IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM

COMMERCIAL CASE NO. 83 OF 2018

NMB BANK PLC ....PLAINTIFF

V

QUALITY MOTORS LTD .... 1st DEFENDANT
KANIZ MANJI ....2nd DEFENDANT
YUSUF MANJI..................................3rd DEFENDANT
QUALITY GROUP ENGINEERING LTD..........................4th DEFENDANT
QUALITY LOGISTIC CO. LTD............5th DEFENDANT
QUALITY GROUP PLANT & EQUIPMENT LTD ....6th DEFENDANT
QUALITY GROUP LTD.......................7th DEFENDANT

Date of last Order: 24/11/2020
Date of Judgment: 22/02/2021

JUDGEMENT

NANGELA, J.:

The Plaintiff is suing the Defendants, jointly and severally, seeking for the following:

(i) *A declaratory order that, the Defendants are in breach of loan facilities.*

(ii) *Payment of the sum of **TZS 25,090, 117,083.64/=** and a total of **US$ 17,697,729.54, being the outstanding** principal under the loan facilities as of 6th September 2017.*

(iii) Payment of interest on prayer (ii) above at the prevailing commercial bank rate from 6th September 2017 to the date of judgement;

(iv) Payment of interest on the decretal sum at Court rate of 7% per annum, from the date of judgement to the date of satisfaction of the decree.

(v) General damages as may be assessed by this Honourable Court;

(vi) Costs of the suit and interest thereon at Court rate of 7% from the date of judgement to the date of payment.

(vii) Any other relief that this honourable court may deem just and fit to grant.

I will give a brief background to this case. On diverse dates, as it may be seen below, the 1st Defendant approached the Plaintiff in request of financial assistance in the form of loan facilities.

Through letters of offer, dated 19th May 2015- (*Ref. No. NMB/CBD/OML/2016/3*), 9th March 2016 - (*Ref.No.NMB/CBD/OML/2016/3*), and 16th May 2017, (*Ref. No. NMB/CBD/OML/2017/5*), the Plaintiff accepted the 1st Defendant's requests. With at acceptance, the Plaintiff made available to the 1st Defendant (**the Borrower**), Term Loans and Overdraft (composite and letter of Credit) (**the Facilities**) totalling **USD 15, 200,000.00** and **TZS 34,000,000,000.00.**

Each term facility was payable within a period of 60 months from the first day of drawdowns while the

overdraft facilities were payable within 12 months subject to renewal. The terms and conditions of all facilities were stipulated in their respective documents.

Regarding the letter of credit, the parties had agreed that, the same should be booked either in **TZS** or in **USD**, based on the needs of the Borrower. However, the amount utilized at any point in time, was not supposed to exceed the approved amount under the facility. All facilities were secured by personal guarantees of the 2nd and 3rd and corporate guarantees of the 4th, 5th, 6th and the 7th Defendants.

There was, as well, an additional security provided by the borrower to the lender. This was in form of a legal mortgage over a landed property under a Numbered certificate of **Title No.50141**, **LO.No.177217 Plot No.189/1 Nyerere Road,** registered in the name of the 7th Defendant.

From 19th May 2015 onwards, the 1st Defendant (**Borrower)** accessed and enjoyed the loan facilities. The unfortunate part, however, was that, the Borrower breached the terms and conditions of the Facilities. In particular, the Plaintiff claims that, from 16th September 2017, the 1st Defendant was in arrears under the term loan facility, which, together with interest thereon, totalled **USD 12,610,323.63**.

It has been further averred that, the Borrower was operating the facilities (the Composite Facility) in excess

of what was agreed by the parties, with an outstanding liability of **TZS 25,090, 117,083.64/=**. Besides, as regards the Letter of Credit Facility, the borrower had operated the facility in excess of the approved amount and, as of 6th September 2017, an amount of **US$ 5,087,403.91** was due and payable to the Plaintiff.

