

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

COMMERCIAL CASE NO. 99 OF 2020

CRDB BANK PLCPLAINTIFF


VERSUS

MAIGE EZEKIEL MAGOLYODEFENDANT

DEFAULT JUDGMENT

K. T. R. Mteule, J

28/7/2021 & 10/8/2021


Under Order XXXV of the Civil Procedure Code, Cap 33 of R.E 2019, the Plaintiff, CRDB PLC sued the Defendant, Maige Ezekiel Magolyo under summary procedure claiming for payment of a total of Tanzania Shillings One Hundred Eighty Four Million Six Hundred Eighty Three Thousand Eight Hundred Eighty Seven and Twenty Two Cents (TZS 184,683,887.22) as at 30th August 2020 plus interest until the date of full payment. The claim is a Bank credit facility which was advanced to the Defendant by a way of loan facility. It was supposed to have been paid with interest of 18 percent per annum for a period of 120 months. The Plaintiff prays for judgment and decree against the Defendant as follows: 

- a) Payment of the principal sum of Tanzania Shillings One Hundred Eighty Four Million Six Hundred Eighty Three Thousand Eight Hundred Eighty Seven and Twenty Two Cents (i.e. TZS., 184,683,887.22), all accruing interest at 18% and penalties at 3% from 24 September 2020 to the date of full payment.
- b) Payment of Commercial interest at 21% per annum on (a) above from 30th August, 2020 to the date of full payment.
- c) Payment of General damages to the tune of Tanzania Shillings One Hundred Million (i.e. TZS 100,000,000.00).
- d) Payment of interest on decretal sum at the rate of 12%.
- e) Costs of this suit.
- f) Any other relief(s) as the court may deem fit and just.

The facts of this case as presented through the plaint are that by virtue of a loan facility letter, the plaintiff advanced a credit facility to Defendant to the tune of Tanzania Shillings Two Hundred Ninety Six Million Nine Hundred Seventy Nine Thousand five Hundred Seventy Five (i.e. TZS. 296,379,575.00) by a way of mortgage. It is further stated in the plaint that, the Defendant after having failed to repay the aforesaid facilities as per the agreed terms and conditions, he made a partial payment of TZS. 100,000,000.00) for the aforesaid loan and applied for restructuring of the

facility to reduce the monthly instalments to TZS.3,095,150.55 per month instead of TZS. 4,772,959.03 the request which was approved by the Plaintiff who issued another facility letter to the Defendant to that effect. Under the rescheduled credit facility letter, it was agreed that the Defendant will repay the said loan facility on monthly instalments basis at the interest of 18% per annum through monthly deductions from the Defendant's account, which was Tanzanian Shillings Three Million Ninety five Thousand One Hundred Fifty Cents fifty Five (i.e. TZS.3,095,150.55) Only for one hundred and eighty months (120) months.


According to the plaint the facility granted was secured by inter alia mortgage over plot No. 2002, Block 'E', comprised under CT. No. 111151/2, located at Mbezi area, Kinondoni municipality, Dar es Salaam.

It is further stated in the plaint that the Defendant has failed and or refused to adhere to the terms and conditions of the said credit facility letter by not remitting the monthly instalments as agreed such that by August, 2020 the Defendant's loan account was in arrears to the tune of Tanzania Shillings One Hundred Eighty Four Million Six Hundred Eighty Three Thousand Eight Hundred Eighty Seven and Cents Twenty Two (i.e. TZS. 184,683,887.22). 

It is further stated in the plaint that the plaintiff has on several occasions demanded repayment of the said facility with interest from the Defendant who has either refused/neglected or failed to heed to the said demands.

The plaint having been filed, and after some processes in the court proceedings the Defendant filed his Written Statement of Defence on 21st May 2021. The Written Statement of Defence was challenged by the plaintiff by a way of Preliminary objection for being filed out of time. The Preliminary Objection was upheld in a Ruling delivered by Hon. Butamo Philip, J on 2/7/2021 where the written statement of defence was struck out.

The Written Statement of Defence having been struck out rendering the plaint not contested by any defence from the defendant, the counsel for the plaintiff prayed for default judgment by filling Form No. 1 pursuant to Rule 22 (1) of the High Court (Commercial Division) Procedure Rules, GN 250 of 2012 (hereinafter referred to as "the Rules"), which provides:

"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 9, within the period of such extension, the Court shall upon proof of service and on application by the plaintiff in Form No. 1 set out in the schedule to these Rules enter judgment in favour of the plaintiff." 

It is apparent that the defendant was duly served and that the Written Statement of Defence filed by the Defendant was struck out by the court. It is obvious in Law that when a matter is struck out, it is considered as if it has never been there. In this respect, the plaint remains uncontested for having no Written Statement of Defence filed to defend that suit. The Written Statement of Defence was struck out on 2/7/2021 and to this moment, the court does not have in record any pending application indicating Defendant's effort to take necessary steps to refile the defence. In the circumstances, Under Rule 22 (1) of the Rules the plaintiff is entitled to default judgment and decree against the defendant.

Therefore, Default judgment is hereby entered, and the plaintiff is entitled to the following reliefs:

- a) Payment of the principal sum of Tanzania Shillings One Hundred Eighty Four Million Six Hundred Eighty Three Thousand Eight Hundred Eighty Seven and Cents Twenty Two (TZS 184,683,887.22), all accruing interest at 18% and penalties at 3% from 24 September 2020 to the date of full payment.
- b) Payment of Commercial interest at 21% per annum on (a) above from 30th August, 2020 to the date of full payment. *At*

- c) Payment of General damages to the tune of Tanzania Shillings One Hundred Million (TZS 100,000,000.00).
- d) Payment of interest on decretal sum at the rate of 12%.
- e) Costs of this suit.
- f) Any other relief(s) as the court may deem fit and just.

It is further ordered that the execution of this decree should comply with the provision of Rule 22 (2) (a) and (b) of the Rules. The decree awarded herein shall not be executed unless the decree holder has, within a period of ten (10) days from the date of this judgment, published a copy of the decree in at least two (2) newspapers of wide circulation and after a period of twenty-one (21) days from the date of expiry of the said period of ten (10) days. It is so ordered.

Dated at DAR ES SALAAM this 10th Day of August 2021.



KATARINA T. R. MTEULE
JUDGE
10/8/2021

Court:

Judgment delivered in the presence of Catherine Tibasana Advocate for the Plaintiff and in the absence of Plaintiff.



KATARINA T. R. MTEULE
JUDGE
10/8/2021