IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: LEVIRA, J.A., GALEBA, J.A. And ISMAIL, J.A.)

CIVIL APPEAL NO. 295 OF 2021

TWIGA FEEDS LIMITED ..... 1ST APPELLANT

ABCON CHEMICAL LIMITED ..... 2ND APPELLANT

VERSUS

NATIONAL INVESTMENT PLC ..... RESPONDENT

[Appeal from the Decision of the High Court of Tanzania, Dar es Salaam Sub Registry at Dar es salaam]

(Luvanda, J.)

dated the 23rd day of June, 2021

in

Land Case No. 29 of 2018

.....

JUDGMENT OF THE COURT

11th March & 15th April, 2024

GALEBA, J.A.:

In this appeal, the appellants are sister companies. They are both owned by common shareholders and directors. One of the officers, is Dr. Herman Moshi (PW1). In the transaction leading to the dispute that eventually resulted in this appeal, the first appellant was an investment company, whereas the second appellant was the owner of Plot No. 10 Mbezi

Industrial Area, with a Certificate of Occupancy No. 35515 (the mortgaged property).

The respondent is also an investment company, and its involvement in this appeal, may be prefaced by the following facts. On 27th January, 2001, the first appellant borrowed a substantial amount of money from Social Action Trust Fund (SATF), which is not a party to this appeal. The financing was secured by the mortgaged property. Subsequently, the first appellant defaulted to honour its financial commitments to SATF, such that in 2007, the latter threatened liquidation measures to make good the first appellant's indebtedness by seeking to dispose of the mortgaged property. In order to avert sale of the property, on 18th October, 2007, at the instance of the first appellant, a tripartite agreement (exhibit P3) was executed. It was between the first appellant, the respondent and SATF. The relevant substance of exhibit P3 is that the respondent agreed to pay TZS. 580,000,000.00, which was the first appellant's debt to SATF. According to that agreement, upon the respondent's settlement of that debt, SATF was to withdraw all recovery measures targeting the mortgaged property and handover the certificate of occupancy to the respondent. Upon receipt of the money, SATF handed over

the said certificate to the respondent, as agreed. With that agreement, however, it was not explicit as to the reciprocal economic or business benefit of the respondent upon her settlement of the first appellant's debt with SATF.

It later transpired that, all did not go well between the appellants and the respondent. On 11th May, 2018, the respondent served the first appellant with a statutory notice (exhibit P9), to sell the mortgaged land in order to recover its TZS. 580,000,000.00 that had been paid to SATF on behalf of the first appellant. Noting the real threat imposed in terms of the notice, the appellants approached the High Court and instituted Land Case No. 29 of 2018, a law suit from which this appeal proceeds. In that case, the appellants prayed for, among other prayers; **one**, a declaration that the money that was paid to SATF was the respondent's contribution to establish a university. **Two**, a mortgage over the mortgaged property is a nullity and; **three,** a declaration that interests and penalties that might have arisen from the money that was advanced to SATF, are a nullity.

In reply, the respondent lodged a written statement of defence strongly disputing the appellants' allegations and raised a counter claim,

praying for, among other reliefs that; **first,** an order for repossession and sale of the mortgaged property for settlement of the owed money, or; **second**, payment of TZS. 2,403,123,777.77 plus TZS. 15,348,550.00, being the unpaid balance as per the agreement of 30th November, 2009 (exhibit P9), and; **third**, interest at 18% per annum on the claimed amounts.

After hearing of the case on merits, the trial High Court dismissed the main suit and allowed the counter claim, ordering that the respondent was entitled to recover from the appellants jointly and severally; **(i)**, TZS. 580,000,000.00; **(ii),** interest on the principal amount at 18% per annum from 2009 to the date of filing the suit, and at 7% per annum from the date of judgment to final settlement of the decreed amount and; **(iii),** costs of the suit. This decision aggrieved the appellants, hence the present appeal.

