IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 27495 OF 2025

DCB COMMERCIAL BANK PLC .... PLAINTIFF

VERSUS

DANVIC PETROLEUM (T) LIMITED .... 1ST DEFENDANT

MUA INSURANCE (TANZANIA) LIMITED .... 2ND DEFENDANT

ASANTE VICTOR NDONDE .... 3RD DEFENDANT

OPTATUS CHRISTANTUS NDONDE .... 4TH DEFENDANT

MARTHA JOSEPH MSAFIRI .... 5TH DEFENDANT

OMARY MUSSA NKWARULO .... 6TH DEFENDANT

JUDGMENT

20/05/2026 & 30/06/2026

KINYAKA, J.:

The plaintiff, DCB Commercial Bank Plc, instituted the present suit against the defendants claiming against the defendants jointly and severally for payment of Tanzania Shillings Two Billion (TZS 2,000,000,000) being principal outstanding overdraft loan facility, together with accrued interest of Tanzania Shillings One Hundred Ninety-Four Million Five Hundred Eight

Thousand Three Hundred Fifty-Nine and Sixty-Three Cents (TZS 194,508,359.63). The plaintiff alleges that the said facility was advanced to the 1^{st} defendant and guaranteed by the 2^{nd}, 3^{rd}, 4^{th}, 5^{th} and 6^{th} defendants.

The background of the suit, as gathered from the pleadings, is that the plaintiff is a licensed commercial bank. The 1^{st} defendant is a company engaged in the sale and distribution of petroleum products. The 2^{nd} defendant is an insurance company, formerly known as Phoenix of Tanzania Assurance Company, while the 3^{rd}, 4^{th}, 5^{th} and 6^{th} defendants are directors of the 1^{st} defendant.

The plaintiff's claim arises from credit facilities allegedly extended to the 1^{st} defendant, namely a mortgage loan facility of TZS 600,000,000 and an overdraft loan facility of TZS 2,000,000,000. The facilities were approved through a letter of offer dated 25^{th} January 2024 and governed by a Loan Facility Agreement executed between the plaintiff and the 1^{st} defendant. According to the plaintiff, the overdraft facility was secured by a Financial/Credit Facility Guarantee issued by the 2^{nd} defendant and further supported by a Directors' Joint and Several Guarantee executed by the 3^{rd}, 4^{th}, 5^{th} and 6^{th} defendants.

The plaintiff alleges that the 1st defendant defaulted in repayment of the overdraft facility, thereby causing the outstanding amount to accrue. It further alleges that demands were issued to the 1st defendant, the 2nd defendant was called upon to honour the Financial/Credit Facility Guarantee, and the 3rd, 4th, 5th and 6th defendants were also required to pay under the Directors' Joint and Several Guarantee. The plaintiff contends that the defendants failed to discharge their respective obligations.

The plaintiff instituted the present suit praying for judgment and decree against the defendants jointly and severally as follows:

i. The declaration that the 1st Defendant breached the terms and conditions of the Loan Facility Agreement by its failure to discharge the duties and obligations contained in the said Agreement especially failure to repay the full amount of the credit facility.
ii. That the 2nd Defendant breached the Financial Guarantee/Credit Facility Guarantee by failure to comply with the terms, conditions and covenants of the guarantee especially on payment of the entire amount of the outstanding amount of the Credit facility following default by the 1st defendant.

iii. The 3rd, 4th, 5th and 6th Defendants breached the Directors Joint and Several Guarantee by failure to comply with the agreed terms, conditions and covenants of guarantee especially on payment of the entire amount of the outstanding amount of the credit facility following default by the 1st defendant.

iv. That the defendants jointly and severally be ordered immediately pay the plaintiff the entire outstanding amount of the credit facility which is TZS 2,000,000,000, say Two Billion Tanzanian Shillings being the Principal amount of the outstanding credit facility and interest of TZS 194,508,359, say One Hundred Ninety Four Million Five Hundred Eight Thousand Three Hundred and Fifty Nine Tanzanian Shillings.

v. The defendants jointly and severally be ordered to immediately pay the accrued interest at the rate of 19% per annum from the date of default to the date of full and final payment.

vi. The defendant jointly and severally be ordered to immediately pay penalty interest of 5% per annum for failure to honour the overdraft loan facility and financial/credit guarantee on time.

vii. That the defendants jointly and severally be ordered to pay the plaintiff general damages resulted by their failure to Honour terms and conditions of the overdraft loan facility, Financial/Credit Guarantee and Directors joint and several guarantees' Agreements.

viii. The defendants jointly and severally be ordered to pay the plaintiff interest on decretal amount from the date due to the date of fully satisfaction of the decree at the prevailing commercial rate.

ix. The defendants be ordered to pay costs of the suit.