Following the defaults by the 1st Defendant (the Borrower), the Plaintiff, both parties made efforts to regularize the situation, but the efforts are said to have failed due to the Borrower's inactiveness. As a result, on 8th September, 2017, the Plaintiff issued a Default Notices to the 1st Defendant, and copied such notices to the guarantors (the 2nd, 3rd, 4th, 5th, 6th and the 7th Defendants).

The notices outlined consequences of defaulting payments and demanded for full payment of the loan money plus accrued interests should the Borrower's failure to perform its obligations under the facilities persisted. That notwithstanding, neither the Borrower (1st Defendant) nor the guarantors observed the contents of the Notices. In short, they as well failed to honour their obligations under the facilities' arrangements, hence, forcing the Plaintiff to knock at the doors of this Court to enforce its rights.

On 13th August 2018, the Defendants filed their joint written statement of defence (WSD). In their defence, the Defendants disputed and opposed all claims and reliefs prayed by the Plaintiff. They averred that the

amount claimed has been exaggerated and prayed that the case should be dismissed. In view of the plaintiff's claims and defendant's defence, the Court, after consulting the parties, framed up the following as issues for determination:

1. *Whether or not the Defendants are in breach of the terms and conditions of the loan facilities extended to the 1st Defendant by the Plaintiff.*
2. *Whether or not the amount of the money being claimed by the Plaintiff is exaggerated and if so, to what extent.*
3. *Whether there is any justification for the Defendants' failure to perform the loan facilities in the manner and terms agreed.*
4. *Whether the Plaintiff is in any way to blame for the Defendant's failure to perform their obligation under the loan facilities.*
5. *Whether the Defendants had paid the claimed amount of money, and, if any, how much and to what extent.*
6. *To what reliefs are the parties entitled.*

This suit was therefore heard and determined on the basis of the above mentioned six issues agreed by the parties. During its hearing, the Plaintiff was represented by Mr. Mang'ena, learned counsel, whilst Mr. Yassin Maka, also a learned counsel, represented all seven Defendants.

To set the wheels in motion, both learned counsel made their opening statements and the Plaintiff's

company called only one witness, this being **Mr. Steven Chuwalo**, a senior NMB Bank PLC's Relation Manager, Corporate Banking, who testified as **PW1**. At the hearing of this case, **PW1** tendered in court his witness statement, which was filed in accordance with the Rules of this Court, and, the same was adopted as his testimony in chief.

In his testimony, **PW1** told the Court that, he had first hand information of the loan transactions entered between the Plaintiff and the Defendants. In particular, he informed this Court that, by its letter of offer, *Ref.No.NMB/CBD/QML/2015/3,* dated 19th May 2015, the Plaintiff advanced to the 1st Defendant (borrower), a term loan facility to the tune of **10,000,000.00** United States Dollars to refinance and finance the latter's businesses in CAPEX works.

PW1's reference to the said letter was objected by Mr. Maka, the learned counsel for the Defendants, on the ground that the document mentioned by the witness was not part of the witness statement. However, for reasons stated in a ruling of this court, the objection was overruled since the letter was yet to be tendered and admitted into evidence. **PW1** further informed the Court that, by a letter of offer, *Ref.No.NMB/CBD/OML/2016/3,* dated 19th May 2016, the Plaintiff advanced a loan to the 1st Defendant amounting to **US$ 5,2000,000/- for the same purposes of** refinancing and financing of the latter's businesses of CAPEX works.

The two letters of offer were signed by representatives of the Plaintiff and the 1st Defendant, and, contained similar agreed terms and conditions governing the loan facilities, which automatically terminate after a lapse of 60 months from the date first drawdown. When **PW1** tendered the two letters of offer in Court and sought to have them admitted into evidence as exhibits, Mr.Maka raised an objection in regard to the first letter of offer but soon afterwards he vacated his objection and, consequently, the two letters of offer were admitted into evidence and marked as **Exh. P-1-(a)** and **P-1-(b)**, respectively.

