

TANZANIA / JUDGMENT

amana bank limited v urban and rural engineering 2022 tzhccomd 59 28 february 2022

COURT
TZHCCOMDDECIDED
28 February 2022

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT PAR ES SALAAM
COMMERCIAL CASE NO. 78 OF 2021 AMANA BANK LIMITED.....
PLAINTIFF VERSUS URBAN AND RURAL ENGINEERING SERVICES
LIMITED..... DEFENDANT Date of Last Order: 16/02/2022
Date of Judgement: 28/02/2022 DEFAULT JUDGEMENT. MAGOIGA, J. This is a default judgement.
The plaintiff, AMANA BANK LIMITED by way of plaint instituted the instant suit against the
above-named defendant praying for judgement and decree in the following orders, namely:

- (a) Payment by the defendant of the sum of Tanzania Shillings One Billion Six Hundred Ninety-Eight Million, Two Hundred Sixty Thousand, Two Hundred and Three and Seventy-four cents (TZS 1,698,260,203.74), Tanzania Shillings Two Hundred Forty Seven Million, One Hundred Thirty One Thousands, Five Hundred and Nine and Sixty Two Shillings (TZS 1 247,131,509.6 2) being outstanding amount on account of the Murahaba Facility.
- (b) Payment of penalty at the sum of five percent (5%) per annum from the entire period of default to the date of full and final satisfaction of decree.
- (c) Payment of profit at the sum of seven percent (7%) per annum for entire period of default to the date of full and final satisfaction of the decree
- (d) Payment of costs of funds from customer depositor at the rate of five percent (5%) per annum from the entire period of default to the date of full and final satisfaction of decree.
- (e) Sale of the following pledged collaterals (i) Landed property on plot No 34,BL2 at Mivumoni in Kinondoni Municipality with CT No. 70553 and LO No. 211684 in the name of Awadhi Zuberi, (ii) Landed property located at plot No. 47 BL2 Mbezi area in Dar es salaam with CT No 102314 and LO No. 271684 in the name of Awadhi Zuberi, (iii) Landed property on plot No. 47, Block "R" Mapinga area in the name of Urban and Rural Group of companies, (iv) Landed property on plot No. 50 Block "R" Mapinga area in the name of Urban and Rural Group of companies, (v) Landed property on plot No. 179, Block "A" Zengereni area in the name of Urban and Rural Group of companies limited, (vi) Landed property on plot No.

181,Block "A" Zengereni area in the name of Urban and Rural Group of companies Limited, (vii) Landed property on plot No. 308,Block "A" at Sinza area Kinondoni Municipality in Dr es salaam, (viii) all other assets of the defendant as per registered Debenture to the satisfactory of the outstanding amount. 2

