

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE NO. 85 OF 2019

ECOBANK TANZANIA LIMITED PLAINTIFF

VERSUS

ZEDS LOGISTICS LIMITED.....1ST DEFENDANT

ZULFIKAR HUSSEIN DEWJI2ND DEFENDANT

ABBAS ZULFIKAR DEWJI3RD DEFENDANT

JUDGMENT

B.K. PHILLIP, J

This case arises from a credit facility granted to the 1st defendant by the plaintiff. The plaintiff alleged as follows; That by virtue of a credit facility letter dated 27/6/2014 the plaintiff granted to the 1st defendant a credit facility for asset financing to a tune of Tshs. 811,000,000/=. The credit facility was secured by specific debenture in favour of the plaintiff over fixed and specific assets of the company, joint and several personal guarantees, and indemnity executed by the 2nd and 3rd defendants.

It is the plaintiff's case that the 1st defendant failed/neglected to repay the said credit facility as agreed and as of 1st day of August 2018, there was an outstanding amount to a tune of Tshs. 705,097,747/=. Consequently, the plaintiff notified all defendants on the default on repayment of the credit

facility and demanded for payment of outstanding amount, but the defendants did not heed to the demands.

In this case the plaintiff prays for judgment and decree against the defendants jointly and severally as follows:-

- i. A declaration that, the defendants have breached the terms of the respective credit facility letter as well as the joint and several personal guarantee and indemnity.
- ii. An order against the defendants for the payment of an outstanding balance of Tanzania Shillings Seven Hundred Five Million Ninety One Thousand Seven Hundred Forty Seven (TZS. 705,091,747/=).
- iii. Payment of interest on the principal sum at a Commercial rate of 21% from the date of commencement of this suit to the date of judgment.
- iv. Payment of interest on decretal sum at the rate of 12%.
- v. Costs of this suit
- vi. Any other relief(s) as the court may deem fit and just to grant.

In their defence all defendants disputed the amount of money claimed by the plaintiff on the ground that the same is incorrect as the 1st defendant has been servicing his loan up to July 2016, when its business was frustrated.

Moreover, the defendants alleged that the plaintiff was well informed of the frustration of the 1st defendant's business. The 1st defendant requested the plaintiff to re-schedule the loan repayment plan. The request was accepted, but before the implementation of the re-scheduled repayment

plan, the plaintiff confiscated the trucks that were the 1st defendant's source of income for repayment of the loan.

At the hearing of this case the learned advocates Joseph Mbogelo and Shalom Msaki, appeared for the plaintiff and defendants respectively.

During the Final Pre-Trial conference the following issues were framed for determination by the court;

- i. What were the terms of the credit facility agreement between the plaintiff and 1st defendant.
- ii. Whether there was a breach of the terms and conditions of the credit facility agreement by either side (plaintiff and defendants) .
- iii. To what reliefs are the parties entitled to.

The plaintiff had one witness namely Pastory Okudo (PW1). At this juncture I think it is worthy pointing out that the hearing of this matter proceeded ex-parte, that is, without any witness from the defendants' side because the defendants and their advocate did not enter appearance at the Final-Pre-Trial Conference despite the fact that the date for the Final Pre-Trial Conference was fixed in the presence of the advocate for the defendants. In addition, no witness statement was filed for the defendants. However, when the case was called for hearing, Mr. Msaki appeared in court for the defendants. I accorded him opportunity to cross examine the plaintiff's witness as the defendants had filed their written statements of defence.

Back to the issues, as regards the 1st issue, to wit; **What were the terms of the credit facility agreement between the plaintiff and 1st**

defendant, in his testimony PW1 narrated the background to this case which I have stated at the beginning of this judgment, thus I do not need to reproduce it here again. Moreover, PW1 testified as follows; That the credit facility (Tshs. 811,000,000/=) that was granted to the 1st defendant was supposed to be repaid within 36 months in monthly installments. The 1st defendant failed to honour the terms of the credit facility agreement. Re-scheduling process for repayment of the loan was initiated but could not be completed as the 1st defendant failed to honour the terms and conditions stipulated in the repayment plan, among them being failure to submit to the plaintiff the 1st defendant's audited financial statement. The failure to honour the terms and condition of the re-scheduled repayment plan, necessitated the sale of some of the trucks so as to recover the outstanding amount. PW1 tendered in evidence the following documents;

