

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 24 OF 2018

AKIBA COMMERCIAL BANK PLC PLAINTIFF

VERSUS

UAP-INSURANCE TANZANIA LIMITEDDEFENDANT

Date of Last Order: 12/05/2021

Date of Judgement: 16/07/2021

JUDGEMENT

MAGOIGA, J.

The plaintiff, AKIBA COMMERCIAL BANK PLC by way of amended plaint instituted the instant suit against the above named defendant praying for judgement and decree in the following orders, namely:

- a. An order compelling defendant to execute its contractual commitments and pay plaintiff total of TZS.1,990,816,547.02 and USD.531,970.60 as shown in details in paragraph 7 in the plaint;
- b. Payment of interest on claimed amounts at the lending commercial rates of 23% on claims made in Tanzania Shillings' currency and 9% on the claims made in USD currency from the dates each claim was demanded to the date of judgement;



- c. Payment of general damages as shall be assessed by the court;
- d. Payment of interest on the decretal sum at 12% from the date of judgement to the date of full payment;
- e. Costs of this suit be provided for;
- f. Any other relief the honourable court shall deem fit to grant.

Upon being served with the plaint, the defendant, dully filed a written statement of defence disputing all plaintiff's claims for being unrealistic, over-claimed against what was guaranteed, failure to exercise first ranking securities and that some claims were made out of time of the agreed period of guarantee and eventually prayed that the instant suit be dismissed with costs.

The facts of this case are not complicated and I find it imperative to be stated. Between 2016 and 2017 the plaintiff and defendant entered into business relationship whereof the defendant undertook to guarantee various customers of the plaintiff who would receive loans in various forms from the plaintiff by issuing Payment Guarantee Bonds. Under that arrangement, the plaintiff issued loans to various customers and accepted bonds issued by the defendant as sole securities to some and part of securities for the respective loans as follows:-



- a. PETROBENA E.A. LIMITED USD.200,000.00 guaranteeing the whole amount;
- b. RAJAB SHABAN RAJAB TZS.200,000,000.00 guaranteeing TZS.60,000,000.00;
- c. TABU JANET JULIUS SEDA TZS.30,000,000.00 guaranteeing TZS.10,000,000.00;
- d. JUMANNE MOHAMED KAPOLI, TZS.85,000,000.00 guaranteeing TZS.20,000,000.00;
- e. GEOFIELD TANZANIA LIMITED USD.400,000.00 guaranteeing the whole amount;
- f. ELIBARIKI MASHULULE MBISE TZS.150,000,000.00 guaranteeing TZS.117,500,000.00;
- g. LEGAL LINK ATTORNEYS TZS.330,000,000.00 guaranteeing TZS.412,500,000.00;
- h. JV TANGREM CONSTRUCTION CO. LIMITED AND INTERCITY BUILDERS LIMITED TZS.480,000,000.00 guaranteeing TZS.225,000,000.00;
- i. BASHIRU ISSA JUMA TZS.100,000,000.00 guaranteeing TZS.85,000,000.00;



- j. DINA ILDEFONSO MGOMERA TZS.40,000,000.00 guaranteeing TZS.30,000,000.00;
- k. TUGHIMBAGHE TRADERS COMPANY LIMITED USD.44,172.00 guaranteeing USD.55,215.00;
- l. TAJIRI WAPII LENASIWAN TZS.10,000,000.00 guaranteeing the whole amount;
- m. SUZAN SAID MATITU TZS.100,000,000.00 guaranteeing the whole amount;
- n. MAZAO E.A. LIMITED TZS.1,000,000,000.00 guaranteeing TZS.530,000,000.00;
- o. OUTASSURANCE BROKERS COMPANY LIMITED TZS.30,000,000.00 guaranteeing the whole amount;
- p. VERAN MUSHI TZS.15,000,000.00 guaranteeing TZS.10,000,000.00;
- q. MALCOM INVESTMENT LIMITED TZS.300,000,000.00 guaranteeing TZS.400,000,000.00;
- r. MKASI TV TZS.150,000,000.00 guaranteeing TZS.90,000,000.00;
- s. REVELIAN LENATUS MAYEKA TZS.35,000,000.00 guaranteeing TZS.10,000,000.00;



- t. MASEMANO INVESTMENT LIMITED TZS.855,712,600.00
guaranteeing TZS.250,000,000.00;
- u. IRENE SHAIRI MAGOTA TZS.50,000,000.00 guaranteeing
TZS.30,000,000.00;
- v. DIDAS CORNEL LULAYA TZS.30,000,000.00 guaranteeing
TZS.20,000,000.00;
- w. ANNA BENARD SHAYO TZS.100,000,000.00 guaranteeing the whole
amount;
- x. RICHARD APOLINARY MHIMBIRA TZS.60,000,000.00 guaranteeing
TZS.30,000,000.00;
- y. ALLY MOHAMED BAKARI TZS.30,000,000.00 guaranteeing
TZS.15,000,000.00; and
- z. ABEL MIKA SHAURI t/a ABEL GENERAL DEALERS CO LIMITED
TZS.30,000,000.00 guaranteeing TZS.15,000,000.00.

Further facts were that in the course of operations under the said arrangement, some borrowers defaulted paying loans given to them necessitating the plaintiff to call payment of the loans as guaranteed by the defendant, hence, this suit claiming the reliefs as contained in the plaint after all efforts to be paid were in vain.



On the part of the defendant, despite admitting the presence of that arrangement nevertheless queried that, the consolidation of the several claims together was wrong, the bonds were to be invoked as a last resort after the plaintiff has exercised first ranking securities, no proof of disbursement, the amount claimed in some claims were unrealistic, bonds claimed out of their validity dates and that no proof of default thus calling for dismissal of the instant suit with costs.

At all material time the plaintiff has been enjoying the legal services of Mr. James Bwana, learned advocate. On the other hand, the defendant, at all material time has been enjoying the legal services of Mr. Karoli Tarimo, learned advocate.

Before hearing of this suit, the following issues were framed, recorded and agreed between parties' for the determination of the instant suit, namely:

1. What was the basis of the payments in respect of guarantees bonds executed by parties;
2. Whether there was a breach of the terms and conditions of payments guarantee bonds by either party;
3. What reliefs parties are entitled to.



At the outset and before going into the testimonies of the parties, I would like to point out that, the hearing of the plaintiff's case was done under the provisions of section 34C of the Tanzania Evidence Act, [Cap 6 R.E 2019] read together with Rule 56 (2) of the High Court (Commercial Division) Procedure Rules, 2012 as amended by G.N.107 of 2019 as there exist an exceptional reason beyond the control of the plaintiff following the demise of David Goodwill Korosso as proved by exhibit P1 in these proceedings, who was the sole witness. That noted, his testimony though not cross examined will be given the weight it deserves because mostly was based on documents most of which were admitted without objection.

In proof of the plaintiff's case, in which the sole witness was the late David Goodwill Koroso, through his witness statement adopted in these proceedings as his testimony in chief, and for ease of reference to be referred as PW1, told the court that he is the Senior Manager- Business Development - Liability of the plaintiff with personal knowledge of the facts pertaining to this suit. PW1 reiterated the reliefs as claimed in the plaint.

