

TANZANIA / JUDGMENT

crdb bank plc vs man company ltd 2 others 2023 tzhccomd 157 2 june 2023

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TZHCCOMDDECIDED
2 June 2023

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT MWANZA COMMERCIAL
CASE NO. 09 OF 2022 CRDB BANK PLC..... PLAINTIFF
VERSUS MAN, COMPANY LTD..... 1st DEFENDANT MANFRED OSWALD
KAPUSI..... 2nd DEFENDANT TUTINDANGA JACOB
MWALWISI..... 3rd DEFENDANT
DEFAULT JUDGEMENT Date of Last Order:
29/05/2023 Date of Judgement: 02/06/2023 AGATHO, J.: This default judgement is a result of breach
of contract and failure to enter defence despite being dully served by publication in Uhuru
Newspaper (dated 14/02/2023) as a substituted service mode. The Plaintiff is a registered company
under the Companies Act, Act No. 12 of 20.02 R.E 2.0.02 and licensed under the Banking and
Financial Institution Act 2006 to carry out banking business in Tanzania. The 2nd and 3rd
defendants are natural persons who have been sued by virtual of being guarantors of the loan
advanced to 1st defendant. And the 1st defendant i is a company registered under the Companies
Act, Act No. 12 of 2002 to do business in Tanzania. By way of plaint the plaintiff, CRDB Bank PLC,
instituted this suit against the above-named Defendants praying for judgment and decree jointly
and severally for following relief, namely:

- (a) An order for immediate payment of the outstanding loan totalling Tanzania Shillings Four Hundred Sixty-Seven Million Forty-Eight thousand Four Hundred Ninety-Five and thirty cents (say TZS 467,048,495.30).
- (b) Commercial interest rate on the amount under item (a) above at the rate of 23% . from the date of filling of the suit to the date of

judgement.

- (c) An order for payment of court interest on decretal amount at the rate of 12%, from the date of judgement to the date of payment in full.
- (d) An order for payment of general damages on assessment by the court.

- (e) Costs of the suit to be borne by the defendants. For better understandings the gist of this suit I find it apposite to narrate the brief facts of the case. According to the plaint, it was averred 2 that, on 14th September 2013, the defendant applied for overdraft facility, and the plaintiff advanced USD 120,000 in favour of 1st defendant for the purpose of facilitating purchase of coffee in Mbeya and Songwe Regions as per the terms and conditions contained in the credit letter. That facility was varying the facility extended sometimes in May 2013 where the 1st defendant was extended with USD 60,000. It was agreed among other terms that, the said overdraft to be repaid within six months at the interest of 9%, Subsequently in 2014 via overdraft facility dated 23rd June, 2014 the plaintiff and 1st defendant varied the previous overdraft facilities in which the 1st defendant was extended with TZS. 470,000,000/= to be repaid within twelve months. Again, on 16th June, 2015 the plaintiff and the 1st defendant executed a letter of credit in which 1st defendant was availed with TZS 500,000,000/- as a working capital to facilitate the purchase of coffee with an agreement that, the plaintiff should pay the vendors directly and the said loan was to be repaid within twelve months. Again, at the request of the 1st defendant all existing facilities were restructured and converted into single term loan to be payable within 36 months at the interest rate of 17% per annum plus penal interest of 3% in case borrower fails to operate within the approved limit. 3 As security for the loan, the aforesaid loan facilities were secured by various legal securities which were: the first ranking debenture over all current, future, fixed and floating assets of the 1st defendant; irrevocable and unconditional corporate guarantee and indemnity of 2nd and 3rd defendants, irrevocable and unconditional personal guarantees and indemnity of the director of the 1st defendant, 2nd defendant, Legal mortgage over property located on Plot No 17 BLOCK " M" Ilemi Mbeya City vide Certificate of Title No. 12434 registered under the name of Manfred Oswald Kapusi,. and legal mortgage over property located on Plot No. 48 Block "A" Mlowo Mbozi, Vide CT No 12515 registered under the name of Manfred Oswald Kapusi. Despite the plaintiff observing the terms and conditions of the credit facility and the 1st defendant enjoying and utilizing the money disbursed, the 1st defendant defaulted in repayment of the amount due to the plaintiff which act constituted an event of default under clause 8 of the credit facility letter and clause 2 of the debenture. Even efforts by plaintiff through his lawyers to have the money paid were in vain. Hence, this suit claiming the prayers as contained in the plaint. The efforts by plaintiff to serve the defendants by normal means were in vain. There is an affidavit of the process server to that effect dated 14th November, 2022. The affidavit of process server filed in this court on 4 14th November, 2022 made this court on 17/01/2023 to order that, the defendant be served by way of substituted service in a local newspaper widely circulated in the country. The plaintiff, therefore served the defendant on 14th February, 2023 through publication in Uhuru newspaper. When the suit was called on for orders on 29th May, 2023 neither defence: has been filed nor any application for extension of time made to file one. In the circumstances, Mr Kennedy Mwakalinga the learned advocate for plaintiff prayed to be allowed to proceed under the provisions of Rule 22(1) of the High Court (Commercial Division) Procedure Rules, 2012 as amended by G.N.107 of 2019. This court on 29th May 2023 granted the prayer to file Form No 1 with its requisite annexures as required under Rule

