

TANZANIA / JUDGMENT

NMB BANK PLC scanned

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DECIDED
7 March 2025

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE NO. 6164
OF 2024 BY WAY OF A COUNTER CLAIM NMB BANK

PLC..... PLAINTIFF VERSUS PETROMARK

AFRICA LIMITED..... 1«tDEFENDA ZAIDI

BARAKA..... 2nd DEFENDANT JULIANA

BARAKA..... 3rd DEFENDANT ASIA HAKIM

MNYIKA..... 4th DEFENDANT EX-PARTE JUDGMENT 4th to

7th March, 2025 E.B. LUVANDA, J This judgment ex-parte is specifically against the Fourth Defendant above named, following settlement out of court of a claim between the Plaintiff above mentioned against the First, Second and Third Defendant named above. According to the evidence adduced by Henry Mfumu (PW1) who is the Relationship Manager of the Plaintiff, testified that sometime in the year 2018, the First Defendant applied for and was granted by the Plaintiff an overdraft facility of USD 100,000 payable within twelve months, attracting interest of 9% and term loan amount of TZS 375,000,000.00 payable within a period of eighteen months, attracting an interest of 18%, making a total facility of TZS i 600,000,000, citing the facility letter dated 18/1/2018 and its amendment dated 14/3/2018, exhibit P2 and P1, respectively. It was the testimony of PW1 that the said facility was secured by different securities including a first ranking legal mortgage over residential property located on Plot No .160, Block "10", Kibada Kigamboni Area, with certificate of title (CT) No. 105879 (the suit property), in the name of Fourth Defendant, as per the mortgage of a certificate of right of occupancy dated 15/3/2018, exhibit P3. PW1 stated that the First Defendant (borrower) failed to repay the loan facilities as agreed, whereby the Plaintiff issued demand letter to the First Defendant on 15/07/2019 (exhibit P4), requiring her to repay the outstanding loan, in vain. PW1 testified that on 14/08/2019 the Plaintiff served to the Fourth Defendant a sixty days statutory notice of default (exhibit P5) requiring her to remedy the default in her capacity as mortgagor, failure of which the Plaintiff would exercise her rights under the mortgage deed. It was the evidence of PW1 that, following expiry of the sixty days' notice of default (exhibit P5), the Plaintiff attempted to auction the mortgaged property to recover the outstanding loan, which exercise was abortive, for reasons which were unknown. According to PW1, as of 3/04/2024, the outstanding loan stood 2 at USD 126,756.90 and TZS 215,863,290.61 which amount continued to attract interest, penalty and charges on accrual basis, citing First Defendant bank/loan account statements, along a certificate of authenticity of printouts statements, exhibit P7 and P6, respectively. PW1 stated further that the Fourth

Defendant act of not remedying the default as mortgagor amounts to breach of mortgage deed. Hence prayed for this Court to declare that the Fourth Defendant is liable to the Plaintiff in terms of her obligations under the mortgage deed and for an order of vacant possession and sale of Plot No 160 Block 10 Kibada Area, Kigamboni Dar es Salaam with CT No 105879 (the mortgaged property), in the name of the Fourth Defendant in order to recover the outstanding loan. The issues framed for determination are: One, whether the Fourth Defendant to the counter claim mortgaged the suit property that is Plot 160 Block 10 CT 105879 located at Kibada Area Kigamboni Municipality, in favour of the Plaintiff to the counter claim; Two, whether the Fourth Defendant is liable to the Plaintiff in terms of her obligation under the mortgage deed; Three, to what reliefs parties are entitled. Issue number one, whether the Fourth Defendant to the counter claim mortgaged the suit property, that is Plot 160 Block 10 CT 105879 located at 3 Kibada Area Kigamboni Municipality, in favour of the Plaintiff to the counter claim. Exhibit P3 is self-explanatory that the Fourth Defendant was a mortgagor and acceded to be a surety for a loan advanced by the Plaintiff to the First Defendant, by mortgaging her property with certificate of title No. 105879 in favour of the Plaintiff. According to exhibit P3, the said mortgage was registered by the Acting Registrar of Titles at the Land Registry on 19/03/2018. In that respect, it is ruled that, indeed the Fourth Defendant mortgaged the suit property. Issue number two, whether the Fourth Defendant is liable to the Plaintiff in terms of her obligation under the mortgage deed. According to PW1 stated that the First Defendant (borrower) failed to repay the loan facilities as agreed, which as of 3/04/2024, the outstanding loan stood at USD 126,756.90 and TZS 215,863,290.61. Unfortunately, the said settlement out of court, was not made clear as to the terms of settlement and if the debt stood on the same position even after the said settlement. Be as it may, it was the evidence of PW1, that the Plaintiff issued demand letter to the First Defendant on 15/07/2019 (exhibit P4) requiring her to repay the outstanding loan in vain. PW1 testified further that on 14/08/2019 the Plaintiff served to the Fourth Defendant a sixty days statutory notice of default (exhibit P5) requiring her to remedy the default in her capacity as mortgagor, failure of which the Plaintiff would exercise her rights 4 under the mortgage deed. In the circumstances, section 1.01 of exhibit P3, regarding mortgagor covenant in event of default, to pay and discharge all obligations and liabilities incurred to the Plaintiff by the First Defendant, is applicable herein. Therefore, the Fourth Defendant is adjudged to be liable to the Plaintiff in terms of her obligation as mortgagor under exhibit P3. Issue number three, to what reliefs parties are entitled. Having ruled that the Fourth Defendant is liable in terms of her obligation stipulated under exhibit P3. Therefore, I order the Fourth Defendant to give vacant possession of a suit property on Plot No 160 Block 10 Kibada Area, Kigamboni Dar es Salaam with CT No 105879, to pave way for the Plaintiff to exercise her right of sale in order to recover the outstanding loan. E.B. LUVAND, JUDGE/ 07/01/^025 5

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