PW1 testimony was that, the plaintiff and defendant entered into business relationship whereof the defendant undertook to guarantee various

customers of the plaintiff who would receive loans in various forms from the plaintiff by issuing them with Payment Guarantee Bonds. According to PW1, the said bonds stand as partial and full securities for the loans and the defendant committed irrevocably undertaking to pay the plaintiff upon the latter's first written demand, irrespective of the validity and any legal effects of the credit relationship the plaintiff will have with the defaulting borrowers and as such the defendant waived all defences on those claims that shall be demanded by the plaintiff.

It was further testimony of PW1 that, in the course of operations, some borrowers which were secured by the said bonds, defaulted to pay loans given to them. PW1 went on to tell the court that, among recovery efforts that were undertaken by the plaintiff was to turn to the defendant and demanded payment of amounts remaining/outstanding on the loans and/or guaranteed by the defendant, depending on the loan status of defaulting borrower and as per the terms of each bond. PW1 further told the court that, despite formal demands, the defendant failed and/or ignored to perform its contractual promise to effect payments.

However, in the course of his testimony, PW1 in paragraphs 9 and 10 of his witness statement dropped and withdrew the claims in respect of



PETROBENA E.A. LIMITED, JOINT VENTURE OF TANGREM CONSTRUCTION CO. LIMITED, INTERCITY BUILDERS LIMITED, SUZAN SAID MTITU, GEOFIELDS TANZANIA LIMITED and REVELIAN LENATUS MAYEKA for same were restructured and discharged the defendant.

The plaintiff tendered two affidavits of PW1 authenticating the bank statements and emails communication between parties which were collectively admitted in evidence as exhibit P2a-b.

The remaining claims therefore were as follows:

a. RAJAB SHABAN RAJAB claim of TZS.200,000,000/= in which the defendant secured TZS.60,000,000.00 and following exhibits were tendered:

- (i) Facility letter dated 15/12/2016 as exhibit P3;
- (ii) Mortgage of right of occupancy dated 06/06/2013 between the plaintiff and Rajab Shabaan Rajab in respect of Certificate of Title No.66899 and the guarantee bond issued in favour of the plaintiff by the defendant dated 20/12/2016 as exhibit P4a-b;



- (iii) Demand letter dated 11/12/2017 from the plaintiff to the defendant on account of Rajab Shabaan Rajab as exhibit P5; and
- (iv) Bank Statement and Customer Position Account of Rajab Shabaan Rajab on account No. 11000741727 as exhibits P6a-b.

b. TAABU JANET JULIUS SEDA claim of TZS.30,000,000.00 in which the defendant secured only TZS.10,000,000.00 but unpaid amount stood at TZS.13,044,855.00 and the following exhibits were tendered:-

- (i) Facility letter dated 07/09/2016 in favour of Taabu Janet Julius Seda by the plaintiff as exhibit P7;
- (ii) Payment Guarantee Bond in favour of the plaintiff dated 07/09/2016 issued by the defendant as exhibit P8;
- (iii) Ilani ya madai dated 02/05/2017 and certificate of sale by Best Group (T) Limited dated 20/11/2017 as exhibits P9a-b;
- (iv) Demand letter dated 02/05/2017 as exhibit P10; and



- (v) Bank Statement and Customer Position Account of Taabu Janet Julius Seda on account No.00202388 as exhibits P11a-b.

c. JUMANNE MOHAMED KAPOLI claim of TZS.85,000,000.00 in which defendant guaranteed TZS.20,000,000.00 but unpaid amount stood at TZS.102,472,000.00 and the following exhibits were tendered:

- (i) Facility letter dated 12/10/2016 in favour of Jumanne Mohamed Kapoli as exhibit P12;
- (ii) Counter guarantee dated 29/09/2016 and Payment Guarantee Bond dated 19/10/2016 as exhibit P13a-b;
- (iii) Demand letter dated 03/11/2017 as exhibit P14; and
- (iv) Bank Statement and Customer Position Account of Jumanne Mohamed Kapoli on account No. 11700006575 as exhibits P15a-b.

d. ELIBARIKI MASHULULE MBISE claim of TZS.150,000,000.00 in which the defendant guaranteed TZS.117,500,000.00 and the unpaid loan stands at TZS.122,167,740.00 as on 27/04/2017 and the following exhibits were tendered:



- (i) Facility letter dated 07/12/2016 in the name of Elibariki Mashulule Mbise as exhibit P16;
- (ii) Land forms No.40 of residential licence No.000537, Payment Guarantee Bond and Counter Guarantee dated 08/06/2016 as exhibits P17a-c;
- (iii) Demand letter from the plaintiff to the defendant as exhibit P18; and
- (iv) Bank Statement and Customer Position Account of Elibariki Mashulule Mbise on account No.10200683531 as exhibits P19a-b.

e. LEGAL LINK ATTORNEYS claim of TZS.330,000,000.00 in which the defendant secured the whole amount and the unpaid loan stands at TZS.412,500,000.00 as of August 2017 and the following exhibits were tendered:

- (i) Facility letter dated 10/08/2016 issued by the plaintiff in favour of the defendant as exhibit P20;
- (ii) Payment Guarantee Bond with No.010/130/1/021443/2016 dated 03/08/2016, Counter Guarantee issued by the defendant to Legal Link Attorneys



for the benefit of the plaintiff date 03/08/2016 as exhibits P21a-b;

(iii) Letter dated 17/08/2016 from plaintiff to the defendant and two emails dated 21/06/2017 and 05/09/2017 as exhibits P22a-b;

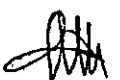
(iv) Two letters from dated 17/08/2017 from the defendant to the plaintiff and one dated 05/09/2017 from the plaintiff to the defendant collectively as exhibits P23a-b; and

(v) Bank Statement and Customer Position Account of Legal Link Attorneys on account No. 101714731 as exhibits P24a-b.

f. BASHIRU ISSA JUMA claim of TZS.100,000,000.00 in which the defendant secured TZS.85,000,000.00 and the outstanding amount is TZS.87,048,167.96 as of 26th June, 2020 and the following exhibits were tendered:

(i) Facility letter dated 15/10/2016 from the plaintiff in favour of Bashiru Issa Juma as exhibit P25;

(ii) Payment Guarantee Bond dated 19/10/2016 with No.010/130/1/28544/2016 as exhibit P26;



- (iii) Two demand notices dated 27/09/2017 and 03/11/2017 collectively as exhibits P27a-b; and
- (iv) Bank Statement and Customer Position Account of Bashiru Issa Juma on account No.113007491 as exhibits P28a-b.

g. DINA ILDEFONSO MGOMERA claim of TZS.40,000,000.00 in which the defendant guaranteed TZS.30,000,000.00 and the outstanding amount stands at TZS.36,200,000.00 as of 13th March, 2017 and the following exhibits were tendered:

- (i) Facility letter from the plaintiff to Dina Ildefonso dated 01/08/2016 as exhibit P29;
- (ii) Payment Guarantee and Counter Guarantee dated 05/08/2016 as exhibits P30a-b;
- (iii) Demand letter dated 03/11/2017 as exhibit P31; and
- (iv) Bank Statement and Customer Position Account of Dina Ildefonso Mgomera on account No. 1120001474 as exhibits P32a-b.

h. TUGHIMBAGHE TRADERS COMPANY LIMITED claim of USD.55,215.00 in which the defendant guaranteed 100% of the loan



and the outstanding loan is USD.44,172.00 and the following exhibits were tendered:

- (i) Facility Letter dated 02/02/2017 in favour of the Managing Director, Tughimbaghe Traders Company Limited as exhibit P33;
- (ii) Payment Guarantee Bond dated 15/08/2016 and Renewed Payment Guarantee Bond dated 01/03/2017 as exhibits P34a-b;
- (iii) Demand notice dated 15/06/2017 as exhibit P35; and
- (iv) Bank Statement and Customer Position Account of Tughimbaghe Traders Company Limited on Account No. 10100713239 as exhibits P36a-b.

i. TAJIRI WAPII LENASIWAN claim of TZS.10,000,000.00 in which the defendant guaranteed whole amount and the following exhibits were tendered:

- (i) Facility letter dated 06/09/2016 in favour of Tajiri Wapii Lenasiwan as exhibit P37;
- (ii) Payment Guarantee Bond dated 05/10/2016 and Counter Guarantee dated 07/09/2016 as exhibits P38a-b;



- (iii) Demand notice dated 06/11/2017 as exhibit P39; and
- (iv) Bank Statement and Customer Position AccountPosition of Tajiri Wapii Lenasiwan on account No.103010594488 as exhibits P40a-b.

j. MAZAO E. A. LIMITED claim of TZS.1,000,000,000.00 in which the defendant guaranteed TZS.530,000,000.00 and the outstanding amount is TZS.1,088,540,126.36 for which the following exhibits were tendered:

- (i) Facility Letter dated 11/04/2016 from the plaintiff to Mazao E.A. Limited as exhibit P41;
- (ii) Mortgage of Right of Occupancy issued by Clara Gladys Gumbo dated 18/04/2016 over C.T. No. 115480 in respect of plot No.489 Boko area Kinondoni Municipality; an affidavit of Clara Gladys Gumbo on her marriage status dated 12/04/2016, Credit Guarantee certificate issued by Private Agriculture Sector Support dated 21/04/2016, submission of Credit Guarantee Certificate from PASS to plaintiff dated 21/04/2016 and Payment Guarantee Bond from the



defendant in favour of the plaintiff dated 13/04/2016 as exhibits P42a-e;

- (iii) Bank Statement and Customer Position Account of Mazao E.A Limited on account No.10500635498 as exhibits P43a-b; and
- (iv) Emails correspondences between officials of the plaintiff and defendant on MAZOE A E.A. LIMITED as exhibits P63a-b.

k. OUTASSURANCE BROKERS COMPANY LIMITED claim of TZS.30,000,000.00 in which the defendant guaranteed the whole amount and the outstanding amount is TZS.30,000,000.00 and the following exhibits were tendered:

- (i) Payment Guarantee Bond No.101/130/02609/2015 dated 29/09/2015 as exhibit P44;
- (ii) Series. of emails communication between plaintiff and defendant officials collectively as exhibits P45a-I; and
- (iii) Bank Statement and Customer Position Account of Outassurance Brokers Company Limited on account No. 10100707597 as exhibits P46a-b.



I. VERAN MUSHI claim of TZS.15,000,000.00 in which the defendant guaranteed TZS.10,000,000.00 and which loan stand at TZS.11,890,994.31 as of 26th June, 2020 and the following exhibits were tendered:

- (i) Payment Guarantee Bond issued by defendant in favour of the plaintiff dated 22/09/2016 No.101/130/026614/2016 as exhibit P47;
- (ii) 3 pages emails correspondences between plaintiff and defendant officials as exhibits P48a-b; and
- (iii) Bank Statement and Customer Position Account of Veran Mushi on account No. 11300002775 as exhibits P49a-b.

m. MALCOM INVESTMENT LIMITED claim of TZS.300,000,000.00 in which the defendant guaranteed TZS.400,000,000.00 and which the outstanding amount is TZS.52,212,305.66 as of 19th May, 2017 and the following exhibits-were tendered:

- (i) Facility letters dated 08/06/2016 and 01/03/2017 from plaintiff to Malcom Investment Co. Limited as exhibits P50a-c;



- (ii) Payment Guarantee Bond bearing No. 010/130/015621 as exhibit P51;
- (iii) 3 pages emails correspondences between plaintiff and defendant officials as exhibits P52a-b;
- (iv) Bank statement and Customer Position of Malcom Investment Co. Limited on account No.1010062441 as exhibits P53a-b; and
- (v) Mortgage of Right of Occupancy dated 10/10/2016 in respect of C.T. No.114300 on plot No. 137 Block '10' Kibada area in Dar es Salaam as exhibit P54.

n. MKASI TV claim of TZS.150,000,000.00 in which the defendant guaranteed TZS.90,000,000.00 and the sum demanded is TZS.90,000,000.00 with interest and the following exhibits were tendered:

- (i) Payment Guarantee Bonds with No.010/130/02673/2016 dated 20/10/2016 and Counter Guarantee issued by defendant guaranteeing Mkasi TV for the benefit of the plaintiff dated 20/10/2016 as exhibits P55a-b;



- (ii) Demand letter dated 06/11/2017 from the plaintiff to the defendant as exhibit P56; and
- (iii) Bank Statement and Customer Position Account of Mkasi TV on account No.10500648878 as exhibits P57a-b.

o. MASEMANO INVESTMENT LIMITED claim TZS.626,093,669.38 in which the defendant guaranteed TZS.300,000,000.00 and USD.270,000.00 and the sum demanded is TZS.250,000,000.00 with interest and the following exhibits were tendered:

- (i) Three set of facility letters dated 18/08/2016, 07/12/2016 and 19/07/2017 issued by plaintiff in favour of MASEMANO INVESTMENT LIMITED as exhibits P58a-c;
- (iii) (ii) Three set of mortgages of right of occupancies dated 17/06/2016, over C.T. No. 15546/LR/MZA on plots No.491 and 492 Block "C" Nyegezi, Mwanza in the name of Maseke Magaiwa Mohono, C.T.No. 29327/LR/MZA plot No.169 Block "B" Ilemela in the name of Maseke Magaiwa Mohono and C.T. No. 14009/LR/Mza plot No. 472 Block "B" Nyegezi, Mwanza in the name of Maseke Magaiwa Mohono



collectively as exhibits P59a-c; Payment Guarantee Bond No.010/130/1/028034/2015 dated 7/10/2015 and renewal of Payment Guarantee Bond No. 010/135/034092 dated 16/12/2016 collectively as exhibits P60a-b;

(iv) Demand letter dated 11/12/2017 as exhibit P61; and

(v) Bank Statement and Customer Position Account of MASEMANO INVESTMENT LIMITED on account No.1170012362 as exhibits P62a-b;

p. TZ BUSINESS CREATION COMPANY LIMITED which was not pleaded but the following exhibits were tendered:-

(i) Facility letter dated 22/04/2017 in favour of TZ BUSINESS CREATION CO. LIMITED as exhibit P64;

(ii) Payment Guarantee Bond issued by the defendant in favour of the plaintiff dated 27/04/2017 as exhibit P65;

(iii) Demand letter dated 11/12/2017 from the plaintiff to the defendant as exhibit P66; and

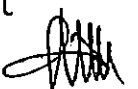
(iv) Bank Statement and Customer Position Account of TZ BUSINESS CREATION CO. LIMITED on accounts No. 11400077675 in collectively as exhibits P67a-b.



q. DIDAS CORNELL KULAYA claim of TZS.30,000,000.00 in which the defendant guaranteed TZS.20,000,000.000 and the balance of amount claimed is TZS.10,257,157 which is within the threshold of the amount guaranteed by the defendant. The following exhibits were tendered:-

- (i) Facility letter dated 19/05/2016 from the plaintiff to DIDAS CORNELL KULAYA and "Mkataba wa mkopo na thamana kati ya Didas Cornell Kulaya na benki" dated 13/05/2016 were collectively admitted as exhibits P68a-b;
- (ii) Payment Guarantee Bond issued by the defendant in favour of the plaintiff dated 03/05/2016 with No. 010/130/1/00023/2016 as exhibit P69;
- (iii) "Ilani ya madai" dated 22/03/2017 from the plaintiff to Didas Cornell Kulaya as exhibit P70; and
- (iv) Bank Statement and Customer Position Account of Didas Cornell Kulaya on Account No.11400108856 collectively as exhibits P71a-b.

r. ANNA BENARD SHAYO claim of TZS.100,000,000.00 in which the defendant guaranteed the whole amount and the balance of amount



claimed is TZS.97,491,196.01. The following exhibits were tendered:-

- (i) Facility letter dated 23/06/2016 in favour of ANNA BENARD SHAYO as exhibit P72;
- (ii) Payment Guarantee Bond dated 28/06/2016 with No. 010/130/1/018050 as exhibit P73;
- (iii) Bank Statement and Customer Position Account of Anna Benard Shayo on account No.10400304322 collectively as exhibits P74a-b;

s. RICHARD APOLINARY MPUMBILA claim of TZS.60,000,000.00 in which the defendant guaranteed TZS.30,000,000.00 and the unpaid balance claimed is TZS.30,000,000.00 and the following exhibits were tendered:-

- (i) Mortgage of Right of Occupancy on C.T. No.33224 on plot No. 374 Block "D" Ilomba Mbeya city in the name of Richard Apolinary Mpumbila as exhibit P75;
- (ii) Payment Guarantee Bond bearing No.010/130/031847/2016 dated 21/11/2016 and Counter Guarantee issued by



defendant to Richard Apolinary Mpumbila as exhibits P76a-b; and

- (iii) Bank Statement and Customer Position Account of Richard Apolinary Mpumbila on account No. 118002148 as exhibits P77a-b;

t. ALLY MOHAMED BAKARI claim of TZS.30,000,000.00 in which the defendant guaranteed TZS.15,000,000.00 and the unpaid balance was TZS.15,000,000.00 plus interest. The following exhibits were tendered:-

- (i) Facility letter dated 13/05/2016 in favour of Ally Mohamed Bakari as exhibit P78;
- (ii) Payment Guarantee Bond with No.010/130/012933 dated 13/05/2016 as exhibit P79;
- (iii) "Ilani ya Madai" form from the plaintiff to Ally Mohamed Bakari dated 10/09/2016 as exhibit P80; and
- (iv) Bank statement and Customer Position of Ally Mohamed Bakari on account No.11400101207 as exhibits P81a-b.

u. ABEL MIKA SHAURI t/a ABEL GENERAL DEALERS COY LIMITED claim of TZS.30,000,000.00 in which the defendant guaranteed



TZS.15,000,000.00 of which the plaintiff claim TZS.15,000,000.00 plus interest. The following exhibits were tendered:-

- (i) Facility letter from the plaintiff to Abel Mika Shauri t/a Abel General Dealers Coy Limited dated 9.05.2016 as exhibit P82;
- (ii) Payment Guarantee Bond issued by defendant to plaintiff on 10/05/2016 bearing No. 010/130/1/012518/2016 and Counter Guarantee issued by defendant to Abel Mika Shauri t/a Abel General Dealers Co. Limited for the benefit of the plaintiff dated 07/05/2016 collectively as exhibits P83a-b;
- (iii) "Ilani ya Madai" dated 21/12/2016 from the plaintiff to Abel Mika Shauri as exhibit P84;
- (iv) Bank Statement and Customer Position Account of Abel Mika Shauri t/a Abel General Dealers Coy Limited on account No.11600043457 as exhibits-P85;
- (v) Emails correspondences between plaintiff and defendant as exhibits P86a-b; and



- (vi) Demand letter from the plaintiff to defendant dated 05/12/2017 bearing reference ACB/CC/320/2017 as exhibit P87.

According to PW1, it understood by the parties that, all bonds were independent contracts, unconditional, the defendant waived all defences and objections, payable on demand and that claims must be submitted within life span of the bonds. Further, PW1 told the court through witness statement that, in total the plaintiff claim TZS.1,829,996,360.00 and USD.44,172.00 from the defendant based on Payment Guarantee Bonds and counter guarantees and prayed that the instant suit be granted as prayed in the plaint with costs.

This marked end of hearing of the plaintiff's case and same was accordingly marked closed.

In defence, the defendant called two witnesses. The first witness was Mr. NICK MURIITHI ITUNGA to be referred in these proceedings as DW1. DW1 through his witness statement adopted in these proceedings as his testimony in chief told the court that, he was the Managing Director of the defendant between 1st June, 2009 and 23rd October, 2018, inclusive.



The testimony of DW1 on claim in respect of PETRONEA E.A. LIMITED was unnecessary following the plaintiff drop and withdrawal of all claims against her. DW1 went on to tell the court that, on 11th December, 2016 the defendant issued a Payment Guarantee Bond guaranteeing TZS.60,000,000/= in favour of the plaintiff to a loan issued to Rajab Shaban Rajab as per facility letter dated 20th December, 2016 and stated that, he cannot be held liable because that amount was not disbursed to the said Rajab Shaban Rajab and no evidence was tendered that there was any default. Further defence by the defendant was that the claim of USD.169,789.39 was not disbursed and that the claim was pegged on separate facilities which were never guaranteed by the defendant and even if secured, the defendant defended that same was not agreed to be first ranking security.


As to Ms. TABU JANET JULIUS LEMA, DW1 admitted the defendant to guarantee by way of Payment Guarantee Bond to the tune of TZS.10,000,000/= pursuant to facility letter dated 07th September, 2016 but disputed the plaintiff claims on reasons that the plaintiff didn't observe the terms and conditions by not disbursing the amount and that, the claim of TZS.13,044,858/= was made contrary to the terms and conditions.



As to Mr. JUMANNE MOHAMED KAPOLI, DW1 admitted the defendant to guarantee by way of Payment Guarantee Bond to the tune of TZS.20,000,000/=pursuant to facility letter dated 19th October,2016 but disputed the claims by plaintiff on reasons that disbursement was not done and as such any claim is unjustified, the borrower had other credit facilities not guaranteed by the defendant and that, even if guaranteed, the Payment Guarantee Bond were not first ranking security.

As to claims regarding GEOFIELDS TANZANIA LIMITED, they were dropped, hence, not to be considered by this court any more.

As to claims regarding ELIBARIKI MASHULULE MBISE, DW1 admitted the defendant guaranteed by way of Payment Guarantee Bond to the tune of TZS.117,500,000/= pursuant to facility letter dated 09th June, 2016 but seriously denied the plaintiff's claims on reasons that, the plaintiff's failure to observe the terms and conditions for failure to disburse the money as agreed, discharged the plaintiff's obligations to the loan, for want of evidence of default to repay the money advanced and that the bonds were not intended nor agreed to be first ranking security. On the above reasons, therefore, DW1 told the court that the plaintiff's claim of TZS.118,403,867/= is unjustified by all intents.

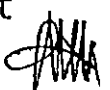


As to LEGAL LINK ATTORNEYS, DW1 admitted the defendant guaranteed by way of Payment Guarantee Bond to the tune of TZS.412,500,000/=pursuant to facility letter dated 2nd August, 2016 but seriously disputed the plaintiff's claims for reasons that the plaintiff's failure to observe the terms and conditions in the facility letter and as such the amount of TZS.338,607,931/= claimed was demanded by the plaintiff out of time because the demand was made on 21st August, 2017 while the Payment Guarantee Bond was valid up to 2nd August 2017.

As to JV TANGERM CONSTRUCTION CO LTD AND INTERCITY BUILDERS LTD this claim was among the abandoned one.

As to BASHIRU ISSA JUMA, DW1 admitted the defendant guaranteed by way of Payment Guarantee Bond to the tune of TZS.85,000,000/= pursuant to the facility letter dated 17th October, 2016 but disputed the plaintiff's claim for reasons that, no disbursement was done, without proof of default and the said guarantee, if any, was not first ranking security.

As to DINA ILDERFONSO MGOMERA, DW1 admitted the defendant guaranteed by way of Payment Guarantee Bond to the tune of TZS.30,000,000/= pursuant to facility letter dated 5th August, 2016 but



the defendant disputed the plaintiff's claim on reason that, no disbursement was done and the plaintiff's claim of TZS.30,000,000/= without proof of default was unjustified with all intents because the security, if any, was secondary to other securities securing the loan.

As to TUGHIMBAGHE TRADERS COMPANY LIMITED, DW1 admitted the defendant guaranteed the tune of USD.55,215.00 pursuant to the facility letter dated 15th August, 2016, which was later renewed on the 1st March, 2017 for a period of one year but seriously disputed the plaintiff's claims for reasons that the money was not disbursed and the plaintiff's claim of USD.55,215.00 is without evidence showing same was disbursed and defaulted.

As to TAJIRI WAPII LENASIWAN, DW1 admitted the defendant guaranteed by way of Payment Guarantee Bond to the tune of TZS.10,000,000/= pursuant to facility letter dated 5th October, 2016 but disputed the plaintiff's entire claim on reasons that the plaintiff breached the terms and conditions of the facility letter by failure to claim the money in time whose last date of claim was 5th November, 2018 but same was claimed on 6th November, 2018 contrary to the agreed terms of the bond.



On that note, DW1 prayed that the entire suit by the plaintiff be dismissed with costs.

DW1 tendered the following exhibits in disproof of the plaintiff's claims:

1. DW1 prayed that exhibits P3, P4b, and P5 be part of the defence case;
2. DW1 prayed that exhibits P7, P8, and P10 be part of the defence case;
3. DW1 prayed that exhibits P4, P13a, P13b be part of the defence case;
4. DW1 prayed that exhibits P17d, and P18 be part of the defence case;
5. DW1 prayed that exhibits P21a, P22a, and P22b be part of the defence case;
6. DW1 prayed that exhibits P26 and P27b be part of the defence case;
7. DW1 prayed that exhibits P30a and P31 be part of the defence case
8. DW1 prayed that exhibits P33, P34a, P34b and P35 to be part of the defence case; and
9. DW1 prayed that exhibits P38b and P39 be part of the defence case.



Under cross examination by Mr. Bwana, DW1 told the court that he was the Managing Director of the defendant and the bonds in dispute were authored in favour of the bank by the defendant. DW1 went on to tell the court that the bonds were issued against the conditions as contained in the facility letters and were in standard form. When pressed with questions, DW1 admitted that bonds did not state that were secondary security. DW1 asked to read from any bond where it stated that proof of disbursement was a condition DW1 read paragraph 1 of the bonds and stated that to him 'refers' and 'adoption' are one and the same thing. DW1 when pressed with question as to what was the status of the bonds he stated that under such situation bonds were primary securities. Also, DW1 admitted that bonds did not require negotiations when demanded because they are clearly stated so. DW1 when further pressed with questions admitted that bonds did not require proof of default and same was not pleaded. DW1 went on to tell the court that some of the money have been paid and pointed to Legal Link Attorneys whom he claimed to have paid Tshs.180,000,000/= but their demand was TZS.300,000,000/=. DW1 insisted that the plaintiff is claiming more than what was guaranteed.



Under re-examination by Mr. Tarimo, DW1 told the court that, they were not given evidence of default and disbursement. DW1 told the court further that they were to get from the plaintiff monthly defaults because they did not guarantee the whole amount. DW1 went on to say that, other securities were sold but the claim came on the whole amount.

Asked by the court for clarification as to whether they requested for evidence for disbursement and default said yes but no such written proof was produced in court.

The second witness for the defendant was Mr. MICHAEL LAMASANI EMMANUEL to be referred in these proceedings as DW2. DW2 through his witness statement adopted in these proceedings as his testimony in chief told the court that, he works with the defendant as Claims Manager since 2009 to date.

As to SUZAN SAID MTITU and REVELIAN LENATUS MAYEKA claims against them were dropped and abandoned.

As to MAZAO E.A LIMITED, OUT ASSURANCE BROKERS CO.LIMITED, VERAN GERALD MUSHI, MALCOM INVESTMENT LIMITED, MKASI TV, MASEMANO INVESTMENT LIMITED, IRENE SHAIRI MAGOTI, DIDACE



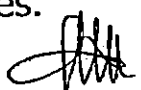
CORNEL KULAYA, ANNA BENARD SHAYO, RICHARD APOLINARY MHIMBIRA ALLY MOHAMED BAKARI and ABEL MIKA SHAURI t/a ABEL GENERAL DEALERS CO. LIMITED DW2 testimony is same as that of DW1, save that DW2 added that in all claims in respect of the above names none was claimed in accordance with the terms and conditions of the Payment Guarantee Bonds issued.

DW2 equally prayed that the instant suit be dismissed with costs.

DW2 tendered or prayed the following exhibits already tendered by PW1 be part of defence:

1. Exhibits P42e and P44; and
2. Exhibits P47, P50a, P51b, P50c, P51, P52a-c, P56, P58a, P58b, P60a, P60b, P61, P61, P69, P75, P76, P79 and P83.

Under cross examination by Mr. Bwana, DW2 told the court most of the demands were done after expiry of the bonds. DW2 when pressed with questions said they did not reply to the demands and advised the bank what to do. DW2 said that they did not pay because the claims were above and over what they guaranteed. DW2 when pressed with questions admitted that bonds did not state that they are secondary securities.



Further, DW2 admitted that bonds do not require for provision of evidence when default occurs but was to be accompanied with other supportive evidence.

Under re-examination by Mr. Karoli, DW2 told the court that after defaults they were expecting to have written demands plus supporting documents including reference of the facility in question, which was missing.

Asked by the court for clarification if they were supplied with bank statements, DW2 said they were not given bank statements.

This marked the end of hearing of this suit.

Parties' learned advocates prayed for leave to file final closing submissions under the provisions of Rule 66(1) of the High Court (Commercial Division) Rules, G.N.250 as amended by G.N. 107 of 2019. The court granted the prayer. I commend the learned advocates for parties for their insightful input in this suit.

In essence, the learned advocate for the plaintiff in his submissions started with the history of the transactions between the plaintiff and the defendant on bonds issued in favour of the plaintiff covering as security to



various lenders who defaulted in repayment of the loans taken and enjoyed.

The learned advocate for the plaintiff at the outset brought to the attention of the court two issues of variance of the testimonies from pleadings and whether a suit can proceed against the defendant without joining the borrowers. The learned advocate for the plaintiff strongly submitted that, it is trite that parties are bound by their pleadings and concluded that un-pleaded grounds should be ignored. To underscore the point he cited a string of cases by the Court of Appeal of Tanzania which insisted that purpose of pleadings in civil suits is to play fair game and the effect of departing from the pleading is to completely ignore them. The learned advocate went on to itemize and show the variance between pleadings and testimony of the defendant's witnesses.

In the end the learned advocate for the plaintiff invited the court to take and hold that the case went unopposed by evidence from the defendant.

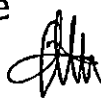
On the second aspect, Mr. Bwana was brief to the point that, this issue was determined by Hon. Mwandambo, J, (as he then was) on 11th



December, 2018 so the court is *functus officio* as of now to entertain such argument.

Mr. Bwana, then went on submitting on the issues and stated that the basis for payments to be done, was for the borrower to have defaulted to service the loan with the plaintiff, hence giving the plaintiff right to make a claim to the defendant for payment occasioned. According to Mr. Bwana, the bonds were subject to the terms and conditions that were standard and that there were defaults by borrowers, and hence, breach of the terms and conditions on the bonds as claimed. In the final, Mr. Bwana concluded that the plaintiff is entitled to be paid TZS.1,829,996,360 and USD.44,172 from the defendant and other claims as in the plaint.

On the other hand, Mr. Tarimo in his final submissions admitted that, the Payment Guarantee Bonds in dispute were issued in favour of the plaintiff but was quick to point out that, they refused to honour them because the plaintiff breached the terms and conditions of the bonds and facility letters subject of issuance of the bonds for failure to disburse the money; for failure to prove defaults, failure to make formal demands to the guarantor and that same were claimed out of their validity time prescribed in the bonds.



On the above reasons, Mr. Tarimo heavily relying on the decision of this court in the case of CRDB BANK PUBLIC COMPANY LTD vs. UAP INSURANCE COMPANY LIMITED, COMMERCIAL CASE NO. 70 OF 2018 which was on Payment Guarantee Bonds concluded that this suit was not proved and prayed that the same be dismissed with costs.

Having summarized the evidence of the rivaling parties herein and the final written submissions of the learned advocates for parties, the noble task of this court now is to determine the merits or demerits of this suit. However, before going into that, I wish to point out that, there are some facts not in dispute between parties, which in one way or another will greatly assist this court in resolving the issues raised for the determination of this suit. These are: one, there is no dispute between parties that the Payment Guarantee Bonds were issued in favour of the plaintiff to various borrowers on different dates and were guaranteeing different amounts. Two, there is no dispute that, some were partially guaranteed and some were sole and full guarantees and the bonds were the only securities for the loans advanced. Three, some of the money guaranteed remain unpaid and were the subject of this suit.



Another point worth of note before I go into merits and demerits of this case, is the status of the witness statement of the plaintiff's sole witness. The said statement was adopted under the provisions of Rule 56 (2) read together with section 34C (1) (b) of the Tanzania Evidence Act, [Cap 6 R.E.2019]. The said Rule and section for ease of reference provide thus:

Rule 56 (1) A party who intends to rely on a witness statement as evidence shall cause his witness to attend for cross examination.

(2) Where the witness fails to appear for cross examination, the court shall strike out his statement from the record, unless the court is satisfied that there are exceptional reasons for the witness's failure to appear.

(3) Where the court admits a witness statement of a witness who has failed to appear for cross examination, lesser weight shall be attached to such statement

And

Section 34C Proof by written statements in civil proceedings Act No. 19 of 1980 s. 8

-(1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document tending to establish that fact shall, in production of the original document, be admissible as evidence of that fact in lieu of the attendance of the witness if the following conditions are satisfied—

(a) if the maker of the statement either—



(i) had personal knowledge of the matters dealt with by the statement; or

(ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement in so far as the matters dealt with in it are not within his personal knowledge, is the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

(b) if the maker of the statement is called as a witness in the proceedings, but the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness or if he is not in Tanzania and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him, or to identify him, have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused order that the statement mentioned in subsection (1) shall be admissible as evidence or may, without the order having been made, admit the statement in evidence—

(a) notwithstanding that the maker of the statement is available but is not called as a witness;



(b) notwithstanding that the original document is not produced, if in lieu of the original there is introduced, a copy of the original document or of the material part of it certified in the order or as the court may approve.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at the time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section a statement in a document shall not be deemed to have been made by a person unless the document or the material part of it was written, made or reproduced by him with his own hand or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purposes of deciding whether or not a statement is admissible as evidence under this section, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a duly registered medical practitioner; and, notwithstanding that the requirements of this section are satisfied with respect to a statement, a court may in its discretion reject the statement if for any reason it appears to the court to be inexpedient in the interests of justice that the statement should be admitted.



(6) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the fact stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(7) N/A.

The wording of the two provisions both allow the use of witness statement/written statement and the weight it carries in the proceedings. There is no dispute that Mr. David Koroso, the maker of the witness statement in these proceedings is dead. Exhibit P1 in these proceedings which was admitted without objection speak volumes on the point. Not only that but also the witness statement was admitted without any objection and was written in compliance with the provisions of section 34C (6). And my reading through the entire rule and section shows the circumstances that befallen Mr. David Koroso was special circumstances that allow the use of the witness statement under Rule 56 (3) of the Rules. The lesser weight to be attached does not mean not to consider it at all. In our case, since the transactions were mainly supported by



documentary evidence, I will accord it the weight it deserves without necessarily been tied up with technicalities.

Now back to the instant suit, the first issue I am due to answer was couched that **“what were the basis of the Payments in respect of the Payment Guarantee Bonds extended by the parties.”** Mr. Bwana answered this issue that, once disbursement was effected and proved, and then, default proved, the defendant was obliged to pay the amount guaranteed in the bonds in favour of the plaintiff. While on the other hand, Mr. Tarimo had a different view that no proof of disbursement, no proof of the default, and that some of the bonds were claimed out of statutory time limit, hence, payment could not be effected to the plaintiff.

I have gone through both the facility letters and bonds in dispute and have noted that the basis of payments in respect of the Payment Guarantee Bonds was for existence of loan advance between the plaintiff and the secured borrower, breach of the terms and conditions by failure to pay any outstanding installment and formal demands in writing demanded within the validity of the bond to guarantor (in this case the defendant) of the unpaid amount under guarantee within the specified period of



guarantee was enough to make defendant liable for the amount guaranteed. The above stance is supported by the wording of Payment Guarantee Bonds which was couched in the following words:

"Claims, if any, under this bond, stating that has failed to repay any outstanding installment under the contract on the due date for such invoice, must be received by us, UAP INSURANCE TANZANIA LIMITED , P.O.BOX 71009 DAR ES SALAAM, in written form not later than the expiry date to be valid against us."

The above term in the bonds, in my considered opinion is the basis upon which the defendant was liable to make payments in favour of the beneficiary and nothing more. That said and done issue number one is answered that default once communicated within time, the defendant was obliged to honour her commitments to the plaintiff.

This takes this court to the second issue which was couched **"whether there was a breach of the terms and conditions of the Payment Guarantee Bonds by either parties'**. The plaintiff claimed to have complied with the terms of the bonds by making good disbursement of



the money to the secured borrowers, who in turn failed to make good payments of the money received or disbursed into their respective accounts. In order to answer this issue effectively I have to go through each case and see who between the parties herein was in breach. In so doing I will deal with each borrower separately. Indeed it is like writing a judgment on each. I will start with the borrowers whose sole security was the bonds. These are LEGAL LINK ATTORNEYS, TUGHIMBAGHE TRADERS COMPANY LIMITED, TAJIRI WAPILI LENASIWAN, OUTASSURANCE BROKERS COMPANY LIMITED, MALCOM INVESTMENT LIMITED and ANNA BENARD SHAYO. I will go one after the other and see who breached the terms of the bonds.

Starting with **LEGAL LINK ATTORNEYS** who took the loan of TZS.330,000,000.00 vide Facility Letter dated 10th August, 2016 (**exhibit P20**) and same is reflected in **exhibit P24a** that was disbursed on 11th August, 2016. Taking into account all exhibits tendered in respect of this borrower, the plaintiff has proved to the standard required in civil cases (on balance of probability) that the borrower Legal Link Attorneys was disbursed with the money, and is in default of payment of the money received from the plaintiff, and the same was claimed within the validity



of the bond hence, breach of payment of the loan amount to the tune of **TZS.241,437,577.69** as guaranteed by the defendant.

That said and done, I am constrained to find and hold that the defendant is in breach of the terms and conditions of the bond in respect of this borrower.

Next is **TUGHIMBAGHE TRADERS COMPANY LIMITED** who was granted a loan of USD.44,172.00 vide Facility Letter dated 2nd February, 2017 and was guaranteed by the defendant vide Bond No. 010/130/1/022316/2016 to the tune of USD.55,215.00 and was extended or renewed up to 29th February 2018.

Having gone through the exhibits tendered in respect of this borrower there is no dispute the same was in default and same was claimed in time, hence, breach by the defendant of the terms and conditions of the bonds for failure to honour payment of USD.44,172.00.

Next is **TAJIRI WAPII LENASIWAN** who according to evidence on record the loan disbursed was TZS.10,000,000.00 and was guaranteed vide Bond No. 010/130/1/027542/2016 which was valid up to 4th October, 2017.



Having gone through all exhibits tendered against this borrower, and in particular, **exhibit P39** dated **6th November, 2017** it is true the same was claimed out of time of the validity of the bond in dispute, hence, the defendant is hereby discharged in respect of this claim.

The other borrower is **OUTASSURANCE BROKERS COMPANY LIMITED** who according to the evidence on record and in particular exhibit P44 was guaranteed to the tune of TZS.30,000,000.00 and was guaranteed vide Bond No.010/130/1/026609/2015 which was valid up to 17th September, 2017.

Having gone through all exhibits tendered in respect of this borrower, in particular, emails for claiming payments exhibits P45a-i it is true same were claimed out of time of the validity of the bonds in dispute, hence, the defendant is hereby discharged in respect of this claim.

Next is **MALCOM INVESTMENT LIMITED** who according to the evidence on record in particular exhibit P50a took an overdraft facility of TZS.300,000,000.00 and was guaranteed to the tune of TZS.400,000,000.00 vide Bond No. 010/130/1/015621/2016 and the claim at the institution of this suit was TSZ.52,870,511.00.



Having gone through the evidence on record in respect of this claim same was claimed in time, hence, breach of commitment on the part of the defendant for failure to honour its obligations to the tune of the amount claimed.

ANNA BENARD SHAYO who according to the evidence on record was disbursed with TZS.100,000,000.00 on 24th June, 2016 and same was guaranteed vide Bond No.010/130/1/018050/2016 (**exhibit 72**) which was valid up to 26th June 2018.

Having gone through the evidence on record in respect of this claim, same was claimed in time, hence, the defendant is in breach of terms and conditions of the bond for failure to honour her obligations to the tune of TZS.112,355,470.71

MKASI TV who according to the record was availed a loan of TZS.90,000,000.00 and the whole amount was secured by the defendant to the tune of TZS.90,000,000.00 as per **exhibit P55** which was valid up to 19th October, 2017 but which was claimed on 13th November, 2017.

Therefore, having gone through the evidence on record in respect of this claim, there is no dispute the same was claimed out of time as per exhibit



P56 and as such the defendant is discharged from the obligation of this claim.

IRENE SHAIRI MAGOTA who according to the records was loaned to the tune of TZS.30,000,000.00 and same was secured by the defendant vide exhibit P65 which was valid up to 26th April, 2018 and same being claimed on 11th December, 2017 in time.

Therefore, having gone through the evidence on record in respect of this claim, the same was claimed in time vide exhibit P66, hence, the defendant is in breach of the terms and conditions of the bond for failure to honour her obligations to the tune of TZS.30,000,000.00

Now back to partially secured borrowers. Let me start with **RAJAB SHABAAN RAJAB** who according to the record borrowed TZS.200,000,000.00 and was secured by the defendant at the tune of TZS.60,000,000.00 vide Payment Guarantee Bond No. 010/130/1/034625/2016(exhibit P4b) valid up to 19th December,2017. The same was claimed in time as evidenced in **exhibit P5** which was written on 11th December,2017.



Therefore, having gone through the evidence on record in respect of this claim this court finds that this claim was claimed in time, hence, the defendant is in breach of the terms and conditions of the bond for failure to honour her obligations to the tune of TZS.60,000,000.00.

Next is **TABU JANET SEDA** who according to record borrowed TZS.30,000,000.00 and was secured by the defendant to the tune of TZS.10,000,000.00 as per exhibit P8 valid up to 6th September, 2018 and same was claimed in time vide exhibit P10 written on 5th December, 2017.

Therefore, having gone through the evidence on record in respect of this claim, this court finds that, this claim was claimed in time, hence, the defendant is in breach of the terms and conditions of the bond for failure to honour her obligations to the tune of TZS.10,000,000.00

Next is **JUMANNE MOHAMED KAPOLI** who according to the record borrowed TZS.85,000,000.00 and was secured at the tune of TZS.20,000,000.00 as per **exhibit P13b** which was valid up to 18th October, 2018 and same was claimed in writing on 3rd November, 2017 vide exhibit P14.

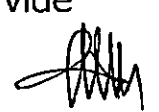


Therefore, having gone through the evidence on record in respect of this claim, this court finds that, this claim was claimed in time, hence the defendant is in breach of the terms and conditions of the bond for failure to honour her obligations to the tune of TZS.20,000,000.00.

Next is **ELIBARIKI MASHULULE MBISE** who according to the record borrowed TZS.150,000,000.00 and was secured by the defendant to the tune of TZS.117,500,000.00 as per **exhibit P17b** which was valid up to 8th June, 2018 and same was claimed on 3rd November, 2017 vide **exhibit P18.**

Therefore, having gone through the evidence on record in respect of this claim, this court finds that, this claim was claimed in time, hence, the defendant is in breach of the terms and conditions of the bond for failure to honour her obligations to the tune of TZS.117,500,000.00.

