IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

CIVIL APPEAL NO. 25880 OF 2023

(Arising from the Judgement of the District Court of Ilala at Kinyerezi in Civil Case No. 16 of 2021 dated 22nd September 2023)

ACCESS BANK LIMITED.....APPELLANT

VERSUS

HAMIS HAJI FAKI.....RESPONDENT

JUDGEMENT

Date of last order: 15th February 2024
Date of Judgement: 4th March 2024

MTEMBWA, J.:

In the District Court of Ilala, the Respondent herein preferred a suit against the Appellant for the claim of Tanzanian Shillings 80,000,000/= (say Tanzanian Shillings Eighty Million only) being actual value of the claimed Motor Vehicles alleged to have been unlawfully attached and sold by the Appellant. He also claimed for Tanzanian Shillings 20,000,000/= (say Tanzanian Shillings Twenty Million only) being general damages, interests and costs of the suit.

Before I delve into the nitty gritty of this matter, I find it opt, albeit briefly, to narrate the factual background information as revealed by the

pleadings. That on 24th August 2017, the parties herein entered into a loan agreement in which the Respondent's loan bank account was credited with the sum of Tanzanian Shillings 100,000,000/= (say Tanzanian Shillings One Hundred Million only) being working capital to expand his business. The said loan was secured with, among others, the Respondent's Motor Vehicles registered as T 523 CCQ (make Toyota Ace – Pick up), T 177 DDF (make Mitsubish Rosa) and T988 BNT (make Mitsubish Rosa). Having been so granted, the Respondent went to China in his mission to procure a cargo.

The facts reveal further that, it could appear, the Respondent's mission could not productively materialize as he expected because he met some business difficulties. As a result, his business was affected and he could not perfectly pay loan installments as per the Loan Agreement. He then promptly approached the Appellant Bank for purposes of resolving the issue pertaining to late payment of monthly installments. He, in addition wrote letters to the Appellant informing her of the delay and a request for extension of time to pay monthly installments.

That, on 25th October 2017, the Respondent received a notice of attachment and sell of mortgaged properties. In view of the pleadings, thereafter, the said properties were attached by the Appellant without further notice. The Respondent alleged further that, up to the date of filing the suit,

the Appellant was in possession of the said Motor Vehicles for more than four years. It was the allegations by the Respondent that the procedures to attach or sale by auction, if any, of the said motor vehicles, were not adhered to.

Before the commencement of the hearing, by the help of the counsel for both parties, the following issues were framed, in summary; **one**, whether the Respondent breached the loan agreement; **two**, whether the Appellant's procedures used to confiscate and sell the Respondent's motor vehicles were lawful; and **three**, reliefs to which parties were entitled to.

The trial Court, having evaluated the evidence adduced during hearing resolved in favour of the Respondent. Consequently, the Appellant was ordered to return the said Motor Vehicles sold illegally to the Respondent. In addition, the Appellant was ordered to pay to the Respondent the sum of Tanzanian Shillings 20,000,000/= being general damages and costs of the suit.

Dissatisfied, the Appellant preferred this Appeal with the following grounds of appeal;

1. *That, Honourable Trial Magistrate grossly erred in law and in fact by misdirecting herself in analyzing and determining the issue of whether there was breach of contract between the parties.*

2. *That, the Honourable Trial Magistrate grossly erred in law and fact by failing to analyze evidence on the issue of confiscation, did*

not consider the evidence adduced by the Appellant and facts that there was no confiscation conducted by the Appellant herein.

3. *That, the learned Trial Magistrate, grossed erred in law and in fact in awarding the Respondent the sum of Tanzanian Shillings twenty Million (TZS 20,000.000/-) as general damages without assigning any reasons and that the amount was exorbitant in the circumstances and evidence produced thereto.*

In the conduct of this appeal, **Ms. Violeth Mipawa**, the learned counsel, appeared for the Appellant while the Respondent enjoyed the service of **Mr. Hassan Chande**, the learned counsel. By consent, parties agreed to argue this Appeal by way of written submissions. I have perused the records of the Court and noted that, parties adhered to the agreed schedule to which I personally subscribe.