In this appeal, the appellants initially raised 5 grounds and during the hearing they indicated that they had 4 more grounds which we permitted them to argue as additional grounds. Going through the grounds raised, we think the entire appeal may be disposed of, by grouping the grounds of appeal in three clusters.

The **first** is that it was erroneous for the trial court to hold that, the money paid to SATF was a loan instead of the respondent's contribution to the University Project. This complaint runs through grounds 1, 3, 4 and 5 and additional grounds 6 and 8. The **second** complaint is that the High Court erred in holding that the mortgage was not fraudulently procured and created, contrary to law. That was as per ground 2 and additional ground 7. The **third** complaint based on additional ground 9 was that, the trial court erred in holding that the respondent was entitled to interest while she was not a financial institution.

At the hearing of this appeal, the appellants were represented by Messrs. Tazan Mwaiteleke and Goodchance Lyimo, learned advocates, whereas the respondent had the services of Mr. Kevin Kidifu, also learned advocate. Learned counsel, adopted their written submissions in support of, and against the appeal based on the grounds contained in the memorandum of appeal and the additional grounds of appeal.

We will start with the first complaint. According to the appellants, exhibits P1, P2 and P6 constitute a bundle of facts conclusively proving that,

the TZS. 580,000,000.00 was the respondent's contribution to the University Project.

The appellants submitted that the loan agreement, exhibit D1 at page 135 of the record of appeal, is so vague and seriously wanting because, the amount of the loan is not stated in that document and it has no title "LOAN AGREEMENT". According to the appellants, exhibit D1 does not show that parties to it, one was a lender and another a borrower, and the alleged agreement has no terms for parties to abide by. Counsel for the appellants contended further that, the reference to making good an amount of Tshs. 10,000,000.00 is not defined for parties to know what that meant in the agreement.

In arguing another offshoot of the first complaint, Mr. Lyimo submitted that the counter claim was not proved because, **first**, it offended Order VII rule (1) (b) and (c) of the Civil Procedure Code (the CPC). **Second**, issues for determination of the main suit and for resolution of the counter claim were not differentiated and; **third,** the evidence that the first appellant paid TZS. 30,000,000.00 as part payment of the loan was not proved.

In reply, the respondent submitted that the trial court was right to rely on the mortgage deed, the loan agreement and the second appellant's content of the board resolution, which are exhibits P10, D1 and D9 respectively, to hold that indeed the money that was advanced by the respondent was a loan and not a contribution to the University Project. Further the respondent submitted that, the demand letter, exhibit D4 and an apologetic reply constituted in exhibit D5 at page 139 of the record of appeal, constitute another evidence that the money advanced to the first appellant was a loan secured by the mortgaged property, and not otherwise. As for the allegations that there was a joint venture agreement, the respondent's position was that exhibits P2, P3, P4 and P6 cannot be said to constitute a legally binding joint venture agreement or any credible commitment of the respondent to invest in the University Project.

As for the submission that exhibit D1 is not a valid loan agreement, counsel for the respondent referred the Court to sections 13 and 14 (1) of the Law of Contract Act (the LCA), in that the document was executed with free consent of the second appellant which cannot be denied. Reference was also made to the case of **Simon Kichele Chacha v. Aveline M. Kilawe**,

Civil Appeal No. 160 of 2018 (unreported), impressing on us to apply the doctrine of sanctity of contract, in this case.

As for the counter claim, Mr. Kidifu submitted in reply; **first**, that it was not necessary to indicate parties in the counter claim where parties in the main suit are the same as in the counter claim; **second,** the issues that were framed were for both the main suit and the counter claim and it was not necessary to indicate which ones related to the main suit and which ones related to the counter claim. As for the question of TZS. 30,000,000.00, the same was duly proved, he contended.

As indicated above, the appellants approached the argument from three fronts, and we will deal with all of them, as appropriate. The first was that exhibits P1, P2 and P6 demonstrated that there was a University Project to be implemented jointly by the first appellant and the respondent.