In her written statement of defence, the 1st defendant disputed the plaintiff's claims. She denied being in breach of the Credit Facility Agreement and contended that the plaintiff was aware of her intention to settle the claimed amount after experiencing business hardship. The 1st defendant disputed the amount claimed as exaggerated and without legal basis. Regarding the securities, she partly admitted that the overdraft facility was secured by a Financial/Credit Facility Guarantee issued by the 2nd defendant, but maintained that any loss arising from its default was recoverable from the 2nd defendant under the said guarantee. She also denied being served with the demand notices, occasioning any loss to the plaintiff and prayed that the suit be dismissed with costs.

The 3^{rd}, 4^{th}, 5^{th} and 6^{th} defendants also resisted the plaintiff's claim. They denied knowledge of the alleged advancement and utilisation of the overdraft facility by the 1^{st} defendant. They further denied having personally guaranteed the facility or being aware of the alleged Directors' Joint and Several Guarantee. Their position was that if the facility was secured by the 2^{nd} defendant's guarantee, then recourse ought to be pursued against the 2^{nd} defendant. They denied further being notified of the alleged default or served with demand notices, disputed the amount claimed and prayed that the suit be dismissed with costs.

At the final settlement and scheduling conference, the following issues were framed and recorded by the Court for determination of the suit:

1. Whether the plaintiff advanced an overdraft loan facility to the 1^{st} defendant;
2. If the first issue is answered in the affirmative, what is the actual overdraft facility advanced by the plaintiff to the 1^{st} defendant;
3. Whether the 1^{st} defendant breached the terms of the Loan Facility Agreement by defaulting to repay the outstanding amount of TZS 2,194,508,359.63;

4. Whether the 2^{nd} defendant breached the terms of the Financial Guarantee/Credit Facility Guarantee by failing to repay the outstanding amount of TZS 2,194,508,359.63 upon default by the 1^{st} defendant;
5. Whether the 3^{rd}, 4^{th}, 5^{th} and 6^{th} defendants breached the terms of the Directors' Joint and Several Guarantee by failing to repay the outstanding amount of TZS 2,194,508,359.63 upon default by the 1^{st} defendant;
6. Whether the defendants are jointly and severally liable for payment of the outstanding amount of TZS 2,194,508,359.63; and
7. To what reliefs are the parties entitled.

At the hearing of the suit the Plaintiff was represented by Mr. Alex Kennedy Mgongolwa, learned advocate and the 1^{st} and 3^{rd} defendants enjoyed the service by Mr. Ambrose Mkwera. The matter proceeded ex parte against the 2^{nd}, after her witness statement was filed out of time hence struck out and against the 4^{th}, 5^{th} and 6^{th} defendants for their default to file their respective written statement of defence.

The plaintiff's case was commenced by PW1, Deogratius Thadei, Director for Credit Risk at DCB Commercial Bank Plc, testifying through his witness statement that the 1st defendant applied for two credit facilities, namely a mortgage loan facility of TZS 600,000,000 and an overdraft loan facility of TZS 2,000,000,000. He stated that the plaintiff approved the facilities through a letter of offer dated 25th January 2024, which was accepted by the 1st defendant.

PW1 testified further that the mortgage loan facility was intended for purchase of a petrol station at Goba, while the overdraft facility was intended to finance the 1st defendant's working capital. He stated that the mortgage loan facility was not disbursed and, consequently, no legal mortgage over the Goba property was created in favour of the plaintiff. He however stated that the overdraft facility of TZS 2,000,000,000 was approved after execution of the Loan Facility Agreement dated 21st March 2024 and was subject to interest at per annum.

PW1 testified that from 22nd March 2024, the 1st defendant continued to withdraw money under the overdraft facility and that the total outstanding amount as at April 2025 stood at TZS 2,194,508,358.63, inclusive of interest. He stated that the overdraft facility was secured by the Credit Facility

Guarantee issued by the 2nd defendant and supported by personal guarantees executed by the 3rd, 4th, 5th and 6th defendants.

According to PW1, the 2nd defendant was contractually obligated under the Financial Guarantee/Credit Facility Guarantee to pay the outstanding amount to the plaintiff upon occurrence of specified events of default. He stated that the 1st defendant defaulted and that the plaintiff demanded payment from the 1st defendant and later from the 2nd defendant.