Arguing on the first ground of appeal, Ms. Mipawa submitted that from the records, it is undisputed fact that parties entered into a Loan Agreement (Exhibit P1) that was supposed to be repaid within eighteen (18) months reckoning from 25th August 2017. That, it was from the said agreement that the Respondent was advanced with the sum of Tanzanian Shillings 100,000,000/= being working capital to expand his business. She added further that, from the records, the Respondent (PW1) admitted to have failed to comply with the terms of the said agreement.

Ms. Mipawa continued to note that, although the Respondent uncounted business difficulties and reported in writing of such inability to satisfy the terms of the agreement, that, itself could not suffice to alter the terms of the Agreement. That, although the said letters were not tendered in Court during hearing, Ms. Mipawa maintained that the same were not part of the Loan Agreement. She blamed the trial Court for basing her decision on unknown letters in steady of the contract that was executed by the parties.

She added further in length that, the loan agreement to which parties were concerned did not expressly waive or exempt the Respondent from adhering to the terms by a mere assertion that there were business difficulties even if the said letters notifying the Appellant's bank would have been admitted. She said, the letters of notification were not a prerequisite condition that, having been so served, the contents thereof were automatically accepted or acted upon by the Appellant.

Ms. Mipawa referred to this Court of the typed Judgement of the Trial Court where the Respondent conceded to have not paid a single penny since 25th August 2017 when the loan was advanced. She added that the said loan is wanting for repayment for about six years. In her views, that was a serious breach of clauses 1:3 and 4:1 of the said Contract (Exhibit P1). She cited ***the Black's Law Dictionary, 8th Edition of 2004*** where the term

"breach of contract" was defined to mean any violation of contractual obligation by failing to perform one's own promise by repudiating it or by interfering with another party's performance.

Ms. Mipawa noted further that, the loan was supposed to be paid in full come 1st March 2019 and in view of the testimony of DW1, the Respondent defaulted and as a result, he was served with a Notice of default (Exhibit D2). She cited the cases of ***Philipo Joseph Lukonde Vs. Faraji Ally Said, Civil Appeal No. 74 of 2019, Court of Appeal at Dodoma*** and ***Private Agricultural Sector Support Trust & another Vs. Kilimanjaro Cooperative Bank Limited, Civil Appeal No. 171 & 172 of 2019, Court of Appeal at Moshi.*** She then faulted the trial Court's assertion that the Appellant herein breached the Contract.

Arguing on the second ground of appeal, Ms. Mipawa complained that that the Honorable trial Magistrate grossly erred in Law and fact by failure to analyse the evidence on the issue of confiscation. She submitted that, although the Respondent complained of confiscation of his motor vehicles, there was no evidence that the same were so confiscated by the Appellant. She noted further that the Respondent was dutifully bound under ***section 110 of the Evidence Act, Cap 6 RE 2022*** to provide evidence to that effect short of which it could not be safely arrived at that his motor vehicles were so

confiscated by the Appellant. She cited the case of ***Anthony M. Masanga Vs. Penina (Mania Mgesi0 & Lucia (Mana Anna), Civil Appeal No. 118 of 2014, Court of Appeal at Mwanza*** where it was observed that, in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on the balance of probabilities.