In this respect, on 14th November, 2007, the respondent wrote a letter, exhibit P2 to the first appellant, in the following terms extracted therefrom:

> *"As you are aware, NICOL has commenced liquidating the debt of Twiga Feeds with SATF.* ***It is***

therefore pertinent to request from you a Business Plan which wili be implemented without delay. NICOL is investing in this venture on the basis of an ongoing concern..."
[Emphasis added]

Admittedly, the above letter was intimating an intention of seeking to invest in the university project as a going concern. On the same day, exhibit P1 was written in response to the above letter as follows:

"With regard to the ***Implementation of the University Business Plan,*** *we have gone through several phases during the twelve months recess and would be very keen to brief investors on the various options, now open, so that the most lucrative avenues can be determined, prioritized and applied for speedy return on investment. However, we append with this letter* ***a summary of the ten-year proposal*** *just to provide food for thought as we approach the project implementation with vigour."*

[Emphasis added]

Exhibit P6, a letter from the first appellant to the respondent states in part:

> *"...Other* ***terms in the MOU*** *were Twiga to surrender their buildings worth an estimated Tsh. 2bn/= and supply the intellectual capital for university establishment; NICOL to provide cash injection to their corresponding share with TWIGA assets. Part of the NICOL cash to defray encumbrances on Twiga property then Tsh. 400m/= held by SATF.* ***Initially a proposal was approved by NICOL*** *to invest US dollars 1.5m within six months as a first phase, which included the SATF debt of USD 300 thousand. There would be several such phases and it was widely anticipated that NICOL would invest approximately US dollars 5m by the stage where the university was running with a 7,525-student capacity."*
>
> [Emphasis added]

The only witness for the appellants' case, on the above point, was PW1, who at page 54 to 55 stated as follows:

"After this money was paid (TZS. 580,000,000.00), we wrote letters to each other between Twiga and NICOL. ***A process for joint venture****, Twiga wrote a letter to NICOL explaining that activities can commence and made a proposal on how to cooperate. NICOL also wrote a letter explaining that SATF had accomplished, now we should move forward. NICOL wrote a letter to Twiga* ***asking about business plan.*** *NICOL wanted us to prepare documents for that University, because there was no more monetary contribution..."*

[Emphasis added]

From the above documentary and oral evidence on the part of the appellants, one notes a couple of points; **first**, that there was supposed to be supplied a Business Plan to the respondent. **Second**, there was supposed to be supplied to the respondent a summary of a ten-year proposal for the University Project. **Third,** there was a Memorandum of Understanding (the MOU), and **fourth,** there was supposedly a joint venture document. Although those documents were the documents necessary to support the appellants' case, none was tendered.

Clearly, we are settled in our mind that, no university expected to run at 7,525 student capacity, or any university worthy the status, could possibly be established based on correspondences communicating the bare minimum and skeletal information, and even so, predominantly from one side of the prospective partnership to establish it. Thus, the cumulative effect of a complete absence of all the documents referred to above, supports a strong affirmation that, indeed, there was no sufficient proof to demonstrate that the respondent was a partner in "the university project" with the first appellant.

The second front from which the High Court's decision was challenged, was that exhibit D1, was not analysed properly and that, had that been done, the court would have found that the document was not, in law, a loan agreement. In addressing that point, and for avoidance of any speculations, we will reproduce the document hereunder. It states:

> ***"AGREEMENT BETWEEN NICOL AND TWIGA FEEDS LTD FOR THE SETTLEMENT OF TSHS 580,000,000/=***

The amount owing to NICOL will be repaid by Twiga Feeds Ltd plus interest at the rate of 18% p. a. effective from the date of settlement with SATF, as follows:

1. *On signing, an amount of 10m/= to be made good.*
2. *From March 2010 Shs. 10m to be paid monthly until the amount is exhausted on worst case scenario.*
3. *Payment to be hastened if a debt liquidation loan currently under negotiation can be secured.*
4. *Payment to be further hastened if the new medical products dealership consummates.*

   In both 3 and 4 it is hoped that the amount will be cleared within 12 months.

