

TANZANIA / JUDGMENT

TIB DEVELOPMENT BANK LIMITED AND ANOTHER VS GLOBAL PACKAGING T LIMITED AND ANOTHER CIVIL CASE NO

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB-REGISTRY AT DAR ES SALAAM CIVIL CASE NO. 103 OF 2022 BETWEEN TIB DEVELOPMENT BANK LIMITED.....1ST PLAINTIFF ATTORNEY GENERAL.....2ND PLAINTIFF VERSUS GLOBAL PACKAGING (T) LIMITED.....1ST DEFENDANT WANDE PRINTING AND PACKAGING COMPANY LTD.....2ND DEFENDANT

JUDGMENT

Date of last order: 23/10/2024 Date of judgment: 03/12/2024 A.A. MBAGWA, J. The suit at hand entails a dispute over the credit facility agreement entered into between the 1st plaintiff and the 1st defendant, on the one hand, and secured by the 2nd defendant, on the other hand. According to the facts as deciphered from the pleadings and evidence, the 1st plaintiff and 1st defendant entered into a credit facility agreement. It is evident from the credit facility letter (exhibit P1) dated 12th June 2015, that the 1st plaintiff offered the 1st defendant two credit facilities namely, Long Term Loan worth Tanzania shillings equivalent to USD 1,630,500, and Short Term Loan worth Tanzania shillings equivalent to USD 700,000. According to the agreement terms found on page 2 of the credit facility offer letter, the long-term loan was payable within eighty-four (84) months including a grace period of twelve (12) months from the first day of the drawdown whilst the short-term loan was payable within eighteen (18) months including three (3) months of a grace period. The letter offer was signed by Joseph O. Wasonga, the Managing Director, and Anna W. Wasonga, the Director on behalf of Global Packaging (T) Limited to signify the acceptance of the terms and conditions therein. Furthermore, the facilities were secured by the 1st defendant's debenture (exhibit P4) and the 2nd defendant's corporate guarantee (exhibit P3). Throughout the evidence, it is undisputed that the 1st defendant did not service the credit facilities according to the agreement terms. As such, at the 1st defendant's request, the two parties entered into a restructuring agreement through an amendment to the credit facility letter of offer dated 20th June 2017 (exhibit P5). Under the restructuring agreement (exhibit P5), the two facilities namely long-term loan and short-term loan were merged into one term loan with the outstanding amount of TZS 5,127,293,638 at the time of signing. Further, under Clause (ii) of the restructuring

agreement, the contract tenure was extended from seven (7) years to nine (9) years. In addition, the repayments were to be done quarterly instead of monthly. Exhibit P5, the restructuring agreement indicates that it was signed by Joseph Otieno Wasonga, the Managing Director, and Hatibu R. Njuwila, GM-Finance & Projects, on behalf of the 1st defendant. It is the plaintiffs' contention that despite the efforts to relax the repayment mode through restructuring of the agreement terms, the 1st defendant continued to default on the loan repayments. As a result, on the 23rd May 3 2022, the 1st plaintiff issued the defendants with a demand notice informing them that they were indebted to the 1st defendant to the tune of TZS 11,583,254,966 as of 18th May 2022. Nonetheless, the defendants did not make good on the outstanding debt. Owing to the defendants' continued default on repayment, the plaintiffs filed the present suit praying for judgment and decree against the defendants in the following orders:

- (i) Declaration that the defendants are in breach of the Credit Facility Agreement, Debenture Deed as well as the Corporate Guarantee Agreement. (ii) Payment of the sum of TZS 11,764,225,355.56 as of 27th June 2022 including penalty and interests by the defendants the aggregate amount used as a party payment to finance the purchase of warehouse (prefabricated materials) and meet installations costs and purchase of complete packaging plant, control panel, transformer and power generator. 4 (iii) Plaintiffs be allowed to exercise their rights towards the Corporate Guarantee Agreement of the 2nd defendant. (iv) Interest of the above (ii) at the rate of 27% from the date of default to the date of judgment.
- (v) Interest on the decretal amount at the rate of 7% from the date of default to the date of judgment. (vi) Costs of the suit; and (vii) Any other reliefs which this Honourable Court may deem just to grant in favour of the plaintiffs. Upon service, the defendants filed a joint written statement of defence disputing the plaintiffs' claims. The defendants in essence stated that the 1st plaintiff did not disburse the whole contractual amount in time. They also lamented that they were not given working capital after the installation of machines. Besides, the defendants filed a counterclaim but the same was struck out by this Court (Kisanya J) through a ruling dated 20th June 2024. Upon completion of the preliminaries, the following issues were framed by 5 the Court and acceded to by the parties namely;
 - 1. Whether the 1st defendant breached the credit facility agreement dated 17th August 2015 and an amendment to a credit facility dated 20th June 2017.
 - 2. Whether the 2nd defendant breached a corporate guarantee.
 - 3. Whether the defendants are jointly indebted to the 1st plaintiff to the tune of TZS 11,764,225,355.56 as of 27th June 2022.
 - 4. To what reliefs are parties entitled? During the hearing of the matter, the plaintiffs had the services of Ms. Tausi Sued, learned State Attorney whereas the defendants were represented by Ms. Angelista Nashon and Mr. Goodluck Temu, learned advocates. The hearing was conducted by way of witnesses' written statements in terms of Order XVIII of the Civil Procedure Code. In a bid to prove their case, the plaintiffs paraded one witness namely, PW1 Jacob Hezron Danda, the Recovery Manager of the 1st plaintiff, and produced eight (8)

