

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 135 OF 2016**

**BANK OF AFRICA (T) LIMITED** ..... **PLAINTIFF**

**VERSUS**

**MAISAM MOHAMED FAZAL t/a**  
**INTERNATIONAL ROAD HAULAGE** ..... **DEFENDANT**

**DEFAULT JUDGMENT**

*Date of the Last Order: 15/03/2018*

*Date of the Default Judgment 09/04/2018*

**SEHEL, J.**

On 1<sup>st</sup> day of November, 2016 the plaintiff instituted a summary suit against the defendant for the payment of Tshs. 404,674,774.71 being outstanding debt arising from restructured Credit Facility to a tune of USD 313,323.50 in the form of consolidation of an expired overdraft facility and an existing loan into one term loan for the purpose of the defendant's working capital requirement upon the



terms and subject to the conditions of the plaintiff's facility letter dated 23<sup>rd</sup> January, 2014 attached to the plaint. The Plaintiff further claims for interest at the contractual rate of 20% on the claimed amount from 18<sup>th</sup> October, 2016 until date of judgment; interest on decretal amount at Court's rate and costs of the suit. It is alleged in the plaint that the facility was secured by a third party mortgage over immovable property situate on Plot No. 2242/24 Appt. No. 002, Ground Floor, Block '186017' Upanga Area, Dar es Salaam comprised in Certificate of Title No. 186017/5/15. Copy of the mortgage deed is attached to the plaint. It is stated in the plaint that the term of the Credit Facility will elapse on 4<sup>th</sup> March, 2017 yet the Defendant failed to repay its accrued indebtedness under the said facility to the plaintiff. The plaintiff in the plaint complained that a formal notice of default was served upon the defendant but defendant failed to repay hence the plaintiff exercised its legal right under the mortgage by selling the mortgage by public auction at a price of Tshs. 70million. The proceeds of the sale was not enough to

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liquidate the exposure and the amount outstanding due as at 18<sup>th</sup> October, 2016. Consequently, the plaintiff filed the present suit.

The defendant was duly served with summons requiring him to obtain leave to appear and defend the summary suit. Upon several attempts, on 25<sup>th</sup> day of October, 2017 the defendant was granted unconditional leave to appear and defend the summary suit. He was further ordered to file its written statement of defence within twenty one days from 25<sup>th</sup> day of October, 2017. Despite being granted leave, the defendant defaulted to file any defence. Hence the counsel for the plaintiff prayed for default judgment. The counsel told the Court that from 25<sup>th</sup> October, 2017 to 20<sup>th</sup> February, 2018 when the matter was called for orders more than 115 days have lapsed and no defence has been filed by the defendant. The counsel for plaintiff further submitted that the plaintiff has complied with Rule 22 (1) of the High Court (Commercial Division) Procedure Rules, GN 250 of 2012 (hereinafter referred to as "the Rules") by filling Form No. 1 for default judgment.

Rule 22 (1) of the Rules provides:



*"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 9, within the period of such extension, the Court shall upon proof of service and on application by the plaintiff in Form No. 1 set out in the schedule to these Rules enter judgment in favour of the plaintiff."*

As I said the defendant was duly served with summons. He appeared and was granted leave to defend the summary suit but he defaulted to file any defence thereof. Pursuant to Rule 22 (1) of the Rules the plaintiff is entitled to default judgment and decree against the defendant. Therefore default judgment is hereby entered and the plaintiff is entitled to the following reliefs:

1. The defendant shall pay the Plaintiff the outstanding amount of Tshs. 404,674,744.71 (Tanzanian Shillings Four Hundred and Four Million Six Hundred Seventy Four Thousand Seven Hundred Forty Four and Seventy One Cents) being the

principal amount of the outstanding Credit Facilities and interests as of 18<sup>th</sup> October, 2016;

2. The defendant shall pay the plaintiff contractual interest rate of 20% per annum on Tshs. 404,674,744.71 from 18<sup>th</sup> October, 2016 until the date of judgment;
3. The defendant shall pay the plaintiff interest at Court's rate of 7% per annum on the decretal amount from the date of judgment to the date of full payment; and
4. Costs of the suit.

In terms of Rule 22 (2) (a) and (b) of the Rules, I further direct that the decree to the present suit shall not be executed unless the decree holder has, within a period of ten (10) days from the date of this judgment, published a copy of the decree in at least two (2) newspapers of wide circulation in the country and after a period of twenty-one (21) days from the date of expiry of the said period of ten (10) days has lapsed. It is so ordered.

Dated at Dar es Salaam this 9<sup>th</sup> day of April, 2018.





B.M.A Sehel

JUDGE

9<sup>th</sup> day of April, 2018