   Dated this 30th day of November, 2009 as witnessed below:

Sgd.	*Sgd.*
Ibrahim M. Kaduma	*Dr. Herman Moshi*
For, National Investments Co. Ltd.	*For Twiga Feeds Ltd."*

This is the document that Mr. Mwaiteleke argued that, it had no useful substance. Although that was counsel for the first appellant's argument, there are three pieces of evidence on record which defeat his contention.

The **first** is a letter from the second appellant (exhibit D9) at page 150 of the record of appeal, with a clear binding commitment on the said appellant. We let it speak for itself:

> ***"ABCON CHEMICALS LTD***
> ***P. O. Box 60098, Tel 2628161, fax 2628164 DAR ES SALAAM***
>
> *30/11/2009*
>
> *The Managing Director NICOL,*
> *Dar es Salaam*
> *Dear Madam,*
>
> ***Board Resolution***
>
> *At the Board Meeting on 30th November, 2009, it was resolved that;*
>
> a. *Title deeds for ABCON property on* ***Plot No. 10 Mbezi Industrial Area, now in your custody, may be used as security until the amount of Tshs.***

580m/= owed by Twiga Feeds, and covered by a separate agreement, is fully recovered.

b. *In the event that default occurs in the above settlement, NICOL will have the right to use the Title to defray the balance on the owed amount.*

We will always appreciate your cooperation and assistance until this matter is duly concluded. May the Lord be Praised!!

Yours truly,

Sgd.

Dr. Herman Moshi
Managing Director."

[Emphasis added]

Admittedly, exhibit D1 is just one page and may not necessarily be a formal loan agreement with exhaustive loan terms and conditions as those found in customary banking, but we still think the contents therein communicated the parties' clear intent. In any case, the said agreement was complemented and given meaning by exhibit D9, containing the substance of the board resolution of the land owner, the second appellant. The content of the resolution as communicated to the respondent in exhibit D9,

constitutes a binding undertaking under the law. Adding credence to our position is the fact that the second appellant had handed over the certificate of occupancy to the respondent. In law, such a deposit of the title deed constituted *a lien by deposit of documents* under section 113 (5) (b) (i) and (6) of the Land Act which provides as follows:

> *"(5) Nothing in this section shall operate to prevent a borrower from offering and a lender from accepting -*
>
> *(b) a deposit of any of the following -*
>
> *(i)* ***a certificate of a granted right of occupancy****;*
>
> *(ii) to (v) N/A*
>
> *(6) The arrangement specified in paragraph (a) of subsection (5) may be referred to as an "informal mortgage"* ***and a deposit of documents specified in paragraph (b) of subsection (5) shall be known and referred to as a "lien by deposit of documents."***
>
> [Emphasis Added]

In the above circumstances, the disputed loan agreement, that is, exhibit D1, read together with exhibit D9 above, coupled with the second

appellant's act of depositing the title deed with the respondent constituted a solid and binding commitment by the first appellant to repay the loan of TZS. 580,000,000.00., and that in case of default, the second appellant offered the mortgaged property as security to make good the default.

The **second** evidence complementary to the loan agreement is contained in two letters. One is dated 22nd April, 2014, exhibit D4 from the respondent, demanding repayment of TZS. 660,000,000.00 from the first appellant, and another is a reply to it, from the latter, which is exhibit D5 contained at page 139 of the record of appeal. In responding to the clear demand of the borrowed money, in exhibit D5, the first appellant was apologetic and giving reasons why settlement of the debt had not happened. The reasons listed include failure of banks to extend any financial accommodations to her, failure to rent or sell properties that she had, and several other reasons. Finally, the first appellant requested the respondent to bear with her, as she was looking forward to more economically conducive environment. In our view, had the money not been recoverable as a loan, the first appellant would not have been that apologetic and pleading for more

time to settle the debt due. It is the clearest indication that the transaction was not aimed at the respondent investing in the University Project.