exhibits to wit, credit facility- letter of offer dated 12/06/2015⁶ issued to Global Packaging Limited with Re. TIB/ORG/16 (exhibit P1), credit facility agreement between TIB Development Bank Limited and Global Packaging (T) Limited dated 17/08/2015 (exhibit P2), Corporate Guarantee Agreement dated 17/08/2015 issued by Wande Printing and Packaging Company Limited to TIB Development Bank Limited (exhibit P3), debenture issued by Global Packaging Tanzania Limited in favour of TIB Development Bank Limited dated 17/08/2015 (exhibit P4), Amended Credit facility-letter of offer dated 20/06/2017 issued to Global Packaging with Ref. No. TIB/PA/12091/VOL.V (exhibit P5), Corporate Guarantee Agreement issued by Wande Printing and Packaging Company Limited to TIB Development Bank Limited dated 04/09/2017 (exhibit P6), letter authored by the Bank and addressed to National Development Corporation and Wande Printing and Packaging Company Limited dated 23/05/2022 titled 'Issuance of Statutory Sixty Days' Notice to Global Packaging Limited and the Guarantor with Ref. TIB/PA/12091/VOL VIII/83 (exhibit P7), and two bank statements from 05 Feb 2016 up to 21 December 2022 and another from 5 January 2023 up to 20 August 2024 (exhibit P8 collectively).⁷ In his written statement, PW1 stated that the long-term facility was for the purpose of part finance for the purchase of a warehouse (prefabricated materials), installation costs, and purchase of a complete packaging plant, control panel, transformer, and power generator whereas the short-term facility was to finance the purchase of raw materials and meeting other initial operation costs. He stated that the 1st plaintiff, on different occasions, disbursed money to the 1st defendant amounting to TZS 3, 414,462,979.66 in respect of the long-term loan. PW1 continued that regarding the short-term loan, the 1st plaintiff made different disbursements to the tune of TZS 710, 435,520,000. The plaintiffs' witness stated that the 1st defendant failed to comply with the repayment schedule hence a restructuring agreement. PW1 testified that at the time of restructuring, the outstanding loan stood at TZS 5,127,293,638. He stressed that despite the restructuring, the defendants continued to default hence the present suit. On the adversary, the defendants marshaled one witness namely, DW1 Joseph Wasonga, and did not tender any exhibit. DW1 contended that the 1st plaintiff did not disburse the contractual amount in full and timely.⁸ He alleged that this anomaly was a material breach of the contractual terms and greatly contributed to the 1st defendant's failure to repay the loan. Through his written statement, DW1 told the court that the 1st plaintiff only disbursed US\$ 1,709,226.57 the equivalent of 73% out of US\$ 2,300,500 which she was bound to disburse. However, during cross-examination, he conceded that the 1st plaintiff released all the contractual amount which is US\$ 2,300,500. He also admitted that the 1st defendant was given all the amount he requested. DW1 further admitted before the Court that the 1st defendant had not fully repaid the loan. Upon conclusion of the hearing, parties were given leave to file closing submissions. However, the defendants did not file their respective written submissions and no reason was assigned to that effect. I therefore proceeded to consider the plaintiffs' written submission only. Having summarized the parties' evidence and navigated through the plaintiffs' submissions, it is opportune to determine the framed issues. To begin with the 1st issue to wit, whether the 1st defendant breached the 9 credit facility agreement dated 17th August 2015 and an amendment to a credit facility dated 20th June 2017. It is common