- i. Credit facility letter dated 27 June 2014 (exhibit P1)
- ii. Specific debenture document together with certificate of registration of charge (exhibit P2 collectively)
- iii. Joint and several personal guarantee, and indemnity for the 2nd and 3rd defendants, (exhibit P3 collectively).
- iv. Demand notices addressed to the 1st defendant (exhibit P4 and P6)
- v. A report from Saints Auction Mart Company Ltd on the auction of the motor vehicles dated 4/3/2019 (exhibit P5).
- vi. 1st defendants bank statement (exhibit P7)

Looking at evidence adduced by PW 1, the credit facility letter (Exhibit P1) contains a number of terms and conditions but the key ones which are relevant to the controversy of the parties herein are as follows; That loan

was supposed to be repaid within thirty six months (36) in equal monthly installments inclusive of four (4) months Moratorium period, interests for the loan was 19% per annum. The purpose of the loan was financing acquisition of ten unit trucks and trailers from Assets Well Limited in UK which were supposed to have joint registration between the plaintiff and the 1st defendant.

As regards the 2nd issue, **Whether there was a breach of the terms and conditions of the credit facility agreement by either side (Plaintiff and defendants)**, PW1's testimony proves that there was a breach of the terms and conditions of the credit facility letter as the loan granted to the 1st defendant was not repaid as agreed. Exhibit P7 shows that the 1st defendant stopped servicing the loan in 2016. This is supported by what is averred by the defendants in their written statements of defence. Thus, I am in agreement with the views expressed by Mr. Mbogela in his final submission that, this issue has to be answered in the affirmative, that is, there was breach of the terms and conditions of the credit facility.

Coming to the last issue, that is, **to what reliefs are the parties entitled to**, Exhibit P7 (1st defendant's Bank statement) shows that, as of 31st July 2018 there was an outstanding amount to a tune of Tshs 705,091,747/=.

The auctioneer's report dated 4/3/2019 indicates that there was a public auction conducted on 1st March 2019 and the following vehicles were auctioned.

- i) T216 DCJ Trailer -Tshs. 3,000,000/=
- ii) T517 DCK Trailer Tshs. 6,000,000/=

- iii) T235 DCJ Trailer Tshs. 3,000,000/=
- iv) T521 DCK Tractor Tshs.5,500,000/=
- v) T106 DCJ Trailer Shs. 3,000,000/=

Responding to questions posed to him during cross examination, PW1 told this court that the vehicles listed in exhibit P5 were not auctioned. The amount indicated therein are bids made at the auction by the potential buyers.

However, I have noted that in his witness statement PW1 stated categorically that upon the 1st defendant's failure to meet the conditions stipulated in the re-scheduled repayment plan, the plaintiff decided to auction the trucks. Therefore, PW1's response during cross examination does not bear any truth on what happened to the trucks and is contradictory to his testimony in chief. Not only that, interestingly, PW1 in his witness statement did not state the amount of money realized out of auction of the trucks.

Another thing that I have gathered from the evidence adduced by PW1 is that the bank statement (exhibit P7) ends in 2018. So, it does not include the transactions in respect of the sale of the trucks which was done in 2019.

From the foregoing it is the finding this court that according to exhibit P5, the Trucks were auctioned and realized a sum of Tshs. 20,500,000/= which has to be deducted from the outstanding balance indicated in exhibit P7 .

In the upshot I hereby enter judgment against the defendants as follows;

- i. The 1st defendant and, the 2nd and 3rd defendants breached the terms and conditions of the credit facility letter and, the joint and several personal guarantee and indemnity respectively .
- ii. The defendants shall jointly and severally pay the plaintiff Tshs 684,591,747/=
- iii. The defendants shall jointly and severally pay interest on the decretal sum at a commercial rate of 21% from the date of filling this suit in court to the date of judgment.
- iv. The defendants shall jointly and severally pay interest on decretal sum at court rate of 7% from the date of judgment to the date of payment in full.
- v. Costs of this suit shall be borne by the defendants.

Dated at Dar es Salaam this 20th day of May 2021.




B.K.PHILLIP
JUDGE