

TANZANIA / JUDGMENT

kcb bank tanzania limited vs dove safaris limited 2015 tzhccomd 17 11 december 2015

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TZHCCOMDDECIDED
11 December 2015

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT DAR ES SALAAM
COMMERCIAL CASE NO. 33 OF 2013 KCB BANK TANZANIA LIMITED..... PLAINTIFF
VERSUS DOVE SAFARIS LIMITED 1st d e f e n d a n t JOHN ATHUMANI MWAKAJINGA 2nd
DEFENDANT JUDGM ENT Mansoor, J: Date of JUDGMENT- 11th December 2015 The suit was filed
by KCB Bank Tanzania Limited “the plaintiff Bank”, against the two defendants, the 1st defendant
being the company incorporated under the Companies Act, and the 2nd defendant was said to be
the director of the 1st defendant- company. The suit was filed for a decree directing the
defendants jointly and severally- to pay the plaintiff-Bank the amount claimed, THz 73,575,606.81
and United States Dollars 11,293.23 as at 31st October 2012 with further interest at 26% per cent
from the date of the plaint till realisation, and for directing the defendants jointly and severally to
pay the plaintiff-Bank the costs of the suit with interest thereon.' The 1st defendant was granted a
loan of THz 56,047,150 on 13th December 2010, for purchasing two motor vehicles. As security
for the loan, on 17th December 2010, the 2nd defendant and one Joseph John Mwakajinga
executed the Deed of Guarantees securing the loan. Mr Joseph John Mwakajinga is now the
deceased. On the 17th December 2010 the 1st defendant issued a Debenture creating a fixed
charge in all the assets of the 1st defendant to the plaintiff bank to secure the loan. The loan was
also secured by a chattel mortgage of the two motor vehicles. The loan was repayable in 36 equal
monthly instalments of THz 2,169,569.57 in each month. The defendants never paid the
instalments as agreed. I have seen the written statement of defence filed by the defendants
jointly. The defence stated the following: Paragraph 3- “that what is stated in paragraphs 5,6,7,8
and 10 of the plaint is disputed, after the defendants had executed the documents, the Managing
Director passed away and no money was thereafter advanced;” Paragraph 4- “that the demands
stated in paragraphs 11, 12, 13 and 17 of the plaint are of no use, as no money wa'S advanced to
the Defendant;” Paragraph 5: “that the Defendant has never been at any liability to pay the money
alleged in the plaint.” The written statement of Defence was verified by John Athumani
Mwakajila, as the 2nd defendant as well as the shareholder and the director of the 1st defendant.
The issues framed at the Final pre Trial Conference are as follows: A: . whether there was a credit
agreement between the Plaintiff and the Defendant, This issue has never been disputed by the

defendants. Actually the 2nd witness for the defence Mr Emmanuel John Mwakajila stated that he was working with the 1st Defendant Company as the Operation Manager and that sometimes in the year 2010 the 1st Defendant had executed the Facility with the plaintiff Bank for the Loan amounting To THz 56,047,150. It has not been denied that the 1st Defendant applied for a Term Loan in their letter dated 9th November 2010 (Exh P2), it has not been denied that the Directors of the 1st Defendant signed a Board Resolution authorising the 1st.. defendant company to apply for the Loan and enter into a Term Loan Agreement with the plaintiff- Bank (Exh P3). It has not been denied by the defendants that the Term Loan Agreement was executed by the plaintiff and the Defendants (Exh P4). The defendants also did not deny having executed the Debenture in favour of the Bank over the landed property comprised in a CT No. 100848, Plot No. 36/1,38/1 and 39/1, Block F Mabibo Area, Dar es Salaam and a personal guarantee of the 2nd defendant and' the Directors Personal Guarantee dated 17th December 2010 (Exh P5). Thus issue no one is answered in the affirmative that there was a Credit Agreement- between the Plaintiff Bank and the 1st Defendants. B: Issue No. 2 is whether there was breach of the Credit Facility Agreement, and if so, by whom? It is the defence case that even though the Credit Facility Agreement was executed, and all security agreements were in place, the Plaintiff Bank never credited the money in the 1st Defendant's Account as the Managing Director of the 1st Defendant had passed away in a motor Accident before the money was disbursed to the defendants, and that according to DW2, the money was to be paid directly in the Account of the Supplier, and that before his death Mr John Joseph Mwakajila had not yet finalised the name and the Account of Supplier. The testimony of DW2 regarding the condition that the money

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