- (f) Order that all proceeds from the existing and future projects of the defendant to be directed at paying the outstanding amount of the facility;
- (g) Costs of the suit;
- (h) Any other relief which this honourable court may deem just to grant in favour of plaintiff. The facts of this suit as gathered from the plaint are that, in February 2014 the defendant entered into contract with Rural Energy Agency (REA), for the purpose of supplying and installation of substation in un-electrified rural area in Kagera region. Facts go that, the main agreement was varied by extending its tenure and the scope of work increased as a such, defendant approached the plaintiff and applied for working capital. On 22nd July, 2014 following the request of the defendant, the plaintiff extended to the defendant working capital facility to the tune of TZS. 2,450,823,040.00 through Murahaba Facility for the purpose of financing various REA projects that defendant was undertaking under the contract with REA. It was agreed among others that, Murabaha Facility was being drawn down at variable intervals as and when requested by defendant and agreed by plaintiff, subsequently the defendant in dive dates made request and the plaintiff disbursed the requested working capital, for various amounts as and when required according to Murahaba Facility. Facts went on that in December 2016 the defendant had accumulated the total outstanding amount to the tune of TZS. 2,574,742,293.91 from various disbarments made over various time. As a security, the Murahaba Facility was secured by personal guarantee of defendant on landed properties described above in the name of Awadhi Zuberi and Urban and /,, c7> 3 Rural Group of Companies all properties alocated at Mivumoni in Kinondoni Municipality, Mbezi area Kinondoni Municipality and Mapinga area. The debenture was issued by defendant in favour of the plaintiff. However, defendant did not repay the money received and utilized as agreed, and efforts by plaintiff to remind the defendant culminated into restructuring of the loan. Murabaha facility changed its name to to Commodity Murahaba as a such TZS.2,957,293.364.16 was approved and extended to the defendant. The said loan facility comprised of the outstanding balance of TZS 2,574,742,293.91, Accrued profit TZS 308,942,974.94 and TZS. 67,972,511.64 being the amount paid to TIB. Despite the restructure of the loan, defendant failed to repay restructure amount which stood TZS 1,202,810,587.75. Subsequently, the facility was again restructured and the principal sum and accrued profit was booked separately, the principal sum booked as an outstanding amount of TZS. 418,164,031.26 as of 13th August, 2019. Facts went on that, the loan was restructured for third time and parties agreed that all profits accrued say TZS. 418,164,031.26 be deducted from outstanding amount and the same was booked as an outstanding as from 12th March, 2019. Unfortunately for the third time again defendant failed repay the loan as agreed. As an effort to assist defendant not getting into a recovery

state plaintiff made a fourth restructure with a condition that defendant to repay TZS 131,970,389.63/= within 12 months from 30th November, 2019 to 30th November, 2020 but the same was not repaid as agreed. Further facts were that, after the completion of part of the project defendant was paid TZS. 576,000,000.00 and United State Dollars \$ 1,670,000.00 through CRDB 4 Bank account which is the defendant's banker. Unfortunately, the government of United Republic of Tanzania blocked the account pending investigation. However, defendant promised the plaintiff that after the release of blocked fund, the entire outstanding balance will be settled. Later the fund was released but defendant deliberately neglected to honour its own undertaking to transfer such fund to plaintiff. It is further alleged that, even efforts by the plaintiff to have the money paid by issuing demand notices were in vain, hence, this suit claiming the reliefs as contained in the plaint. Going by the record of the Court, it is loud and clear that, the defendants were served with the plaint and summons on 4/8/2021 and when the suit was called for orders on 23/9/2021 Mr. Erasto Ntondokoso, learned advocate appeared for the defendants and informed the Court that, they were served on 09/09/2021 and we intend to file defence within the prescribed time. Consequently, the suit was adjourned to 1/11/2021 for necessary orders. On that date, no defence was ever filed and Mr. Ntondokoso informed the court that, they intend to settle the matter and the suit was again scheduled for orders on 1/12/2021. On 01.12.2021 when the matter called for mention the learned advocate for the plaintiff, in the circumstances, prayed that she be allowed to comply with the provisions of Rule 22(1) of the High Court (Commercial Division) Procedure Rules, 2012 as amended by G.N.107 of 2019. Mr. Muganyizi for the defendant insisted on settlement which the court declined. Consequently, I granted the prayer to proceeds under Rule 22 of the High Court (Commercial Division) Procedure Rules because 5 time to file written statement of defence and time for filing extension of time to file written statement of defence had long elapsed. It is against the above background, this Court on strength of such proof of service, granted the plaintiffs prayer to prove her case by filing Form number 1 accompanied with affidavit in proof of the claim as provided for under Rule 22 (1) as amended by G.N. 107 of 2019, paving way for this default judgement. In proving the claim, the plaintiff on 14th day of December, 2021 filed in this Court, Form 1 accompanied by the affidavit of, one, FAHD AFIF who is the principal officer of the plaintiff. Having carefully gone through the affidavit and the exhibits 1-11 annexed in proof of the claim, I am satisfied that the plaintiff has discharged his legal burden required in civil cases. In essence this suit revolves around breach of contract on the part of the defendants for unjustifiably failure to pay TZS. 1,698,260,203.74 and TZS.247,131,509.62 being the outstanding amount on account of the Murahaba Facility. In the foregoing, therefore, I find this suit proved to the standard required in civil cases with reservation on the amount claimed in the plaint and proved. This Court faced with similar situation in the cases of NITRO EXPLOSIVE (T) LIMITED v. TANZANITE ONE MINING LIMITED, COMMERCIAL CASE NO. 118 OF 2018 (HC) DSM (Unreported) AND A-ONE PRODUCTS AND BOTTLERS LIMITED v. TECHLONG PACKAGING MACHINERY LIMITED AND ANOTHER, 5 COMMERCIAL CASE NO 105 OF 2017 (HC) DSM (Unreported) in the interpretation of Rule 22 (1) as amended, held that for the plaintiff to enjoy fruits of justice under Rule 22, the