Next is **BASHIRU ISSA JUMA** who according to the record borrowed TZS.100,000,000.00 and was secured by the defendant to the tune of TZS.85,000,000.00 as per **exhibit P26** which was valid up to 16th October, 2018 and same was claimed on 27th September, 2017 vide **exhibit P27a.**

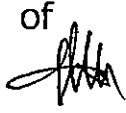


Therefore, having gone through the evidence on record in respect of this claim, this court finds that, the claim was claimed in time, hence, the defendant is in breach of the terms and conditions of the bond for failure to honour her obligations to the tune of TZS.74,603,305.00

Next is **DINA IDELFONSO MGOMERA** who according to the record borrowed TZS.40,000,000.00 and was secured by the defendant to the tune of TZS.30,000,000.00 as per **exhibit P30a** which was valid up to 4th August, 2018 and same was claimed on 3rd November, 2017 vide **exhibit P31**.

Therefore, having gone through the evidence on record in respect of this claim, this court finds that, the claim was claimed in time, hence, the defendant is in breach of the terms and conditions of the bond for failure to honour her obligations to the tune of TZS.30,000,000.00.

Next is **MAZAO E.A LIMITED** who according to the record got an overdraft of TZS.1,000,000,000.00 and was secured by the defendant to the tune of TZS.530,000,000.00 as per **exhibit P42e** which was valid up to 08th April, 2017 and same was claimed in time to the tune of TZS.530,000,000.00



Therefore, having gone through the evidence on record in respect of this claim, this court finds that, the claim was claimed in time, hence, the defendant is in breach of the terms and conditions of the bond for failure to honour her obligations to the tune of TZS.530,000,000.00

Next is **VALERIAN GERALD MUSHI** who according to the record borrowed TZS.15,000,000.00 and was secured by the defendant to the tune of TZS.10,000,000.00 as per **exhibit P47** which was valid up to 19th January, 2018 and same was claimed on 05th March, 2017 vide **exhibits P48a-c** and same was claimed in time to the tune of TZS.10,000,000.00

Therefore, having gone through the evidence on record in respect of this claim, this court finds that, the claim was claimed in time, hence, the defendant is in breach of the terms and conditions of the bond for failure to honour her obligations to the tune of TZS.10,000,000.00

Next is **MALCOM INVESTMENT CO. LIMITED** who according to the record was offered series of overdrafts of TZS.300,000,000.00, TZS.300,000,000.00 and 400,000,000.00 and was secured by the defendant to the tune of TZS. 400,000,000.00 as per **exhibit P51** which was valid up to 8th June,2017 and same was claimed in time.



Therefore, having gone through the evidence on record in respect of this claim, this court finds that, the claim was claimed in time, hence, the defendant is in breach of the terms and conditions of the bond to the tune of TZS.52,121,305.66

Next is **MASEMANO INVESTMENT LIMITED** who according to the record borrowed TZS.250,000,000.00 and was secured by the defendant to the tune of TZS.100,000,000.00 as per exhibit P60a and later renewed to the tune of TZS.250,000,000.00 as per exhibit P60b which was valid up to 14th December, 2017 and same was claimed in time.

Therefore, having gone through the evidence on record in respect of this claim, this court finds that, the claim was claimed in time as per exhibit P61, hence, the defendant is in breach of the terms and conditions of the bond to the tune of TZS.250,000,000.00.

Next is **DIDACE CORNEL KULAYA** who according to the record borrowed TZS.30,000,000 and was secured by the defendant to the tune of TZS.20,000,000.00 as per exhibit P69 which was valid up to 18th May, 2018 and same was claimed in time.



Therefore, having gone through the evidence on record in respect of this claim, this court finds that, the claim was claimed in time as per exhibit P70, hence, the defendant is in breach of the terms and conditions of the bond to the tune of TZS.10,257,157.

Next is **RICHARD APOLINARY MHIMBIRA** who according to the record was borrowed an amount of TZS.60,000,000.00 and was secured by the defendant to the tune of TZS.30,000,000.00 vide exhibit P76 which was valid up to 20th November, 2018 and which was claimed in time.

Therefore, having gone through the evidence on record in respect of this claim, this court finds that, the claim was claimed in time, hence, the defendant is in breach of the terms and conditions of the bond to the tune of TZS.30,000,000.00

Next is **ALLY MOHAMED BAKARI** who according to the record was borrowed an amount of TZS.30,000,000.00 and was secured by the defendant to the tune of TZS.15,000,000.00 as per exhibit P79 which was valid up to 05th May, 2017 and same was claimed in time as per exhibit P80.



Therefore, having gone through the evidence on record in respect of this claim, this court finds that, the claim was claimed in time, hence, the defendant is in breach of the terms and conditions of the bond to the tune of TZS.15,000,000.00

Last is **ABEL MIKA SHAURI t/A ABEL TRADING DEALERS COMPANY LIMITED** who according to the record was borrowed an amount of TZS.30,000,000.00 and was secured by the defendant to the tune of TZS.15,000,000.00 as per exhibit P which was valid up to 06th May, 2018 and same was claimed in time as per exhibit P84.

Therefore, having gone through the evidence on record in respect of this claim, this court finds that, the claim was claimed in time, hence, the defendant is in breach of the terms and conditions of the bond to the tune of TZS.15,000,000.00

This takes me to the last issue couched that **"what reliefs parties are entitled to"**. The defendant at the end of the day both in her written statement of defence, testimony of her witnesses and final closing submissions on reasons advanced prayed that the instant suit be dismissed with costs. The reasons advanced by the defendant were



breach of the terms and conditions in the facility letter, failure to make formal demands and claims must have been made within the validity period of the bonds and relying on the decision in the case of CRDB BANK PUBLIC COMPANY LIMITED vs. UAP INSURANCE COMPANY LIMITED(supra) concluded that in the instant suit the plaintiff breached the terms and conditions as such discharged the defendant from the obligations to pay the money due.

With due respect to the learned advocate for the defendant, though both cases were on Payment Guarantee Bonds but the facts and circumstances of that case and this case are remarkably distinguishable because in the CRDB case the bank deviated the money to the borrower instead of paying it in accordance to the terms of the facility letter, whereas in the instant suit money borrowed was disbursed to the accounts of the borrowers and the plaintiff has been able to prove that by production of bank statement of each borrower and the amount given was the same as was in the facility letter. Not only that but also, the defendant who alleged breach was to prove it and none of the borrowers was called to testify that he/she was not given the money as agreed to justify the allegations by the defendant. The only plausible defence which has been taken care of was



that, some of the claims were claimed out of time of the validity of the bonds and I have carefully considered them to the letter as I have done on each claim.

On the part of the plaintiff, they claimed several reliefs as contained in the plaint. Apart from the claims that were claimed out of time, the rest of the claims, I find them proved to the required standard in civil cases i.e. on balance of probability. In the totality of the above analysis, the plaintiff is entitled to be paid by the defendant the amount of USD.44,172 and TZS.1,671,143,327.06. The plaintiff is equally entitled to claims in paragraph (b) and (d) in the plaint. As to the general damages the plaintiff is given only TZS.5,000,000.00 as general damages. The plaintiff is entitled to the costs of this suit.

It is so ordered.

Dated at Dar es Salaam this 16th day of July, 2021.



S.M. MAGOIGA

JUDGE

16/07/2021