22(1) and the same was filed on 30th May, 2023. I have looked at the form No 1 filed in this court the same was filed together with accompanying affidavit of Mr. Bartholomeo Kyando an officer of the plaintiff. Following the filing of form No 1, I fixed this suit for default judgement and went on to consider the application for the said default judgement. In the circumstance, the issue which I am supposed to determine in this case is whether the plaintiff is entitled to the prayers and reliefs sought in form No 1? It is worth noting that; the filing of Form No. I, seeking for a Default Judgment comes to play where the Defendant has declined to defend his case. In this case there is no dispute that the defendants were served in accordance with the law. However, neither written statement of defence was filed nor application for extension of time to file one as required by Rule 22(1) of the High Court (Commercial Division) Procedure Rules, 2012 (as amended, 2019) was made. For easy reference the said Rule 22(1) provides as follows: "Where any party required to file written statement of defence fails to do so within the specified period or where such period has been extended in accordance with sub rule (2) of rule 20, within the period of that extension, the court may, upon proof of service and on application by the plaintiff in form No. 1 set out in the schedule to these Rules accompanied by an affidavit in proof of claim, enter judgment in favour of the Plaintiff." As it has been established herein above, the Plaintiff did file Form No. I accompanied with the affidavit in proof of the claim. Having carefully gone through the affidavit and annexure CRDB 1,2,3,4,5,6 and 7 attached to the affidavit which during hearing the original documents were tendered before this court it is my considered view that, this suit revolves around breach of contract on the part of the defendants for failure to repay the loan granted and utilized by the 1st defendant as agreed. I am taking this stance because contents of annexure CRDB 1-3 are clear that the 1st defendant was availed the loan and the 2nd and 3rd defendant guaranteed it. However, he is yet to repay it. Also, annexure CRDB 7 is loud and clear that the unpaid balance as on 10th August, 2021 by the 1st defendant was TZS.467,048,495.30. Therefore, in regard to evidence tendered before this court I am satisfied that the 1st defendant was granted the loan which she has defaulted to repay as agreed. As such in the view of the above evidence and in terms of Rule 22(1) of the High Court (Commercial Division) procedure Rules, 2012 (as amended,

2019) this court do hereby enter default judgement in favour of the plaintiff, and order as follows.

- i. The defendant shall pay the plaintiff TZS 467,048,495.30) being the principal amount and accrued as of 10/8/2021.
- ii. The defendant to pay the plaintiff interest on the principal amount at the rate of 23% from the date of filing of the suit to the date of judgement.
- iii. The defendant to pay the plaintiff interest on the decretal amount at the rate 12% from the date of filing of the suit to the date of

judgement.

- iv. The defendant shall pay the plaintiff TZS.5,000,000 as general damages.

- v. The defendant shall pay costs of the suit. In terms of Rule 22 (2) (a) and (b) High Court (Commercial Division) Procedure Rules, 2012 (as amended, 2019), the Plaintiff is ordered to ensure that, the decree emanating from this suit is not executed unless the decree holder has, within a period of ten (10) days from the date of this default judgment, publish a copy of it (the decree) in at least two (2) widely circulated newspapers in the country and after a period of twenty one days (21), from the date of expiry of the said ten (10) days, has elapsed. It is so ordered. DATED at MWANZA this 2nd Day of June, 2023. U. J. AGATHO JUDGE 02/06/2023 Date: 02/06/2023 Coram: Hon. U. J. Agatho, J. For Plaintiff: Kennedy Mwakalinga, Advocate For Defendants: Absent. 8 C/Clerk: Beatrice Court: Judgment delivered today, this 2nd June 2023 in the presence of Kennedy Mwakalinga, counsel for the Plaintiff, but in the absence U. J. AGATHO JUDGE 02/06/2023 9

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