Limited. It was further the testimony of PW1 that thereafter, the plaintiff was notified by HARVEST (TANZANIA) LTD of its intention to conduct sale of the mortgaged properties unless the plaintiff cleared the outstanding balance within twenty-one (21) days. PW1 continued that upon inquiry, the plaintiff was informed that the outstanding loan was TZS 500,000,000/=. The plaintiff contended that the amount has no connection with credit facility borrowed from UBL Bank (Tanzania) Limited. PW1 stated that since the actual change of UBL Bank (Tanzania) Limited to Exim Bank Tanzania Limited took place on 10th day of September, 2018 then all agreements signed by UBL Bank (Tanzania) Limited were null and void because it was no longer in existence. In view of the plaintiff's evidence, the witness prayed

the Court to grant the orders sought in the plaint and dismiss the counter claim with costs. As neither the defendants nor their counsel were present, after close of the plaintiff's case, Mr. Godfrey Ogundi moved the Court to dismiss the counter claim for want of prosecution. Consequently, this Court dismissed the counter claim with no order as to costs and adjourned the matter for judgment of the main suit. 8 Having summarized the plaintiff's evidence, it is now the right time to determine whether the plaintiff has established its case (the main suit) to the required standard. Starting with the 1st issue, the plaintiff was required to prove that the defendants are unjustified to pursue their intention to sell the plaintiff's mortgaged properties. In its own evidence and pleadings, the plaintiff admitted that it obtained facilities from UBL Bank (Tanzania) Limited. PW1 further stated, at paragraph 9 of its witness statement that, the rights of UBL Bank with regard to credit facilities were transferred to Exim Bank Tanzania and the plaintiff signed deed of novation and deed of variation with UBL Bank and Exim Bank (Tanzania) Limited. This evidence, in my considered view, speaks against the plaintiff in that Exim Bank (Tanzania) Limited has the right to enforce the terms of the deed of novation and deed of variation of corporate guarantee. The plaintiff failed to prove the illegality or unjustification of the defendants' alleged intention to sell the (securities) mortgaged properties. Furthermore, the evidence tendered was to the effect that the assets (outstanding facility amount) was transferred to Exim Bank (Tanzania) and PW1 admitted that they executed deed of novation and deed of variation of 9 corporate guarantee on 24th September, 2019. However, the plaintiff contends that the agreements entered by UBL Bank Tanzania on 24th September, 2019 were a nullity simply because UBL Bank Tanzania Limited was no longer existing. The plaintiff did not adduce any evidence apart from mere verbal to prove that UBL Bank Tanzania Limited was not legally existing on 24th September, 2019 when it entered into agreement with the plaintiff and Exim Bank Tanzania Limited. As such, the plaintiff has failed to prove that the credit facility by the defendant, Exim Bank (Tanzania) Limited is not legally connected with UBL Bank. To the contrary, the plaintiff's evidence proves otherwise. For example, in the letter addressed to Exim Bank (Tanzania) Limited, Head Special Assets Management (part of exhibit Pl), the plaintiff admits liabilities to the 1st defendant. Moreso, throughout the pleadings and evidence, there is nowhere the plaintiff is disputing taking loan from UBL Bank Tanzania Limited. Besides, the plaintiff does not claim to have repaid the loan amount nor does it state anywhere the actual outstanding loan amount. In these circumstances, it goes without saying that the plaintiff's evidence does support its case at all rather, it speaks in favour of . ii the defendants. io On all the above account, it is my considered findings that the plaintiff has failed to prove its case on the balance of probabilities. Consequently, I dismiss the suit. Since the hearing proceeded ex parte, I make no order as to costs. It is so ordered. Right to appeal is explained. A.A. Mbagwa JUDGE 29/08/2023 11

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CASE PAGE <https://chat.esheria.ai/case-law/tanzania/a-m-steel-iron-mills-ltd-v-exim-bank-tanzania-limited-loanagreement-tzhccomd-2023>

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