

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

COMMERCIAL CASE NO.23 OF 2020

STANBIC TANZANIA LIMITEDPLAINTIFF

VERSUS

**DEOGRATIAS BONIPHACE
KIGALU.....RESPONDENT**

DEFAULT JUDGEMENT

Date of Last Order: 10/ 12/2020

Date of Judgement: 26/02/2021

NANGELA, J.:

This is a default judgement. It arises from a suit filed in this Court by the Plaintiff on the 19th of March 2019. In that suit the Plaintiff prays for judgement and decree against the Defendant as follows, that the Defendant be ordered to pay the Plaintiff:

- 1. Payment of **TZS 79, 195,296.59**
to be paid to the defendant being
the outstanding loan amount and
interest thereon.*

2. *Interest on the sum stated in No.1 above at the rate of 25% per annum from the date of filing to the date of judgment.*
3. *Interest on the decretal amount at the court's rate of 7% from the date of Judgement to the date of payment.*
4. *Costs of the suit be paid for by the Defendant*
5. *General damages to be assessed by the Court.*
6. *Any other relief that this honourable Court may deem just to grant in favour of the Plaintiff.*

I will briefly narrate the facts constituting this case. The Plaintiff, a limited liability company licensed to offer banking services in line with the requirements of the Banking and Financial Institutions Act, No.5 of 2006 and other applicable laws, claims from the defendant a total of **TZS 79, 195,296.59** being the outstanding loan amount and interest thereon.

The loan was a result of an agreement executed between the Plaintiff and the Defendant 30th June 2017 in which the Plaintiff extended a personal loan amounting to TZS 60,000,000/= repayable within a 60months' period. However,

having received the monies, the Defendant went on default resulting into an accumulated amount of **TZS 79, 195,296.59** being the principal amount plus interest thereon.

The Defendant's failure to service the loan forced the Plaintiff to issue a demand letter to him, dated 28th June 2019. Despite such a letter, the Defendant failed, neglected or otherwise refused to repay the loan hence this suit.

When this case was called on for both mention and hearing, the Defendant never showed up. A summons was also served on the defendant by way of a substituted service to appear and defend the suit but no response was obtained from the Defendant.

On 27th October 2020, Mr Evans Tumwesigye who appeared as an advocate for the Plaintiff applied to the Court to proceed by way of filing Form No.1 and prove his client's case *ex-parte*. He made his prayers under Rule 22 (1) of the High Court Commercial Division Procedure Rules, 2012 (as amended in 2019).

This Court granted the prayer and, on 10th December 2020, having ascertained that the Plaintiff complied with its earlier order of filing Form

No.1 with its requisite annexures, this Court fixed a date for this judgement. The Form No.1 was accompanied by two affidavits, one of being an affidavit of proof of the claim and the other being an affidavit regarding authenticity of e-mail relied on by the deponent of the affidavit of proof of the claim.

I have looked at the affidavit regarding proof of the claims and the annexures **CRB-1, CRB-2-** and **CRB-3** attached to the affidavit. I have also looked at their originals which were availed to this Court. The issue which I am called upon to determine in this case is *whether the Plaintiff is entitled to the prayers and reliefs sought in Form No.1 filed in this Court.*

The filing of Form No. 1, seeking for a default judgement in favour of the plaintiff, is a matter of exercise of a statutory right that is open to the Plaintiff in a case where the Defendant has declined to defend his case. Such particular right is provided for under Rule 22 (1) of the *High Court (Commercial Division) Procedure Rules, 2012 (as amended, 2019)*. The said rule 22(1) provides as follows:

"(1) Where any party required to file written statement of defence fails to do so within the specified period or where such period has been extended in accordance with sub-rule (2) of rule 20, within the period of such extension, the Court may, upon proof of service and on application by the plaintiff in Form No.1 set out in the Schedule to these Rules accompanied by an affidavit in proof of the claim, enter judgment in favour of the plaintiff."

As it has been demonstrated herein above, the Plaintiff did file Form No.1 in this Court applying for a default judgement following the failure by the Defendant to file a written statement of defence. In this instant case at hand, the Defendant was given ample time to file his Written Statement of Defence but never showed up.

It is also on record that the Plaintiff went ahead and published the summons in *Mwananchi News Paper* dated 19th August 2020 and *Nipashe Newspaper* dated 18th August 2020. Even so the

Defendant did not file his defence nor appear in Court. As stated earlier, it is also clear that the Plaintiff has filed affidavits to prove the claims.

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.

That being said and, as regards the case at hand, I am satisfied that the Defendant defaulted in repaying the loan as per the agreement and the Plaintiff is entitled to be repaid its monies advanced to the Defendant. The issue I raised herein earlier, therefore, is responded to in the affirmative.

In view of the above reasoning, and, in terms of Rule 22 (1) of the *High Court (Commercial Division) Procedure Rules, 2012 (as amended, 2019)*; this Court do hereby enters judgement in

default and decree in favour of the Plaintiff and states as follows:

1. That, the Defendant is hereby ordered to pay to the Plaintiff a sum of **TZS 79, 195,296.59** being the outstanding loan amount and interest thereon.
2. That, the Defendant is ordered to pay Interest on the above sum at a rate of 17% per annum, from the date of filing of this case i.e., **19th March 2019**, to the date of this default judgement (i.e., **26/02/2021**).
3. That, the Defendant is ordered to pay Interest on decretal amount at a rate of 7% from the date of this default judgement till when the decree is fully satisfied;
4. That, the Defendant is ordered to pay to the Plaintiff all Costs pertaining to this suit.

Further orders:

5. That, Since the Plaintiff's supporting affidavit does not offer sufficient

proof regarding the prayer for general damages suffered, I decline to award general damages.

6. That, in terms of Rule 22 (2) (a) and (b) *High Court (Commercial Division) Procedure Rules, 2012 (as amended, 2019)*, the Court makes further orders that the decree emanating from this suit shall not be executed unless the decree holder has, within a period of ten (10) days from the date of this default judgement, publish a copy of it (the decree) in at least two (2) widely circulated newspapers in the country and after a period of twenty one days (21), from the date of expiry of the said ten (10) days, has elapsed.

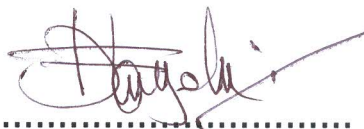
It is so ordered.

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)
26 / 02 / 2021

Ex-parte Judgement, delivered on this 26th day of February 2021, in the presence of the Advocate for the Plaintiff, and in the absence of the Defendant.



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DEO JOHN NANGELA
JUDGE,
High Court of the United Republic of
Tanzania (Commercial Division)
26 / 02 / 2021