cause that the 1st defendant failed to comply with the repayment schedule as set in the credit facility agreement (exhibits P1 and P2). As such, the 1st defendant requested for the restructuring and the same was accepted by the 1st plaintiff as demonstrated through exhibit P5. The plaintiffs contended that even after restructuring, that is on 20/06/2017, the 1st defendant continued to default. To support the plaintiffs' contention, PW1 tendered the bank statement in respect of the 1st defendant's loan account (exhibit P8) which clearly indicates that the 1st defendant was not repaying the loan as per the agreement terms. The defendants, on their part, did not bring evidence to counter the plaintiffs' assertion. The defendants' defence on this is that the 1st plaintiff did not disburse the loan amount in full and timely although, in the cross-examination, DW1 recanted this contention. According to the restructuring agreement, under Clause (ii) the 1st defendant was duty bound to remit the loan money quarterly namely, January- March, April – June, 10 July -September, and October – December. However, as per the plaintiffs' evidence, in particular the bank statement (exhibit P8), the 1st defendant did not abide by this repayment schedule. It is the settled position of law that failure to pay even a single installment amounts to a breach of contract. See the case of National Bank Of Commerce Limited vs Stephen Kyando T/A Asky Intertrade, Civil Appeal No. 162 of 2019, CAT at Dar es Salaam. In the circumstances, it is my considered findings that the 1st defendant breached the terms of the credit facility agreement dated 17th August 2015 and an amendment to a credit facility dated 20th June 2017. As a result, the 1st issue is answered affirmatively. The 2nd issue is whether the 2nd defendant breached a corporate guarantee. Following my deliberations in the 1st issue, I will not belabour much in disposing of this issue. It is clear under the corporate guarantee agreement (exhibit P6) that the 2nd defendant committed itself to pay the loan in the event the 1st defendant failed to service it. For the purpose of clarity, I let the contents of Clause 1 speak for themselves; 11 'The guarantor hereby agree and undertake (sic) with the bank that whenever the company shall make default in the payment of any monies to be paid by the company pursuant to the provisions of the agreement whether in respect of the loan or interest or otherwise, or whether in respect of any other charges failing to be paid to the bank by the company, the guarantor shall forthwith pay such monies to the bank' There is uncontroverted evidence (exhibit P7) that both defendants were informed of the default but none bothered to remedy it. This explains that the 2nd defendant failed to honor the terms of the corporate guarantee agreement (exhibit P6). In the end, the 2nd issue is answered in the affirmative. Coming to the 3rd issue namely, whether the defendants are jointly indebted to the 1st plaintiff to the tune of TZS 11,764,225,355.56 as of 27th June 2022, the plaintiffs tendered the bank statement (exhibit P8) to support their contention. There was no counter-evidence from the defendants as they did 12 not produce any documentary evidence. DW1 told the court that he would rely on the documents adduced by the plaintiffs. Apart from evasive denial, the defendants could not tell the court as to how much money, according to their record, they are indebted to the 1st plaintiffs nor did they establish any amount allegedly repaid. As hinted above, the authentic and reliable evidence on this is the bank statement (exhibit P8). I have strenuously scanned the bank statement but I could not come across the allegedly claimed figure of TZS 11,764,225,355.56. According to exhibit P8 on page 7, on the 30th day

of June, 2022 the outstanding debt amount stood at TZS 9, 433, 451, 637.76. It must be noted that this claim being special damages, the plaintiffs were under obligation to strictly prove it. Thus, in my considered analysis, the plaintiffs have managed to prove TZS 9, 433, 451, 637.76. Based on the available evidence, I hold that the defendants are indebted to the 1st plaintiff to the TZS 9, 433, 451, 637.76. as of 27th June 2022. The last issue is what reliefs are parties entitled to? The plaintiffs prayed for 13 several reliefs including the leave to exercise their rights towards the Corporate Guarantee Agreement of the 2nd defendant, interest on the claimed outstanding amount at the rate of 27% from the date of default to the date of judgment, interest on the decretal amount at the rate of 7% from the date of default to the date of judgment, costs of the suit and any other reliefs. I have carefully appraised all three agreements namely, exhibits P1, P2, and P5 but nowhere the interest of 27% is provided. Further, the plaintiffs testified that the defendants are indebted to the 1st plaintiff for TZS 11,764,225,355.56 as of 27th June 2022 being the principal sum along with accrued interest and penalties. As such, this claim has no legs on which to stand. In addition, the interest from the date of filing the suit to the date of judgment is awarded at the discretion of the Court. See the case of Ashraf Akber Khan vs Ravji Govind Varsan, Civil Appeal No. 5 of 2017, CAT at Arusha. In the circumstances of this matter, I do not find it prudent to grant this relief along with other orders as indicated hereinabove. Moreso, the plaintiffs prayed for the leave of this Court to exercise their 14 rights towards the corporate guarantee agreement of the 2nd defendant. The plaintiffs were enjoined to exercise this right even without a court order. Since the plaintiffs opted to bring the suit instead of exercising this right under the corporate guarantee agreement, I decline to grant this prayer and instead, I order the plaintiffs to follow normal procedures of executing a court decree that may involve the securities. In conclusion, it is worthwhile to restate the position of law that the defaulting party to a contract is obliged to remedy the other party. As the defendants have been found in breach of the agreements, it necessarily follows that they are liable to compensate the plaintiffs. In view thereof, I hereby enter the judgment and decree against the defendants with the following consequential orders;

- (i) It is declared that the defendants are jointly in breach of the Credit Facility Agreement, Debenture Deed as well as the Corporate Guarantee Agreement. (ii) The defendants are jointly ordered to pay the 1st plaintiff the sum 15 of TZS 9, 433, 451, 637.76. being outstanding loan amount as of 27th June 2022. (iii) The defendants are ordered to pay interest on the decretal amount at the rate of 7% from the date of judgment to the date of full satisfaction. (iv) Costs of the suit be borne by the defendants. It is so ordered. The right of appeal is fully explained. Dated at Dar es Salaam on this 3rd day of December 2024. A.A. Mbagwa JUDGE 03/12/2024 16

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