To fortify, Ms. Mipawa referred this Court to the testimonies of the Appellant (PW1) summarized at page 3 of the typed script of the Jugdement that;

> *He claimed that after such attachment he saw his motor vehicles on the road but he was not given explanation as to what where they doing on the road, hence PW1 decided to go to TRA to prove if the motor vehicles still bear his names and he found out that they are under his names*

Ms. Mipawa submitted in addition that there was no evidence exhibiting that the motor vehicles were confiscated by the Appellant. She alluded further that, upon default, the Respondent was served with a Notice of default (Exhibit D2). That, the Appellant proceeded further to appoint a broker but while the recovery processes were underway, the Respondent rushed to the Court and filed the **Civil Case No. 16 of 2021** claiming that the Appellant (the Bank) had confiscated his motor vehicles. That according to the testimonies of DW1 (the Bank officer), the appellant has never

confiscated the Respondent's Motor Vehicles as alleged. She wondered how the Appellant could have sold the Motor Vehicles and still the Bonafede purchaser refrains from changing the ownership at Tanzania Revenue Authority (TRA). That, the Appellant remained with Motor vehicles' registration cards, Ms. Mipawa added. She maintained that the said motor vehicles are under the possession and ownership of the Respondent.

Ms. Mipawa Further faulted the trial Court's findings that, the purchase price for two motor vehicles was deposited into the Respondent's current bank account as per the Bank Statement (Exhibit P3). She relied upon the testimonies of DW1 who testified that, the said Bank Account was a private account used for private transactions by the Respondent and not the loan account and as such, anyone can transact through it. To buttress, lastly, she cited the case of ***Exim Bank Tanzania Limited Vs. Sai Energy Logistics Services Limited, Commercial Appeal No. 2 of 2022.***

Arguing on the third ground of appeal, Ms. Mipawa complained that, the learned trial magistrate grossly erred for awarding to the Respondent the sum of Tanzanian shillings 20,000,000/= as general damages without assigning reasons. She was of the view that the amount was exorbitant and of high scale considering the available evidence on records. She cited the case of ***Anthony Ngoo & Davis Anthony Ngoo Versus Kitinda Kimaro, Civil***

Appeal No. 25 of 2014, Court of Appeal at Arusha where it was Court observed that the decision maker has discretion to award general damages but she or hemust assign reasons for the grant.

Generally, Ms. Mipawa implored this Court to allow the appeal, set aside the Judgement and Decree of the trial Court with costs.

In reply, Mr. Chande prefaced that, while the Appellant was a lender, the Respondent was a borrower. He submitted further that a loan of Tanzanian Shillings 100,000,000/= was extended to the Respondent herein with an interest of 2.9% monthly for the duration of eighteen months (18). He continued to note that the Respondent, as security, pledged the following securities, namely; a house with a residential license number ILA 030235 within Ilala District in Dar es salaam Region, two Mitsubishi Rosa buses with a registration numbers T. 117 DDF and T. 988 BNT and Toyota Ace pickup with registration number T. 523 CCQ and house hold items in the names of the Respondent. He added further that, the buses were for passengers' transportation business (daladala business) while pick-up was carrying goods, with a daily total income of Tanzanian Shillings 270,000/=.

However, that, before payment of the first installment, the Respondent herein experienced business problems in China and as a result,

he wrote letters to the Appellant Bank with the view to adjourn the payment of the first installment. He continued to note that the said letters were received and stamped by the Appellant but a reply thereof could not be traced. That, before the expiry of sixty days' Notice, the Appellant herein sold through auction two Mitsubishi buses (T. 117 DDF and T. 988 BNT) and parted with sale price while hiding one motor vehicle (Toyota Ace pickup registered as T.523 CCQ).

Replying to the first ground of appeal, Mr. Chande submitted that, **Order XX Rule V** of the **Civil Procedure Code Cap. 33 RE 2019** provides that, in suit in which issues have been framed, the Court shall state its finding or decision with the reason therefore, upon each separate issue unless the finding upon any or more of the issues is sufficient for the decision of the suit. He added further that in the case at hand, the Respondent pledged his three motor vehicles, residential house and house hold items as securities against the loan disbursed to him by the Appellant. He referred to clause 3.8 of Exhibit P1 which provides that *"Wenye amana wanakubali kushirikiana au kusaidia benki ama wawakilishi wake kwenye zoezi la kushika na/ au kuuza amana zilizotolewa chini ya mkataba huu".*

Mr. Chande continued to note that the Appellant's recovery officers attached the motor vehicles (the buses) from their normal routes and

ordered drivers to drive them to their yard without informing the Respondent. That, thereafter, the Appellant conducted auction without issuing fourteen days' notice in blatant contravention of **Section 12 of the Auctioneers Act** and the loan agreement.