The **third** is the evidence of one Kinoni Adam Wamunza, DW1 at page 79 of the record of appeal. At that page, DW1 testified, and there was no evidence to the contrary, that the first appellant settled TZS. 30,000,000.00 as part payment to the respondent in reducing the debt burden, which lowered it to TZS. 550,000,000.00.

The last front challenging the trial court's judgment, was that the counter claim was not proved. The appellant's point was that the counter claim offended order VII rule 1 (b) and (c) of the CPC which is to the following effect:

> *"1. The plaint shall contain the following particulars:*
>
> *(b) the name, description and place of residence of the plaintiff including email address, fax number, telephone number and post code, if available;*
>
> *(c) the name, description and place of residence of the defendant including email address, fax*

number, telephone number and post code, if available, so far as they can be ascertained."

Notably, in substantive justice delivery, we agree that due consideration should be accorded to words and phrases used in a statute. Nonetheless, due concentration should be accorded to the message that the words and phrases used in a statute were enacted to convey to users. In our view, the message that the above provisions sought to communicate, is to ascertain the identity of the parties to the dispute, and to give sufficient particulars of their respective places of abode or registered office, in order to reach them with ease. In seeking to meet the above objectives, the pleadings are loud and clear. Paragraph 1 of the plaint was to the following effect:

"1. That the first and second plaintiffs are limited liability companies incorporated under the Companies Act Cap 212 R. E. 2002, carrying on business in Dar es Salaam. The address for service for the First and Second Plaintiffs for purposes of this suit is in the care of Apex Attorneys Advocates, Scouts Building, 1st Floor,

Malik Road, Upanga, P. O. Box 34674 Dar es Salaam."

Paragraphs 2 and 14 of the Written Statement of Defence which has a counter claim state as follows:

> *"1. Paragraphs 1 and 2 of the Plaint are not disputed, save for the Defendant's description which should read National Investment PLC. Further that the Defendant's address is in the care of BM Attorneys Advocates, RITA Tower, 22nd Floor, Plot No. 727/11, Makunganya Street, P. O. Box 4681 Dar es Salaam.*
>
> *14. The Defendant repeat all what is averred in the Defence and by way of Counter Claim and without prejudice to what is stated in the Defence, the Defendant's claim against the Plaintiff's jointly and severally for..."*

If, as indicated above, the purpose for enactment of Order VII rule 1 (b) and (c) of the CPC was to ensure that parties are capable of being identified and where to locate them, we do not think the spirit of the law was, at all, offended. In this case, neither the parties' respective identities

nor their addresses of service, presented any issue of contest. We thus reject the appellants' complaint on that aspect.

The other complaint was that the trial court did not separate which issues were drawn to resolve the main suit and which ones were for the counter claim. To illuminate our path in this respect, we wish to refer to Order VIII rule 12 of the CPC which provides that:

> *"12. Where a defendant has set up a counterclaim, the court may,* ***if it is of the opinion that the subject matter of the counterclaim ought for any reason to be disposed of by a separate suit****, order the counterclaim to be struck out or order it* ***to be tried separately*** *or make such other order as may be expedient."*
>
> [Emphasis added]

In our view, determination of separate issues in the main suit and in the counter claim could have been necessary if there was any reason for the court to separate the suit and the counter claim and try them one independent of the other. In this case, both the main suit and the counter claim were tried together and, there was no complaint that in doing so, the

trial court left out any issues undetermined. In the circumstances, the complaint that issues for the main case were not separated from those of the counter claim, has no basis.

Based on the above discussion, we are firm in our view and hold that, except for the fact that the debt was reduced to TZS. 550,000,000.00, grounds 1, 3, 4 and 5 in the memorandum of appeal and additional grounds 6 and 8, have no merit and we dismiss them.