In his testimony, **PW1** further testified that, through a letter of offer, *Ref. No. NMB/CBD/OML/2017/5*, of 16th May 2017, the 1st Defendant sought and obtained from the Plaintiff an overdraft facility and composite facility (Letter of Credit/bank guarantee/post import loan) to the limit sum of **TZS 22,000,000,000/-** and **12,000,000,000/-** respectively.

PW-1 informed this Court that, the overdraft facility was meant to meet the 1st Defendant's working capital requirements and to finance other trade facilities. He further told the Court that, the duration of repayment was 12 months, commencing from the date of the grant and automatically terminating at the lapse of the 12 months, on the terms and conditions contained in the letter of offer, signed by representatives of the Plaintiff and the 1st Defendant.

PW-1 tendered in court, with no objection from the defendants, two letters of offer, *Ref. No. NMB/CBD/OML/2017/5*, dated 16th May 2017 and 9th May 2016, which were collectively admitted into evidence and marked as **Exh.P2. PW-1** stated, further, that, the overdraft facilities were a renewal of earlier facilities which were granted well before 2017, and were renewable at the option of the Plaintiff, pursuant to clause 2.2 of the said loan facility. He testified, as regards the composite facility, that, the 1st Defendant was at liberty to present its utilization requests to the Bank, either in **TZS** or in **USD**, provided that the amount utilized, at any point in time, was not in excess of the approved amount under the facility.

PW1 further told the Court that all facilities were secured by same securities of personal guarantees of the 2nd and 3rd Defendants as well as the corporate guarantees of the 4th to 7th Defendants. He tendered the personal guarantees of the 2nd and 3rd as well as the corporate guarantees of the 4th to 7th Defendants which were admitted into evidence without objection from the defendants and marked as **Exh. P3 to P7** respectively.

PW1 testified further, that, although the 1st Defendant utilized and benefitted from the loan facilities, advanced to it, the 1st Defendant failed to perform its obligations under the facilities and operated the loan facilities in a manner contrary to the terms and conditions of the facilities. He stated further that, the 1st Defendant's

failure included its inability to pay the outstanding balances and agreed interest within the prescribed time, and, as well, operating the loan accounts in excess of agreed limits, leaving an outstanding liability of **TZS 25,090,117,083.64**, on the overdraft, as of 6th September 2017.

Further that, **PW1** testified that the 1st Defendant had, as of 6th September 2017, import loan arrears to the tune of **USD 5,087,403.91**, resulting from the 1st Defendant's operation of the Compromise Facility (Post Import Loan) in excess and arrears of the approved limit amount. **PW1** tendered as exhibits, and, without objection from the Defendants, bank statements in respect of the following 1st Defendant's Accounts:

- *No. 201CL12160910001*, printed out on 7th November 2019, which was admitted into evidence and marked as **Exh. P 8.**
- USD Account *No.20110003534* showing that the 1st Defendant owes the Plaintiff USD 3,418,116.11, which was admitted into evidence and marked as **Exh. P 9.**
- Customer Account Statement for *A/c No.20110004030*, showing that the 1st Defendant owes the Plaintiff

Bank **TZS 81,836,727.43/-** which was admitted into evidence and marked as **Exh. P 10.**

- Customer Account Statement (Internal), in the name of Quality Motors Ltd- QLCL Operation- *Acc/No.20110004025*, which was admitted into evidence and marked as **Exh. P 11.**
- Customer Account Statement for *Account No.20110004029-* (in respect of Quality Motors Ltd- QEL Fund, for the period between 2nd January 2017 to 11th July 2019, showing that, as of 31st May 2018, the 1st Defendant owes the Plantiff Bank **TZS 623,191,600.93**), which was admitted into evidence and marked as **Exh. P 12.**
- Customer Account Statement (Internal), in the name of Quality Motors Ltd- Operation- *Acc/No.20110004028*, for the period between 2nd January 2017 to 11th July 2019, showing that as of 31st May 2019, the 1st Defendant owes the Plantiff Bank **TZS 95,386,372.21**) which was

admitted into evidence and marked as **Exh. P 13.**

- Customer Account Statement (Internal), in the name of Quality Motors Ltd- *Acc/ No.20110003533,* which was admitted into evidence and marked as **Exh. P 14.**

