

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 197 OF 2017

BANK OF AFRICA (TANZANIA) LIMITED **PLAINTIFF**

VERSUS

1. JORAM GENERAL ENTERPRISES LIMITED **1st DEFENDANT**
2. JORAM EDWARD KAMINYONGE **2nd DEFENDANT**
3. EVA BRIGHTON **3rd DEFENDANT**

DEFAULT JUDGMENT

Date of the Last Order: 19/07/2018

Date of the Ruling 23/07/2018

SEHEL, J.

The plaintiff herein has instituted a suit against the defendants jointly and severally for the payment of Seventy Four Million One Hundred Thirty One Thousand Two and Fifty Two Cents (Tshs. 74,131,002.52) being the outstanding loan balance arising from the defendants' default to the terms of credit facility letter. The Plaintiff further claims for interest at the commercial rate of 39.5% on the

outstanding amount claimed; interest on the decretal sum at the court's rate of 12% from the date of judgment to the date of full satisfaction; and costs of the suit; general damages for breach of contract; and any other relief as the Court may deem fit to grant. It is alleged in the plaint that in the year 2016 the 1st defendant applied and was availed by the plaintiff a bank guarantee facility of Tshs. 100,000,000 for financing 1st defendant's project of distribution of bagged/bulk Twiga cement. A copy of the credit facility letter attached to the plaint as annexure "BOA-1". According to the terms and conditions of the facility letter, the facility was for a period of twelve months from the date of issuance at equal rates with 3% interest thereon charged quarterly without a default interest.

It is alleged in the plaint that the facility was secured by a third party mortgage over immovable property situate on Plot No. 135, Block 'B' held under Certificate of Title No. 131370, Madale Area, Kinondoni Municipality in Dar es Salaam owned by one Felix Haule Othmar "the mortgagor". Copy of the mortgage deed is attached to the plaint as annexure "BOA-3". It is stated in the plaint that the

loan was further personally guaranteed by the 2nd and 3rd defendants. Copies of personal guarantees are attached to the plaint as annexure "BOA-2". It is stated in the plaint that the 1st defendant defaulted to repay loan and interest thereon thus a formal demand notice was issued to the 2nd and 3rd defendants and on 20th May, 2017 the mortgagor was issued with the 60 days notice of default but the amount still remained unpaid thus the plaintiff exercised its rights over the legal mortgage by instructing the joint venture Debt collection Company Ltd to dispose the mortgaged the property in order to recover the outstanding balance of Tshs. 118,007,379.11 as of 31st August, 2017. On 8th September, 2017 the mortgaged property was sold by public auction whereof Tshs. 50,000,000/= was fetched. The proceeds of the sale was not enough to liquidate the exposure and the amount outstanding due as at 27th November, 2017 of Tshs. 73,853,702.52 plus publication fee of Tshs. 265,500/= and transfer charges of Tshs. 1180 making the outstanding balance of Tshs. 74,131,002.52. Consequently, the plaintiff filed the present suit.

The defendants were duly served through substituted service in two widely circulated newspapers of Mwananchi dated 9th March, 2018 and Dailynews dated 7th March, 2018 but defaulted appearance thus failed to file any defence. Hence the counsel for the plaintiff prayed for default judgment by filling Form No. 1 for default judgment as required by Rule 22 (1) of the High Court (Commercial Division) Procedure Rules, GN 250 of 2012 (hereinafter referred to as "the Rules").

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 defendants were duly served with summons. They neither appeared nor filed any defence thereof. Therefore, pursuant

to Rule 22 (1) of the Rules the plaintiff is entitled to default judgment and decree against the defendants jointly and severally. Default judgment is hereby entered and the plaintiff is entitled to the following reliefs:

1. the defendants jointly and severally for the payment of Seventy Four Million One Hundred Thirty One Thousand Two and Fifty Two Cents (Tshs. 74,131,002.52) being the outstanding loan balance arising from the defendants' default to the terms of credit facility letter;
2. The defendant shall pay the plaintiff interest rate at contractual rate of 3% quarterly on Tshs. 74,131,002.52 from 27th November, 2017 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 23rd day of July, 2018.



B.M.A Sehel

JUDGE

23rd day of July, 2018