Next was the complaint challenging the authenticity of the mortgage instrument executed on 30th November, 2009 (exhibit P10) as a forged document and not created according to law. The basis for the appellants' complaint was that no party from their side executed it. On this point, we can say quite briefly, that there was no semblance of evidence that was tendered to prove fraud or forgery.

The one point that we found legally useful in challenging perfection of the mortgage was by Mr. Mwaiteleke. He argued that the mortgage was not valid because the instrument creating it was not first registered with the Registrar of Companies as required by sections 96 (1) (2) and 97 (1) (d) of

the Companies Act. These sections that the learned counsel made reference to, provide as follows:

> *"96.-(1) Subject to the provisions of this Part, every charge created by a company registered in Tanzania and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator or administrator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced are delivered to or received by the Registrar for registration in the manner required by this Part within forty two days after the date of its creation.*
>
> *(2) Subsection (1) is without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section the money secured thereby shall immediately become payable.*
>
> *97.-(1) Section 96 applies to the following charges:*

(a) to (c) N/A (d) a charge on land, wherever situated, or any interest therein."

Under the above quoted provisions, it is beyond clarity that a legal charge in the form of a mortgage created by a company legally existing in Tanzania, can only be valid, if the instrument is delivered to the Registrar of Companies within forty-two days of its creation for registration. If that is not done, like in this case, for there was no evidence to that effect, the charge is void.

That is not all though. Under section 59 (1) of the Land Registration Act (the LRA), it is unlawful for the Registrar of Titles to accept and register a mortgage instrument creating a charge over land owned by a limited liability company, without ensuring that the same was first delivered to, and registered by the Registrar of Companies under section 96 (1) of the Companies Act. That section of the LRA provides as follows:

"59.-(1) Where a mortgage is created by a company registered in Tanzania or by a company incorporated outside Tanzania which has established a place of business within Tanzania, such mortgage shall not be registered under the provisions of this Act unless and

until it is proved to the satisfaction of the Registrar that it has been registered in accordance with the provisions of the Companies Act."

As there was no evidence that the mortgage was registered at the Companies Registry, by production of a Certificate of Registration of a Charge issued by the Registrar of Companies under section 102 (3) of the Companies Act, the Registrar of Titles violated section 59 (1) of the LRA, by accepting the mortgage for registration by him. That is the law, which we accord supremacy over the evidence of Waziri Masoud Mganda DW3 who testified that the mortgage was valid. Our firm decision, therefore, is that, the charge was void under section 96 (1) of the Companies Act.

For purposes of clarity, we must state that, where a charge becomes void for offending section 96 (1) of the Companies Act, the liability to pay the debt to which the charge relates, becomes immediately due, under section 96 (2) of the same Act, also quoted above. In other words, although we have stated that the mortgage was void, such a position does not absolve the borrower from her obligation to pay the money which was secured by

the mortgage. The obligation remains intact and we find the respondent's claim, in that respect, legitimate and tenable at law.

Thus, in view of that, the second complaint partly succeeds and partly fails. The complaint succeeds in that the mortgage is void for contravening section 96 (1) of the Companies Act, but the same fails as there was no proof that the mortgage was procured by fraud.

The last complaint was that, it was illegal for the first appellant to charge interest while she was not a licensed financial institution. In supporting his point, the learned counsel for the appellants referred us to the High Court's decision in the case of **Ulf Nilson v. Dr. Tito Mziray Andrew,** Land Case No. 66 of 2007 (unreported). In reply to this complaint, Mr. Kidifu submitted that the issue of interest was part of the agreement, so it cannot be denied at this stage. He relied on the case of **Simon Kichele Chacha v. Aveline M. Kilawe,** Civil Appeal No. 160 of 2018 (unreported), and moved the Court to dismiss the appellants' complaint.