PW1 testified further that, through a letter of offer dated 16th May 2017, the parties agreed to restructure the loans by converting the existing **USD** Post Import Loans, and Post Import Arrears, into **TZS** and restructuring some of the post-import loans in respect of the 1st Defendant for the exchange rate for conversion to be agreed by the bank treasury team and the 1st Defendant. **PW1** testified, however, that, despite the Plaintiff's flexibility and harmonization of business relations towards the 1st Defendant, the latter neglected or failed to play its part. **PW1** tendered to this Court, a letter of offer dated 16th May 2017 which was admitted into evidence without objection and marked as **Exh.P15.**

PW1 told the Court in his testimony that, the 1st Defendant's failure to discharge its obligations under the loan facilities, forced the Plaintiff to issue a call-off of the facilities. The Plaintiff further informed the Defendants about the 1st Defendant's default, cautioning them of the consequences should they fail to remedy the default situation timely. Even so, the Defendants were said to have ignored the Plaintiff's demand. **PW1** tender in this

Court as an exhibit, the document dated 6th September 2017, which constitutes the calling-off of the facilities. The document was admitted without objection from the Defendants and was marked **Exh.P.16**.

In addition, **PW1** tendered before the Court, Statutory Default Notices of issued by the Plaintiff to the 1st Defendant and copied to the rest of the Defendants as guarantors. The notices of default issued under section 127 of the Land Act were admitted without objection and marked as **Exh.P.17** and **Exh.P.18. PW1** testified that both the notices of default and the call off of the facilities were duly served upon the Defendants by way of registered mail.

PW1 sought to be admitted into evidence postal receipts (cash memos) for payment of postage fees in respect of the default notices sent to the Defendants via the registered mail services. The said postage receipts were admitted into evidence and collectively marked as **Exh. P 19**.

Finally, **PW1** prayed to tender into this Court a title deed in respect of - *CT NO.50141, Plot. No. 1891/1* Industrial Area Nyerere Road, DSM in the name of Quality Motors. The Title Deed had been surrendered and being held by the Plaintiff as a security for **TZS 12,500,000,000/-** and **TZS 42,500,000,000**/- advanced to the 1st Defendant as loan. Since no objection was raised by the defendants, the title deed was admitted into evidence and marked as **Exh.P.20.**

When cross-examined by the learned counsel for the Defendants, **PW1 stated** that, until the time when the 1st Defendant was given the letter of offer dated 16th May 2017 (**Exh.P.15**), the parties had not finalized their proposed harmonization of all loans. He stated that, **Exh.P 15** was signed by the Defendants and the Plaintiff had confirmed that the Defendants were ready to convert all debts into Tanzanian Shillings (TZS).

PW1 further stated that the parties had agreed to prepare a special TZS Account and they were to agree on the exchange rate for the TZS Account which was to be created. However, the parties did not achieve that goal and no consensus was reached regarding the exchange rate. He maintained that although Exhibits **P 17** and **P 18** were indicating amounts in USD, these were made or prepared after **Exh.P.15** and, that, the Plaintiff had asked to be paid what was outstanding amount and did not rely on **Exh.P15.**

On further cross-examination, **PW1** told the Court that the Plaintiff had been in phone communications with the 1st Defendant when they knew that the offices of the 1st Defendant were closed by the Tanzania Revenue Authority (TRA).

When asked if they are compelled to do loan restructuring, **PW1** was categorical that the Plaintiff is not under any compulsion to do so unless the client applies for and the bank agrees to that application. He told the Court, that, when Mr Manji was held in Keko Prison, the

Plaintiff's officers did look for him and visited him when he was hospitalized.

