

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 53 OF 2019

BANK OF INDIA TANZANIA LIMITED.....PLAINTIFF

VERSUS

MUSSA ALLY SILLA1ST DEFENDANT

FATUMA HAMISI YUSUFU.....2ND DEFENDANT

Date of Last order: 21/08/2021

Date of Judgement: 08/10/2021

SUMMARY JUDGEMENT

MAGOIGA, J.

This is a summary judgement. The plaintiff, **BANK OF INDIA (T) LIMITED** under summary procedure vide Order XXXV of the Civil Procedure Code [Cap 33 R.E.2019] by a plaint instituted the instant suit against the defendants jointly and severally praying for judgement and decree in the following orders: -

- a) A declaration that the first defendant mortgaged to the Plaintiff and the second defendant consented to the mortgaging of the Mortgaged property.



- b) A declaration that the first and second defendants are liable, jointly and severally to pay principal sum TZS 623,858,765.00 (Tanzanian shillings Six Hundred Twenty Three Million Eight Hundred Fifty Eight Thousand Seven Hundred Sixty Five) plus interest of the loan advanced by the Plaintiff.
- c) An order for sale of the mortgaged property with registration C.T No 8670, L.O No. 594594, Plot No. 52, Block "W" Raha Leo Area, Lindi Municipality, C.T No. 8851, L.O No. 594595, Plot No. 206, Block "W" Raha Leo Area Lindi Municipality, C.T No. 6559, L.O No. 346052, Plot No. 653, Block "Z" Wailes Area Lindi Municipality, motor vehicles make Yutong with registration number T607 CVL and motor vehicle make Yutong with registration number T638 CVL so as to recover the principal sum of TZS 623,858,765.00 (Tanzanian Shillings Six Hundred Twenty Three Million Eighty Hundred Fifty Eight Thousand Seven Hundred Sixty Five) being repayment of a term loan and servicing the approved credit facility.
- d) Interest over the decretal sum at the Bank rate of 20% from the date of default to the date of judgement.
- e) Interest at the court's rate of 12% from the date of judgement till final payment.
- f) Costs of the suit provided jointly by the defendants.
- g) Any other/ relief this honourable court may deem fit and just to issue.



The facts, of this suit as gathered from the plaint are that, on 26th June, 2015 the 1st defendant applied, and was granted Tshs 448,000,000.00 for acquisition of two yutong buses (vehicle loan) and Tshs 30,000,000.00 for person loan (the facility). In the said credit application which was executed on 2nd July, 2015, it was agreed that, the loan was to be repaid by 28th February, 2019. However, the defendant has failed to honour his obligation as the result, the term loan and servicing of approved facility now stands at TZS.623,858,765.00 as on 22nd February,2019. Plaintiff issued default notices to the defendants but have been non-responsive, hence, this suit under summary procedure for reliefs as claimed in the plaint.

The record of the court is loud and clear that, the plaintiff instituted the instant suit under summary procedure. The efforts by the plaintiff to serve the defendants in normal way were in vain. Eventually, the plaintiff got an order to serve the defendants by way of publication, which service was done by the plaintiff, to the defendants through Mwananchi newspaper dated 2nd December, 2020.

When this suit was called on for orders on 21st September, 2021, no application for leave to file defence has been filed. Consequently, the learned advocate for the plaintiff, Mr. Mzikila prayed that, this court be pleased to grant summary judgement under Rule 2(2) (a)-(c) of Order 35 of the Civil Procedure Code,[Cap 33 R.E 2019] as prayed in the plaint. The learned advocate for the plaintiff cited the case of COMMERCIAL BANK OF AFRICA (T) LIMITED vs. ESTER JAPHET MHAYE t/a ESTHER AGRO AND GENERAL SUPPLY AND ANOTHER, COMMERCIAL CASE NO 21 OF 2008

(HCCD) DSM (UNREPORTED) AND NATIONAL BANK OF COMMERCE LIMITED vs. JACQUILINE MICHAEL KIMARO AND ANOTHER, COMMERCIAL CASE NO.1 OF 2017 (HCCD) DSM (UNREPORTED) for guidance and in which a summary judgement was ordered in circumstances similar to this suit.

In the circumstances, there is no dispute that, defendants were served in accordance with the law. However, ever since this suit was instituted way back in 2019, no application for leave to defend summary suit has been preferred and as such no written statement of defence has been filed so far nor any application for extension of time to file one.

In the totality of the above, and without much ado, summary judgement must be and is hereby entered for the plaintiff and against the defendants jointly and severally in the following orders, namely:

- a. This court declares that the 1st defendant mortgaged to plaintiff and the 2nd defendant consented to mortgaging of the mortgaged property;
- b. This court declare that the first and second defendants are liable, jointly and severally to pay principal sum TZS 623,858,765.00 (Tanzanian shillings Six Hundred Twenty Three Million Eight Hundred Fifty Eight Thousand Seven Hundred Sixty Five) plus interest of the loan advanced by the Plaintiff which money is hereby ordered and directed that it be paid within three months from the date of this judgement;
- c. This court further orders that in case of failure to pay the adjudged money within three months form this date of this

- judgement, immediate sale of the mortgaged properties with registration C.T No 8670, L.O No. 594594, Plot No. 52, Block "W" Raha Leo Area, Lindi Municipality, C.T No. 8851, L.O No. 594595, Plot No. 206, Block "W" Raha Leo Area Lindi Municipality, C.T No. 6559, L.O No. 346052, Plot No. 653, Block "Z" Wailes Area Lindi Municipality, motor vehicles make Yutong with registration number T607 CVL and motor vehicle make Yutong with registration number T638 CVL so as to recover the principal sum of TZS 623,858,765.00 (Tanzanian Shillings Six Hundred Twenty Three Million Eighty Hundred Fifty Eight Thousand Seven Hundred Sixty Five) being repayment of a term loan and servicing the approved credit facility through laid down procedures;
- d. Interest over the decretal sum at the Bank rate of 20% from the date of default to the date of judgement is granted;
 - e. Interest at the court's rate of 12% from the date of judgement till final payment;
 - f. The plaintiff is also awarded costs of this suit.

It is so ordered.

Dated at Dar es Salaam this 8th day of October, 2021.



S.M. MAGOIGA

JUDGE

08/10/2021