Mr. Chande submitted further that, the first motor vehicle (Mitsubishi Rosa T. 117 DDF) was sold through auction within ten days from the day of issuance of Notice of default and the second one (Mitsubishi Rosa T. 988 BNT), was auctioned within forty-five days after being attached by the Appellant's recovery officers. He cited the case of ***Edwin Simon Mamuya Vs. Adam Jonas Mbala [1983] TZHC 50 (3 November, 1983)*** where the Court observed that once the parties bind themselves in a contract for a lawful consideration, they are obliged to perform their respective promise. He then continued to analyse the series of breach of contract by the Appellant.

In reply to the second ground of appeal Mr. Chande submitted that, the issue pertaining to evidence is governed by the ***Evidence Act, CAP 6 RE 2019*** where, in civil cases, the burden of proof is on the balance of probabilities. He cited Section 110 (1) of the Act (supra) which provides that, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist; meaning, the court will only sustain such evidence which is more

credible.

Mr. Chande added that, the Appellant sold the two Respondent's motor vehicles (pledged as securities) before the expiry of 30 days' notice and 60 days' notice of default. That, according to the Bank Statement (Exhibit P3), the motor vehicle with registration number T. 117 DDF was auctioned on 2nd November, 2017 and the other Mitsubishi Rosa, on 4th December, 2017 while the sale proceeds for one motor vehicle (T 523 CCQ Toyota Ace) could not be traced. That, is not known whether it was sold or not.

In reply to the third ground of appeal, Mr. Chande was very brief. He submitted that since the Respondent proved his case to the required standards acceptable in law, the trial court has justified to award general damages. He cited the case of ***Martha Mtono Vs. Pascal Anold Kelya & Another, High Court of Tanzania at Mbeya District Registry.***

Rejoining to what was submitted by the Respondent on the first ground of appeal, Ms. Mipawa insisted that the trial Court misconceived the facts related to breach of contract. She said, what was supposed to be taken into consideration was a loan agreement between the parties and not Loan facility. That, as per clause 4.4 of the Loan Agreement (Exhibit P1), the Respondent was supposed to remit monthly installment but, very unfortunate,

he did not pay a single penny. She added that, since 2nd October 2017 to date, no cash has been deposited by the Respondent into his loan account. As such, that, it was the Respondent who breached the loan agreement. She cited the case of ***Hemed Said v. Mohamed Mbilu [1984] TLR 113*** where it was observed that a party whose evidence is heavier than that of the other is the one who must win the case.

Rejoining to the what was submitted by the Respondent in reply to the second ground of appeal, Ms. Mipawa submitted that, the fact alleged by the Respondent that the Applicant confiscated his motor vehicles were supposed to be proved by evidence and that, such evidence, connecting the Appellant with the confiscation of the alleged properties, were lacking. Ms. Mipawa insisted that the Appellant bank was not involved in the confiscation of the Respondent's properties, if any. She noted further that, had it been the case, the Appellant could have not been in possession of the Registration Cards. She wondered how, in today's life, a buyer may buy a car without requiring the registration card for change of ownership. She continued to fault the trial court by believing on the Respondent's story that the alleged motor vehicles were attached and sold by the Appellant.

In addition to the above, Ms. Mipawa noted that, what the Appellant did was only to issue a notice of default. Thereafter, she made

follow-ups on the collaterals unsuccessfully to date. Ms. Mipawa opined that, to date, the Appellant has no information on the whereabouts of the said motor vehicles. She cited the case ***Anthony M. Masanga vs Penina (mama Mgesi) and Another (Civil Appeal 118 of 2014) [2015] TZCA 556 (18 March 2015)*** where it was observed that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Briefly, rejoining to what was submitted by the Respondent in reply to the third ground of appeal, Ms. Mipawa insisted that, the trial Court failed properly to evaluate the evidence available thereby resulting into an award of Tanzanian Shillings 20,000,000/= as general damages without justification. Lastly, she re-cited the case of ***Anthony Ngoo (supra)***.

That was what I captured, in summary, from the rival submissions by the parties.

Well, this court being the first appellate court has the duty to reevaluate the evidence on records and put it under critical scrutiny and come out with its own conclusion. In the case of ***Mapambano Michael @ Mayanga vs. Republic, Criminal Appeal no. 258 of 2015***, the court placed the special duty on the first appellate court as follows;

The duty of the first appellate court is to subject the entire evidence on record to a fresh re-evaluation in order to arrive at decision which may coincide with the trial court decision or maybe different altogether.

While guided by the above principle, it is a trite law also that, whoever alleges existence of any fact bears the duty to prove the same. This principle is gathered from sections 110, 112 and 115 of ***the Evidence Act (supra)*** and judicial precedents including the case of ***Manager NBC Tarime Vs. Enock M. Chacha [1993] TLR 228.***

From what I have gathered, there is no dispute that the Appellant extended loan to the Respondent the sum of **Tanzanian Shillings 100,000,000/=** (say Tanzanian Shillings One Hundred Million only) repayable within eighteen months reckoning from 25th August 2017, to be used as a working capital and extension of his business. During hearing the same was tendered as Exhibit D1. It is not in dispute either that, inter alia, the Respondent's Motor Vehicles registered as T 523 CCQ (make Toyota Ace – Pick up), T 177 DDF (make Mitsubish Rosa) and T988 BNT (make Mitsubish Rosa) were pledged as securities for the loan. As per the Agreement which also is not in dispute, the Respondent was supposed to pay as monthly installment, the sum of Tanzanian Shillings 7,257,962.34/= (see Payment Plan

attached to Exhibit P1).

In my recollection, the dispute arose when the Respondent failed to adhere to the payment schedule resulting into issuance of the notice of default (Exhibit P2). According to the payment Plan which is part of Exhibit P1, the first installment was supposed to be paid on Monday, 2nd October 2017. On 25th October 2017, the Respondent was served with a Notice of default (Exhibit P2). When cross examined by the Appellant's counsel at page 26 of the typed script of the proceeding, the Respondent was recorded as follows;

- *My loan was for 18 months*
- *It was form 2017 to 2018 (sic)*
- *I was required to pay Tsh 7,200,000/= per month*
- *I did not pay any of the rejesho (sic)*
- *It is not true that I breach the contract, because I wrote a letter*
- *explaining my problems, and the letter was served be you (sic)*
- *I don't know if failure to pay even one of the "rejesho" amount to the*
- *breach of the contract (sic)*
- *I know how to read and write*

From the quoted passage above, and in terms of Exhibit P1 and P2, the Respondent did not pay the first installment as per the payment plan on the assertation that he met some business difficulties which were, by

letters, communicated to the Appellant at the earliest stage. It was very unfortunate that the said letters were not received in evidence. According to DW1 (the bank officer), the Respondent did not pay any single penny as per the agreement. Consequently, he was served with a notice of default on twenty third day since the day of default but then, still, he did not pay. The Appellant decided to appoint a broker to attach the collaterals but while the recovery procedures were underway, the Respondent filed this case and another in the District Land and Housing Tribunal. That as such, nothing was done as the said collaterals could not be traced.

In answer to the first issue, the trial Court having analyzed the evidence available resolved at pages 10 and 11 of the typed script of the Jugdement that;

> *Plaintiff told the Court that he encountered business difficulties as a result he contacted the defendant in this Respect, therefore he tried to show what made him not to pay the loan installment in respective time, therefore the Plaintiff did not breach the contract, and therefore, the issues is answered in the affirmative.*

With respect such conclusion was unsupported. Since there was no dispute that the Respondent failed to remit the first monthly installment even when he was so reminded by a notice of default on 25th October 2017, the trial court would have arrived at a bravely conclusion that it was the

Respondent who breached the loan Agreement. The fact that the Respondent communicated his business difficulties to the Appellant did not automatically grant him leave not to adhere to the agreed schedule of payment. As said before, the said letters were not received in evidence. It was therefore unsafe to act on the evidence not before the Court, much as the Appellant did not concede to that effect.