PW1 was not ready to buy the view that the 1st Defendant's business had faced business frustrations. He stated that, the allegation that the offices of the 1st Defendant were closed by the TRA, were matters which the Plaintiff was unaware of, but a fact known to all was that Mr Manji was at some point in Keko Prison. However, he admitted that, the offices of the 1st Defendant had been cordoned off with a red tape to prevent entry. He was of the view that, the Plaintiff's failure to follow up on **Exh. P.15** was not a negligent act as there was no consensus reached by the parties regarding **Exh. P15.**

Concerning **Exh P.20**, *PW-1* told the Court during his cross-examination that, **Exh.P.20** was registered as a mortgage in 2016 but the 1st Defendant's relationship with the bank was way back to 2012. He acknowledged that the 1st Defendant was a good client until when he defaulted. **PW1** told the court that as of the year 2020 he was not aware of the value of **Exh.P.20**.

During re-examination, **PW1** told the Court that Exh.P15 was prepared as the 1st Defendant had loans (post import loans) which he had failed to pay and thus applied for the restructuring of his loans. According to **PW1**, there are two stages that must be accomplished before a restructuring takes place. He stated that, the first step is one that goes with a request or an application since restructuring is done at the request of the client

depending on his ability to pay. The 1st Defendant had requested that the **USD** loans be converted to **TZS.**

PW1 told the Court that, according to their banking procedure a credit committee must approve such application and once approved the documents are drawn and signed by the parties. This is what took place. The second step was for the two parties to engage and agree on the exchange rate to be used.

PW1 told the Court while being re-examined that, they communicated with the 1st Defendant over the phone regarding that stage and the rate proposed by the Plaintiff was rejected. He stated therefore, that, due to such a reason, **Exh.P.15** did not achieve its intended purpose. **PW1** denied that the Plaintiff Bank had received reports that Mr Manji's businesses were in troubles, though acknowledged that the Plaintiff's officers visited him when he was hospitalized. PW1 further stated that the visit was due to the fact that Mr Manji was their client and they had wanted to remind him of his obligations.

At the closure of the Plaintiff's case **PW1** requested the Court to enter judgement in favour of the Plaintiff on account of his testimony.

On 24th November 2020, the learned counsels for the parties appeared before me with a view to proceed with the hearing of the Defence case. On that particular day, Mr Maka informed the Court that he did not have a witness to testify in Court for the reason that the expected witness, one Deus Luchamila, had been

employed by another employer who is outside Dar-es-Salaam. Consequently, Mr Maka prayed, under Rule 56 (2) of the *High Court (Commercial Division) Procedure Rules, 2012 (as amended),* to adopt the witness statement filed in this Court on 06th November 2019.

Mr Mang'ena who appeared for the Plaintiff did not object to the prayer by Mr Maka. However, he informed the Court that, since the 2nd, 3rd, 5th, 6th and 7th Defendants did not file witness statements, it hould be made clear to the Court that they have failed to contradict the Plaintiff's case and, thus, have approved it.

This Court made an order granting the prayer to have the Defence witness statement adopted under Rule 56 (2) of the *High Court (Commercial Division) Procedure Rules, 2012 (as amended)*. However, as provided for under sub-rule (3) of the said Rule, the witness statement will be accorded a lesser weight.

I have looked at the particular witness statement. While one hand it admits that the 1st Defendant did took a loan from the Plaintiff, it, as well, states that the 1st Defendant has been servicing the loan. Further, that, the claims are overly exaggerated and the 1st Defendant is ready to service correct outstanding loan.

Having adopted that witness statement, the Defence case came to an end and, the parties prayed to file their final submissions. However, it was only the Plaintiff's counsel who filed final submissions. I will

consider the evidence available and the submissions before I come to my verdict on this suit.

As I had indicated earlier herein above, this Court framed a total of six (6) issues for determination. I will start with the first issue which was: ***whether or not the Defendants are in breach of the terms and conditions of the loan facilities extended to the 1st Defendant by the Plaintiff.***

It is trite law that the strength of any case relies on the evidence adduced before the Court. With that in mind, however, I am also equally aware of the well settled principle that a plaintiff's case must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. That has so far remained to be the law. In the instant case at hand, the Plaintiff, during the hearing, called one witness and submitted a total of **twenty (20) exhibits** as documentary evidence relied upon by the Plaintiff. All these were admitted into evidence.