following cumulative ingredients must be proved, namely; 6

- (a) Proof of the service to the defendant but who has failed to file written statement of defence.
- (b) The plaintiff must make an application in the prescribed Form No. 1 to the First Schedule to the Rules.
- (c) (c) That the said application in Form No. 1 must be accompanied by an affidavit in proof of the claim. In the instant suit, there is no dispute that the plaintiff was served in accordance with the law and instructed an advocate who is on record that was representing the defendants. However, despite such proof of service, no written statement of defence was so far filed nor was any application preferred for an extension of time to file one. Equally, it is not in dispute that the plaintiff has made an application in prescribed Form No. 1 and same was accompanied with the affidavit in proof of the claim. In the totality of the above, this Court having carefully gone through the affidavit and exhibits 1-11 thereto, I am satisfied that the plaintiff has been able to prove the unpaid amount of TZS. 1,698,260,203.74 and Tshs.247,131,509.62 as claimed in her plaint. In the circumstances, I am inclined to enter default judgment in favour of the plaintiff to the tune of TZS. 1,945,391,713.36 being principal and accrues profits as of 30th March, 2021 as exhibited in exhibit P4. Other prayers in items (b) (c)(e) (f) (g) and (h) are equally granted as prayed in the plaint I hereby enter judgement for the plaintiff and decree as follows:
 - (a) Defendant is ordered to pay the plaintiff TZS. 1,945,391,713.36 being an outstanding amount due on account of the defendant and Murahaba Facility. 7
 - (b) Payment of penalty at the sum of five percent (5%) per annum from the entire period of default to the date of full and final satisfaction of decree.
 - (c) Payment of profit at the sum of seven percent (7%) per annum for entire period of default to the date of full and final satisfaction of the decree
 - (d) Payment of costs of funds from customer depositor at the rate of five percent (5%) per annum from the entire period of default to the date of full and final satisfaction of decree.
 - (e) The defendant to pay the costs of this suit. The amount adjudged in items (a) (b) (c) (d) and (e) be paid within three months from the date of judgement. In case of failure by the defendant to pay money in dispute within the grace period given, the plaintiff to exercise her rights under prayer (e) of the plaint. In terms of Rule 22 (2) (a) of the Rules as amended by G.N. 107 of 2019, I further order that the decree in this suit shall not be executed unless the decree holder has, within a period of ten(10) days from the date of the judgement, publish a copy of the decree in Daily News and Mwananchi Newspapers and a period of twenty one days (21) from the date of expiry of the said ten (10) days has elapsed. It is so ordered. Date at Dar es Salaam this 28th February 2022.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/182477/source_file/amana-bank-limited-v-urban-and-rural-engineering-2022-tzhccomd-59-28-february-2022.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/amana-bank-limited-v-urban-and-rural-engineering-services-limited-loandefault-tzhccomd-2022

Prepared on 14 October 2026 · Esheria