Loan Agreements are simple, straight forward and easy to handle. It follows therefore that a borrower who contract with the lender to remit the sum of money on the agree date, he or she must do so unless the contrary is proved. There is no shortcut. However, if he is so prevented to carry out the terms of the agreement by some supervening acts, such acts must be contemplated by the contract. Once a single installment is not paid, the lender has power to call off the loan at once, in which case, she can exercise any of her powers under the Agreement.

In the case of ***Philipo Joseph Lukonde Vs. Faraji Ally Said (supra)*** which was cited to me by the counsel for the appellant; the court observed that;

> *Where parties have freely entered into binding agreements, neither courts nor parties to the agreement, should interpolate anything or interfere with the terms and conditions therein*

In this case, the Respondent agreed to pay the monthly installment of Tanzanian Shillings 7,257,962.34/=, the first installment of which was supposed to be paid not later than Monday, 2nd October 2017. As alluded by DW1, twenty-three days passed as a result, a notice of default was issued. In fact, the Respondent breached clause 8.1 (a) of the contract which provides one of the events of default to be;

> *Mkopaji akishindwa kulipa deni na riba au sehemu yake kulingana na ratiba ya malipo.*

The counsel for the Respondent cited clause 5.3 of the Contract in his mission to persuade this court that the same allowed the Respondent to notify the Appellant of any business difficulty. With respect I did not find any merit on that because, notifying the party does not mean, necessarily, that the terms will be automatically altered and if so, the contract would have expressly and in lucid terms stated so. It follows therefore that, if the Respondent so wished, he could have caused negotiations with the Appellant with the view to amend the Loan Agreement in view of clause 9.3 thereof short of which, the terms remained intact and binding upon the parties to death.

To that end, I hold the view that, the Respondent breached the Loan Agreement by failure to remit to the Appellant the agreed monthly

installments. The Appellant therefore was justified to issue a notice of default. I therefore find merit on the first ground of appeal and I proceed to allow it.

Having so observed, the next issue is whether the Appellant attached and sold by auction the Respondent's properties pledged as collaterals to secure the loan. According to PW1, the Appellant attached his three motor vehicles before time lapsed. However, later on, he saw them on the road while no explanation was offered. He then decided to approach Tanzania Revenue Authority (TRA) and found that the same were still in his names. However, when looked at the Bank statement issued by the Appellant bank, he discovered that, two of the motor vehicles were sold and one was not. The Bank statement of account No. 03241005197-23 was admitted as exhibit P3. When cross examined at page 29 of the typed proceedings, the Respondent noted that he was present when one of the motor vehicles was attached.

In his testimonies, DW1, one Focus Osward Makungu, the bank officer, denied to have attached and sold the said motor vehicles. He conceded to have served to the Respondent the sixty days' notice of default who did not heed to it. The appellant then had no option but to continue with recovery measures including appointing the broker. While recovery measures were underway, the Respondent rushed to Court including District Land and

Housing Tribunal. He testified further that, the pending task was to sell the House and allocate the motor vehicles. He insisted that the motor vehicles are still under the supervision and custody of the Respondent. That, the Appellant (the bank) only remained with the registration cards.

Without further details, the trial Court resolved that the said motor vehicles were illegally confiscated by the Appellant. The learned trial magistrate based her holding on the bank statement of the Respondent's current account (Exhibit P3) which showed that the sale proceeds of two motor vehicles were deposited therein.

I have dispassionately perused the testimonies of both parties, the evidence tendered during hearing and the submissions by the counsels only to note that, the trial court was wrong to disbelieve the Appellant. As submitted by Ms. Mipawa, there was no evidence exhibiting that the Appellant attached and ultimately sold by auction the said motor vehicles. For the reasons to be advanced hereinafter in length, the Respondent's case fell short of evidence.

During hearing, PW1 (the Respondent) conceded to have been only present when one of the motor vehicles was attached. He did not say when that happened. He did not even mention the motor vehicle that was

attached in his presence. He did not disclose even the area where the same was so attached and by whom. There is no evidence either on how the other two motor vehicles were attached.

In his submissions, Mr. Chande observed that, the Appellant's recovery officers attached the motor vehicles (the buses) from their normal routes and ordered drivers to drive them to their yard without informing the Respondent. With respect that was an afterthought because in his testimony, the Respondent did not testify to that effect. I would therefore not hastate to find that it was the submissions from the bar. If the Respondent was aware of those facts, why didn't he mention the place where the yard is located? That could have resolved a number of issues here including whether it was actually the Appellant who attached the vehicles. Reasonably, the drivers could have been called to testify as witnesses.

Moreso, failure to join the brokers or the purchasers, if any, is an indication that the Respondent is not aware of who attached and who bought the said vehicles as the case may be. I see no reason why the Appellant Bank would have secretly attached and sold the said vehicles. That would be silly and economically payless.

There is another issue of interest to me. According to the

Respondent, he came to know that the two vehicles were sold upon looking at the Bank Statement (Exhibit P3). DW1 was not amused by the allegations. He testified at pages 37 and 38 of the types proceedings that bank Account No. 0324100519723 is the Respondent's current account and it is for his personal and or private transactions. He said, that account has nothing to do with loan facility issues. He noted in addition that, according to Exhibit D1 (Loan Agreement), the loan account was 0307100206179.

I went through Exhibit P1 as tendered by the Respondent and noted that the agreed loan account was Bank Account No. 03071002061-79. It follows therefore that Bank Account No. 0324100519723 as reveled by Exhibit P3 was a new animal species in the jungle in as far as loan facility agreement is concerned. There can be no way the sale proceeds from the sale of collaterals be deposited into the current account instead of loan bank account. The automatic monthly remittance is set on the loan account and not current account of the borrower. If the Appellant really sold the said vehicles, the sale proceeds would have been deposited into the Respondent's loan account because that is where automatic monthly remittances is set. The Appellant (the Bank) has no authority to offset the money from the private account (current account) of the borrower unless so authorized.

Exhibit P3 is silent on where the alleged deposited sale proceeds

were remitted to. If what is alleged by the Respondent is true, Exhibit P3 would have expressly indicated to whom the sale proceeds were remitted to.

According to DW1 which Ms. Mipawa fortified, the Appellant, to date, is in possession of the Motor vehicles' registration Cards. Such assertion was not disputed anywhere by the Respondent. The Respondent also testified to have approached Tanzania Revenue Authority (TRA) and found that, the said motor vehicles are still under his names. Constructively, the said motor vehicles are under his ownership.

I agree with Ms. Mipawa that, having bought the vehicle, there is no way a purchaser may refrain from demanding a registration Card. To me, still, it is an indication that the Appellant has never been in position to sell the said motor vehicles, be it by auction or otherwise. In fine, the second ground of appeal has merit and I proceed to allow it.

While down to the end, I see no reason to discuss the third ground of appeal. Since I have already observed that it was the Respondent who breached the Loan Agreement and that there was no evidence that the Appellant attached and sold the alleged motor vehicles, I see no reason not to allow the ground. In the premises, the third ground of appeal is also allowed.

Accordingly, I allow the appeal with costs. The Judgement and Decree of the District Court of Ilala in Civil Case No. 16 of 2021 are hereby quashed and set aside. I order accordingly.

Right of appeal explained.

DATED at **DAR ES SALAAM** this 4th March 2024.

H.S. MTEMBWA
JUDGE