Looking at the evidence availed to this Court, both oral and documentary; it is undisputed, as per **Exh. P-1-(a)** and **Exh.P-1-(b)** and **Exh.P-2**, that, the 1st Defendant obtained credit facility from the Plaintiff. It is also undisputed that the loan was secured by the rest of the Defendants by various means as per **Exhibits P-3** to **Exh.P-7, as well as Exh. P-20.**

In the testimony offered by **PW-1**, the 1st Defendant failed to repay the loan and the Guarantors did not come to the aid of the 1st Defendant despite being notified by the Plaintiff. In particular, the uncontroverted evidence of the **PW-1** which is supported by **Exh. P-8 to Exh.P-14** is to the effect that, the 1st Defendant failed to pay the outstanding balances and agreed interest within the prescribed time, and, operated the loan accounts in excess of agreed limits, leaving an outstanding liability of **TZS 25,090,117,083.64**, and **USD 5,087,403.91** for the overdraft facility and post import loan respectively, as of 6th September 2017.

The above evidence clearly tells me that there was already a breach of the terms and conditions of the loan facilities extended to the 1st Defendant by the Plaintiff. It was nevertheless stated by **PW-1**, and as per **Exh.P.15,** that, the situation did not scale to its ruinous end without there being attempts salvage it. In particular, it was made clear to this Court that the 1st Defendant made a request to restructure the loan and the Plaintiff was willing and accepted the 1st Defendant's request.

However, even with that restructuring the 1st Defendant was unable to live to the terms as agreed, hence the Plaintiff's decision to issue a "***Call-Off-Letter***", **Exh.P-16**. This was followed by notices of default (**Exh.P-17 and Exh.P-18**) all of which were issued to all defendants as Guarantors of the 1st

Defendant, and which notices were not responded to despite the fact that the 2nd and 4th Defendants has personally guaranteed to indemnify the Plaintiff for all resulting, costs or expenses or losses should the 1st Defendant default in repaying the loans.

With all such evidence, no one can deny that there Defendants were in default, and, hence, in breach of the terms and conditions of the loan facilities extended to the 1st Defendant by the Plaintiff. It is crucial to note that in any sort of loan advanced to a borrower, timely payment of the principal sum and its interest is at the core of the lender's expectations.

Consequently, and, as once stated by this Court in the case of **First National Bank of Tanzania Limited v Josic Company Limited & 2 Others, Commercial Case No. 16 of 2019 (unreported)**, failure to repay the loan, amounts to an express breach of the loan agreement. The first issue is thus answered in the affirmative.

The above confirmation of the 1st issue gives room to consideration of the *second issue which is*: **Whether or not the amount of the money being claimed by the Plaintiff is exaggerated and if so, to what extent.**

According to the single Witness Statement filed in this Court in respect of the 1st and 4th Defendants' case,

the Witness stated that the Plaintiff's is overly exaggerated.

Equally, in their defence, the 1st and 4th Defendants have alleged that the claims are exaggerated. As a matter of principle, he who alleges must prove and failure to do so will mean that an alleged fact did not happen. This was emphasised in the cases of **Anthony M Masanga v Penina (Mama Ngesi) and Another, Civil Appeal No. 118 of 2014 (unreported)** and **Barelia Karangirangi v Asterai Nyalwambwa, Civil Appeal No.237 of 2017 (unreported).**

In those cases, the Court of Appeal cited with approval the case of **In Re B [2008] UKHL 35**, where Lord Hoffman stated as follows:

> *"If a legal rule requires a fact to be proved (a fact in issue), judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates in a binary system in which the only values are 0 or 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is*

returned to and the fact is treated as having happened. "

In the instant case at hand, although the 1st and 4th Defendants have raised the allegation that the Plaintiff exaggerated the claims, they have totally failed to adduce any evidence to support their assertions. Besides, neither of them was able to adduced evidence to contradict the bank statements admitted in this Court as **Exh.P8 to Exh.P.14**. As correctly submitted by the Plaintiff, if at all there was an exaggeration of the claim, that act would have amounted to fraud worth reporting to the police.