On our part, we will deal with the complaint in the context of the Banking and Financial Institutions Act, (the BFIA) and the Microfinance Act

of 2018 (the MFA), the major statutes regulating banking business in Tanzania. Section 6 (1) of the BFIA, provides that:

> *"6.–(1) A person may not engage in the banking business or otherwise accept deposits from the general public unless that person has a licence issued by the Bank in accordance with the provisions of this Part."*

According to section 3 of the BFIA, banking business entails the following:

> *"banking business" means the business of receiving funds from the general public through the acceptance of deposits payable upon demand or after a fixed period or after notice, or any similar operation through the frequent sale or placement of bonds, certificates, notes or other securities, and to use such funds, in whole or in part, for loans or investments for the account of and at the risk of the person doing such business."*

Similarly, the substance of sections 3 and 6 (1) of the BFIA are mirrored by sections 4 (3) and 16 (1) of the MFA, which provide as follows:

"16.-(1) Without prejudice to the provisions of section 28 of this Act, a person shall not carry out any microfinance business, unless such person is licensed in accordance with the provisions of this Act.

4.-(3) Without prejudice to the generality of sub section (2), the microfinance business undertaken under this Act shall include-

(a) receiving money, by way of deposits or interest on deposits or borrowing and which is lent to members or clients;

(b) accepting savings and providing loans or other credit facilities to micro or small enterprises and low-income households or individuals;

(c) providing micro credit, micro savings, microinsurance, micro-leasing, micro-pension and micro-housing finance;

(d) transfer and payment services, including digital microfinance services;

(e) undertaking commodity microfinance business including provision of commodity loans;

(f) providing financial education; and

(g) any other related service as may be prescribed in the regulations."

What we gather from the above provisions of the BFIA and of the MFA, is that, what is outlawed is the carrying out of the business of banking and microfinance, which includes mobilization of deposits and extending credits to the public, without a licence issued by the Bank of Tanzania.

In the case before us, neither the banking, nor the microfinance business was proved to have been carried out by the respondent. In fact, the respondent advanced the money to SATF on behalf of the first appellant in order to save the face of the second appellant from the shame of losing the mortgaged property, which would be disposed of by SATF. In this case, what was necessary was the meeting of the minds of the parties to the contract and due compliance to their agreement under section 37 (1) of the LCA. In this regard, the Court's decisions in **Abualy Alibhai Azizi v. Batia Brother Ltd,** (2000) T.L.R. 289 and **Simon Kichele Chacha** (supra), are relevant.

As we wind up this subject on interest, which is as misconstrued as it is misunderstood, we wish to observe that, money, a determinant of value

in society, like any other economic resources, has a price which is called interest in commerce. Interest is a recompense that mitigates the pain that comes with denial of use of the said financial resource while the same is in the hands of the borrower. So, when one, be it a natural or a legal person, requests for money from a third party for its own use on short or long-term basis, and they both agree on the rate of interest payable on the money advanced to the beneficiary, the transaction is perfectly lawful, provided that their arrangement does not offend any law, particularly the LCA. In this case, the payment of interest was one of the covenants by the parties. Thus, the third complaint in the 9th ground of appeal has no basis, we reject it.

In view of the foregoing, the decision of the High Court is substantially upheld. However, we reverse it in respect of two aspects, namely, that the amount due and payable by the appellants is reduced to TZS. 550,000,000.00, and that the mortgage in respect of the mortgaged property is void under section 96 (1) of the Companies Act. However, the latter will eventuality not bar any application for execution of the decree against the mortgaged property, for the respondent holds a lien by deposit of documents

over the land under section 113 (5) (b) (i) and (6) of the Land Act. Otherwise, this appeal has no merit and we dismiss it with costs.

DATED at **DAR ES SALAAM** this 12th day of April, 2024

M. C. LEVIRA
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

M. K. ISMAIL
JUSTICE OF APPEAL

Judgment delivered this 15th day of April, 2024 in the presence of Mr. Benjamin Mwakagamba, learned counsel for the Respondent and also holding brief for Mr. Goodchance Lyimo, learned counsel for the appellants and Mr. Alfred Moshi, Director of the first Appellant, is hereby certified as a true copy of the original.

C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL