

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 77 OF 2019**

**STANBIC BANK TANZANIA ..... PLAINTIFF**

**VERSUS**

**AGRIC EVOLUTION TANZANIA LIMITED..... DEFENDANT**

**Date of Last Order: 15/04/2021**

**Date of Judgement: 24/05/2021**

**JUDGEMENT**

**MAGOIGA, J.**

The plaintiff, STANBIC BANK LIMITED by way of plaint instituted the instant suit against the above named defendant praying that, this honourable court be pleased to grant judgement and decree in the orders as follows:

- a. Payment of TZS.287,674,469.54 (Two Hundred Eight Seven Million, Six Seven Four Thousand Four Hundred and Sixty Nine Fifty Four cents) against the defendant being outstanding amount;
- b. Interest on the foresaid amount accruing at the plaintiff's default interest rate of 12% per annum from the date of default until judgement or sooner payment;
- c. Interest as above decretal sum post judgement;

- d. Such further orders or reliefs this honourable court deems just, equitable and convenient to grant;
- e. The defendant be ordered to pay costs of incidental to this suit.

Upon being served with the plaint, the defendant filed a written statement of defence disputing all plaintiff's claims by calling them as being baseless and unfounded unless and until strictly proved and prayed that this honourable court be pleased to dismiss the instant suit with costs.

The facts of this case are imperative to know. According to pleadings, it is alleged that, on 11<sup>th</sup> February, 2011 the plaintiff and defendant executed a loan agreement for a term loan of TZS.889,240,000.00 for working capital for the plant of sorghum by hiring machines, fuel, purchase of seeds, fertilizers and harvest operational costs. It was the terms of the deed of understanding signed on 17<sup>th</sup> February, 2011 that, upon planting sorghum and harvest, the sales-proceeds will be channeled to the defendant's loan account held with the plaintiff and the payment would be bullet payment. Further, it was agreed that the loan was to be disbursed in phases and upon request which the plaintiff did as agreed.



Further facts were that, the defendant upon harvest did not commit to the terms and conditions of the loan agreement and even the amount of money paid back since 2011 to 2016 was not enough to pay off the loaned amount. The last payment done was on 29<sup>th</sup> December, 2016 whereby the defendant paid TZS.25,838,103.20 leaving the claimed amount unpaid, hence breach of the contract, and therefore, this suit claiming the reliefs contained in the plaint.

On the other part of the defendant, the defendant vehemently disputed the plaintiff's claims, which he equated as baseless and unfounded unless strictly proved. Defendant further alleged that she was just a intermediary entity for controlling, verifying and facilitate the farmers out of research conducted by Agra and Kilimo on how to help farmers on growing sorghum in Tanzania and was the major guarantor of those projects.

On a serious note the defendant denied to have requested any loan from the plaintiff and that, if any, the alleged money was paid to the farmers through defendant's account upon raising invoices to the bank directly.

However, the defendant admitted to have signed a facility letter dated 1<sup>st</sup> February, 2011 as facilitator for different farmers for season 2011, upon



request by AGRA, Kilimo Trust and a deed of understanding dated 17<sup>th</sup> February, 2011 between plaintiff and defendant with Tanzania Breweries Limited for plaintiff to credit the funds to the account of the defendant on understanding that the farmers will collect the money for suppliers of inputs and service providers through selected account and upon harvest deliver the sorghum to Tanzania Breweries Limited as the only consumer. Further the defendant alleged that the amount of TZS.25,838,103.20 deposited into her account was rental charges for Telephone Tower on his land and that it has nothing to do with the payment of loan at all. Consequently, the defendant invited this honourable court to hold and find that the plaintiff had no cause of action against the defendant as such prayed for the dismissal of the instant suit with costs.

The plaintiff at all material time was enjoying the legal services of Mr. Stanslaus Ishengoma, learned advocate from Dar es Salaam based legal clinic of Kesaria and Company Advocates, while the plaintiff was equally enjoying the legal services of Messrs. Benard Masimba and Boniface Erasto, learned advocates from Dar es Salaam based legal clinic of Royal Attorneys.

Before hearing started, the following issues were agreed between parties and adopted by the court for the determination of this suit, namely:-




1. Whether there was loan agreement between plaintiff and the defendant;
2. If issue number one is answered in the affirmative, whether the defendant paid the loan advanced;
3. What reliefs parties are entitled to

The plaintiff in proof of the suit called only one witness, one, Mr. NOEL PHILIP PINIEL to be referred herein as PW1. Under oath and through his witness statement adopted in these proceedings as his testimony in chief, PW1 told the court that, he is the Manager Credit Rehabilitation and Recovery for credit department of the plaintiff's bank in headquarters, Dar es Salaam. PW1 went to tell the court that on or about 11<sup>th</sup> February, 2011, the plaintiff approved for the defendant a loan facility of TZS.889,240,000/= vide Credit Facility Letter dated 11<sup>th</sup> February, 2011 for twelve months. According to PW1, the terms and conditions were dully accepted by the defendant as principal borrower, and was to repay in bullet payment. PW1 pointed out that the purpose of the loan was for capital financing as to purchase of fuel for cultivation of land, purchase of seeds, fertilizers, insecticides, and purchase of sacks and bags for harvest operations.



The type of loan, according to PW1, was overdraft facility which allows the borrower to withdraw more money than available balance in the borrower's current account, this creating a debit balance up to set limit of the overdraft facility. PW1 went on to tell the court that, out of TZS.889,240,000.00 limit approved in the facility letter, the defendant withdrew and utilized TZS.287,674,469.00 from her current account No. 9120000309980.

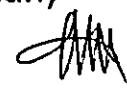
PW1 further told the court that, parties executed a second agreement known as deed of agreement on how the proceeds of the harvest to the agreed purchase and pay the purchase price via loan account. According to PW1, the defendant defaulted to pay the money as agreed and as such breached the terms of the loan facility and deed of agreement, necessitating the plaintiff to issue several demand notices. It was the testimony of PW1 that, upon being issued with the notices, the defendant, engaged negotiations with the plaintiff for the partial payment and rescheduling of the payment of the loan which compromise was afforded but only paid once on 29<sup>th</sup> December, 2016 an amount of TZS. 25,838,103.20, and since then refused continue paying the loan triggering the instant suit for the reliefs as claimed in the plaint.



In proof of the facts as alleged above, PW1 tendered in court as exhibit the following:-

- i. Facility letter dated 11/02/2011 as **exhibit P1**.
- ii. One page Bank statement in respect of account No. 9120000309980 in the name of the defendant as **exhibit P2**.
- iii. Deed of Agreement dated 17/02/2011 as **exhibit P3**.

Under cross examination by Mr. Erasto, PW1 told the court that he has been working with the plaintiff for 3 years and four months. PW1 pressed with questions, told the court that, by bank records which speak volumes he has been able to know the transaction between parties. PW1 went to insist that, exhibits P1 and P2 all proves that the money was loaned and was withdrawn but not paid. According to exhibit P3, the money was deposited into the account of the defendant and the actual money taken was TZS.294,871,541.66 which was principal and interest. Pressed with more questions, PW1 admitted that, in the plaint they claimed TZS.287,674,469.54 but in exhibit P2 it shows TZS.282,214,464.02. Also, PW1 told the court that in Deed of Agreement it was between the plaintiff, defendant and Tanzania Breweries Limited.



Under cross examination by Mr. Masimba, PW1 told the court that, Agro and Kilimo were guarantors of the loan on loss of guarantee and that no loss occurred.

Under re-examination by Mr. Ishengoma, PW1 insisted that facility letter was signed between plaintiff and defendant. PW1 went on to insist that the defendant had duty to pay the money which he admitted that according to exhibit P2 is TZS.282,214,464.02. PW1 told the court that in exhibit P1, nowhere farmers were mentioned at all. Consequently, PW1 prayed that prayers as contained in the plaint be granted as prayed with costs.

That marked the end of hearing for plaintiff's case and same was marked closed as prayed by Mr. Ishengoma and not objected by the defence counsel.


On the other hand, the defendant as well in disproof of the plaintiff's claims called two witnesses. The first witness was, one, Mr. JOSEPHAT ARON KIONAMELA to be referred in these proceedings as DW1. DW1 under oath and through his witness statement adopted in these proceedings as his testimony in chief, told the court that, he is Agriculture Advisor of Kibaigwa Saccoss, Dodoma. DW1 went on to tell the court that, the defendant deals





with production of high quality seeds, import and distribute of agricultural seeds, fertilizers and agricultural chemicals to large and small scale farmers in Tanzania.

DW1 further testimony was that, in 2011/2012 season plaintiff had entered into loan agreement with Kibaigwa Saccoss in which it was agreed that, the plaintiff will supply on credit basis agricultural inputs to the farmers on growing sorghum and the defendant was selected to supervise, controlling, verifying, and facilitating the payments to the service provider. According to DW1, it was the plaintiff who recommended the defendant and the farmers were to repay back the money after submitting the sorghum to Tanzania Breweries Limited herein to be referred as '**TBL**'. DW1 went on to tell the court that according to the agreement, TBL agreed to purchase the sorghum of Kibaigwa Saccoss Farmers at an agreed price on credit basis and without credit purchase limit and redistribute them. Further terms were, that all crops financed under the facility were only to be sold to TBL and TBL was to pay all proceeds directly into the designated Stanbic Bank Tanzania selected account in the name of the defendant and the plaintiff was to recover the money deposited.



DW1 further testimony was that as director of the defendant did his duties in accordance with the agreement, and as such according to him, the defendant is not indebted to the plaintiff as alleged in the plaint.

DW1 went on to tell the court that in September, 2010 the plaintiff and Kibaigwa Saccoss convened a meeting which discussed and agreed that in effecting and implementing the sorghum growing project in Kibaigwa, the plaintiff will fund the project by giving out the loan to farmers and AGRA, Kilimo Trust to guarantee 20% of the total loss on growing of sorghum and OPEC/OFC agreed to guarantee 50% to the farmers as well.

The rest of testimony of DW1 was on meetings on how to solve the challenges and problems facing the sorghum farming project both in farming and payments.

In disproof of the plaintiff claims, DW1 tendered in court as exhibits the following:-

- i. "Muhtsari wa kikao cha Bodi ya Stabic Bank" dated 15/09/2010 as **exhibit D1.**
- ii. "Muhtasari wa Kikao cha Bodi kilichofanyika tarehe 15/07/2011 as **exhibit D2.**



- iii. "Muhtasari wa kikao cha bodi na Stanbic" cha tarehe 17/10/2011 as **exhibit D3.**
- iv. "Muhtasari wa kikao cha bodi, Stanbic na wakulima wa mtama kilichofanyika tarehe 28/11/2011" as **exhibit D4.**

Under cross examination by Mr. Ishengoma, DW1 told the court that he knows the plaintiff as partner who gave a loan to Kibaigwa Saccoss which was specific in respect of agriculture and that DW1 is the Agriculture Officer of Kibaigwa Saccoss. DW1 pressed with questions, told the court that, the defendant role was to verify, the money taken by farmers according to its target. DW1 denied to know exhibit P1 and said that all money taken were used as targeted.

Under re-examination by Mr. Masimba, DW1 told the court that Agri Evolution was the overall in the loan. DW1 denied to have signed any document relating and that no money was disbursed.

The second witness for the defendant was, one, Mr. DAVID BATEGEREZA to be referred in these proceedings as DW2. DW2 under oath and through his witness statement adopted as his testimony in chief told the court that,he



lives in Arusha and he is one of the shareholder and Managing Director of the defendant and that he is an Agriculture Engineer by professional.

DW2 went on to tell the court that the plaintiff orally agreed with the defendant, TBL, AGRA and KILIMO TRUST for the basis of helping farmers on hiring of farm machines/equipments, buying diesel during land cultivation to whole cropping, purchase of seeds, fertilizers, herbicides, insecticides and fungicides, and harvesting operations including purchase of bags for the grown sorghum of 2011 season.

DW2 further testimony was that the plaintiff as banking institution agreed through '**Deed of Undertaking**' between plaintiff, defendant and TBL in the period of 2011 season was to supply on credit basis agricultural inputs to the farmers on growing sorghum and the defendant was to supervise, control, verifying and facilitating the payments to the farmers. DW2 further testimony was that the money was to be channeled through the account of the defendant and upon harvesting the sorghum farmers were to sell the sorghum to TBL, who in turn will pay for all the proceeds through the designated account maintained with the plaintiff in the name of the defendant.



DW2 admitted that the defendant received several demand notices from the plaintiff with different figures which shows the plaintiff is not certain how much is indebted to herself and concluded that plaintiff has no genuine claim against the defendant.

Further testimony of DW2 was that in 2014 the plaintiff management and defendant orally resolved and examine and conduct verification on the account and discovered that the defendant never withdrawn the credited amount on the selected account and or utilized by any means because it was the plaintiff who had direct access to the account and that there is no outstanding amount as claimed in the plaint.

DW2 tendered no documentary evidence to support his testimony.

Under cross examination by Mr. Ishengoma, DW2 told the court as Managing director of the defendant he borrowed money from the plaintiff to facilitate sorghum farming and the account used was of the defendant.

DW2 admitted he was technical advisor to the project. Pressed with questions, DW2 admitted that farmers were given all necessary services under the umbrella of the defendant. According to DW2 the bank



recovered 75 million out of 300 million utilized and that the money was a grant.

Under re-examination by Messrs. Masimba and Erasto, DW2 admitted that the money was disbursed in the account of the defendant but was on transit. DW2 told the court that TBL paid the money through the defendant's account which was instantly debit to pay the loan. DW2 said their role was facilitation and were not paid at all. DW2 admitted was served with default notice.

When asked for clarification of exhibit P1, DW2 admitted that it was between the plaintiff and the defendant and the money was disbursed into the account of the defendant. This marked the hearing of this suit.

The learned advocates for parties prayed for leave to file closing written submissions, which leave I granted and gave them seven days to do the needful as provided under Rule 66(1) of the Rules of this Court. But as I am composing this judgement, it was only the learned advocate for the plaintiff who managed to file final closing submissions. I have had an opportunity to read the written closing submissions and truly recommend Mr. Ishengoma for his input on this suit.



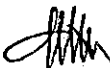
The noble task of this court now is to determine the merits and/or demerits of this suit based and guided by issues framed against the evidence tendered by both parties. However, before going into the issue there are some salient facts which in the course of this suit, I find them not in dispute. These are; **one**, no dispute that the plaintiff and defendant executed exhibit P1, which is a facility letter for a term loan of TZS.889,240,000.00, this has been admitted by both DW1 and DW2 in their testimonies. Two, there is no dispute that the money in dispute was withdrawn/disbursed into the account of the defendant in the name of the defendant.

Now back to the issue framed and will go one after one. The first issue was that ***'whether there was a loan agreement between the plaintiff and defendant'***. Based on the contents of exhibit P1 and based on the above undisputed fact without much ado this court finds and hold that, there was loan agreement between the plaintiff and the defendant. Without any allegations and proved of any known factors that can vitiate a contract, this court is of the firm finding of issue number one in the positive that there was loan agreement between parties herein.



This takes me to the second issue which was couched that ***'if issue number one is answered in the affirmative, whether the defendant paid the loan advanced to her.'*** This issue as well will not detain this court much for obvious reasons. Having gone through the testimony of both parties and the exhibits tendered, in particular, exhibit P2, no dispute that the defendant actually enjoyed the loan advanced to the tune as indicted in exhibit P2 with interest to be TZS.282,214,464.02. This amount no evidence was tendered by the defendant to counter of its existence and as such in the absence of any evidence in the contrary, I am constrained to find and hold that the amount remains unpaid, hence a breach of contract by the defendant.

With the two findings in two issues above, the last issue is ***'what reliefs parties are entitled to.'*** In this suit no doubt the plaintiff has been able to prove his suit to the required standards in civil suit that is on balance of probability. With that note, therefore, I hereby find that the plaintiff is entitled to all prayers as prayed in the plaint save for one prayer that the first prayer is for TZS.282,214,464.02 and not TZS.287,674,469.54 as claimed in the plaint.





That said and done, and for the reasons given above, I find the defence by the defendant without any useful merits in the circumstances of this suit. Therefore, this suit is hereby allowed as adjusted above with costs.

It is so ordered.

Dated at Dar es Salaam this 24<sup>th</sup> May, 2021.



A handwritten signature in blue ink, consisting of a series of vertical strokes followed by a horizontal line and a flourish.

**S.M. MAGOIGA**

**JUDGE**

**24/05/2021**