This Court, in the case of **Maxima Clearing & Forwarding Ltd v National Microfinance Bank PLC, Commercial Case No.123 of 2017 (unreported)**, once stated that, fraud being a criminal act, no prudent customer of any bank would risk losing huge amounts of money from his accounts without reporting such matter to the police for the carrying out a thorough investigation. See also **National Microfinance Bank PLC vs Delphina Ikanda Mama, Civil Appeal No.149 of 2017 (unreported).**

Essentially, it is trite and, indeed, obligatory on the part of defendants, to specifically deal with each allegation in the plaint and, when the defendants deny any such fact; they must not do so evasively or give out omnibus statements, but must sufficiently answer all allegations with points of substance. In other words, it is

never sufficient for a defendant to deny generally the grounds alleged by the plaintiff but he must be specific with each allegation of fact.

In view of the above, the second issue, which is: *whether or not the amount of the money being claimed by the Plaintiff is exaggerated and if so, to what extent*, is responded to in the negative. That gives room for consideration of the 3rd and 4th issues: ***whether there is any justification for the Defendants' failure to perform the loan facilities in the manner and terms agreed*** and ***whether the Plaintiff is in any way to blame for the Defendant's failure to perform their obligation under the loan facilities.***

These two issues are somehow similar and they are straightforward issues. It is clear from the evidence availed to the Court that the defendants did not repay the loans as agreed. They have neither stated whether they partly paid and what amount was paid and what was indeed the true outstanding balance. Besides, there is no any justification or proof whatsoever adduced implicating the Plaintiff as the party to blame for the Defendants failure to repay the loans. In view of that, the third and the fourth issues are answered in the negative.

The fifth issue was: ***whether the Defendants had paid the claimed amount of money, and, if any, how much and to what extent.*** This issue is equally responded to in the negative since no evidence has been adduced to contradict the Plaintiff's claims. So

far, **Exhibits P-8 to Exh P-14** have not been contradicted and, consequently, on the balance of probabilities, the Plaintiff's claims stand proved.

The final issue to address is: to what reliefs are the parties entitled. It is clear that the 1st Defendant was a borrower and the rest were guarantors. As guarantors they ought to have discharged their obligations as well having been notified of the default as evidenced by **Exh.P-17, 18 and 19**. It is trite that the rationale behind the idea of a guarantee is that, the guarantor undertakes to answer to a creditor in the event that the principal debtor fails to pay the debt. **PW-1** stated that the notices sent to the guarantors were not heeded to.

In the circumstances of this case, therefore, this Court makes a finding that the Plaintiff has proved its case to the required standards. Consequently, the Court decides in favour of the Plaintiff. That being said, the Plaintiff is entitled to reliefs which this Court proceeds to grant as follows, that:

(i) This Court hereby declares that, the Defendants are in breach of the agreed terms and conditions governing the loan facilities advanced to them by the Plaintiff;

(ii) Following the breach of the loan facilities, the Plaintiff is entitled, and the Defendants are jointly and severally ordered to Pay, to the Plaintiff, a sum of **TZS 25,090, 117,083.64/=** and a total of **US$ 17,697,729.54**, being the outstanding

principal amount under the loan facilities as of 6th September 2017.

(iii) The Defendants are hereby ordered to jointly and severally Pay to the Plaintiff an interest on (ii) above at the rate 17% from 6th September 2017 to the date of judgement;

(iv) The Defendants are hereby ordered to jointly and severally pay to the Plaintiff interest on the decretal sums at Court rate of 7% per annum, from the date of judgement to the date of satisfaction of the decree.

(v) That, the Costs of the suit shall be borne by the Defendants.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 22nd February, 2021.

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DEO JOHN NANGELA
JUDGE,
High Court of the United Republic of Tanzania
(Commercial Division)
22 / 02 /2021