PW1 further testified that since the overdraft facility was also secured by the Directors' Joint and Several Guarantee they equally undertook to indemnify and pay the plaintiff all money and discharge all obligations and liabilities of the borrower upon default by the 1st defendant.

PW1 tendered several documents to wit the affidavit of electronic printouts was admitted as Exhibit P2. The original offer letter dated 25th January 2024 was admitted as Exhibit P3. The Loan Facility Agreement was admitted as Exhibit P4. The 1st defendant's bank statement was admitted as Exhibit P5. The Credit Facility Guarantee/Insurance was admitted as Exhibit P6. The Directors' Joint and Several Guarantee was admitted as Exhibit P7. The original *Hati ya Madai* dated 21st October 2024 and *Hati ya Madai* No. 2 dated

15th November 2024 were admitted collectively as Exhibit P8. The claim letter to the 2nd defendant dated 13th January 2025 and reminder letter dated 7th March 2025 were admitted collectively as Exhibit P9.

In cross-examination, PW1 stated that he did not know when the 1st defendant became a customer of the plaintiff. He confirmed that the overdraft facility was meant to support working capital for the fuel business. He also stated that the 1st defendant had submitted a loan application letter, but the same was not tendered in evidence. He furthered that although a company is required to have a board resolution authorising borrowing, he had not tendered such resolution.

PW1 stated that the plaintiff did not disburse the TZS 600,000,000 mortgage loan facility. He explained that the Goba petrol station had not been purchased and that the overdraft facility was meant to develop the 1st defendant's existing fuel business. He also stated that the securities under the overdraft facility were the Financial/Credit Facility Guarantee by MUA Insurance and the Directors' Joint and Several Guarantee.

After closure of the plaintiff's case, the matter proceeded with the defence case for the 1st and 3rd defendants.

The defence called one witness, DW1 Asante Victor Ndonde the Managing Director of the 1st defendant and in his personal capacity as the 3rd defendant.

DW1's witness statement for the 1st defendant was admitted as Exhibit D1, while his witness statement in his personal capacity as the 3rd defendant was admitted as Exhibit D2. In substance, DW1 testified that the 1st defendant applied for the two facilities in order to expand her petroleum business by acquiring and renovating a petrol station at Goba. He stated that the overdraft facility was meant for working capital, while the mortgage loan was intended for purchase of the Goba station.

He testified that the plaintiff delayed in disbursing the funds, thereby frustrating the 1st defendant's plan to acquire the Goba petrol station. He stated that the 1st defendant had paid premiums for an insurance policy issued by the 2nd defendant, and that the plaintiff ought to recover any loss from the 2nd defendant under the Financial/Credit Facility Guarantee.

In his personal capacity as the 3rd defendant, DW1 testified that his alleged liability as guarantor was secondary to the main securities, namely the Goba property and the Financial/Credit Facility Guarantee issued by the 2nd defendant. He stated that he was not personally served with a notice of default or formal demand before the institution of the suit.

During cross-examination, He stated that because the loan was guaranteed by MUA Insurance, MUA was to repay the loan.

DW1 further stated that Danvic Petroleum (T) Limited has a board of directors and that the board is run in accordance with the law. He admitted that the company received notifications from DCB that it was indebted to the bank. Upon being shown Exhibit P8, he identified the documents as the notifications he was referring to. He stated that after receiving the notifications, the board convened meetings and discussed the matter. He further stated that the directors of Danvic were Asante Victor Ndonde, Optatus Christantus Ndonde, Martha Joseph Msafiri and Omary Mussa Nkwarulo, and that they were aware of DCB's claim on the debt. He also stated that there was no dispute about the outstanding debt to DCB, but rather about the manner of settling it.

When referred to the 3rd defendant's written statement of defence, DW1 stated that there was no wording in the said defence corresponding to the statement in paragraph 7 of his witness statement that the plaintiff's unreasonable delay in disbursing funds had a catastrophic impact on his personal financial standing. He maintained, however, that the plaintiff delayed in disbursing the loan, stating that there was an interval from the offer letter to the date of disbursement. He also admitted that after the offer letter, there were matters to be complied with by the 1st defendant before disbursement, including issuance of an insurance cover.

DW1 was also referred to Exhibit P4, the Loan Facility Agreement. He stated that according to the agreement, Danvic was required to offer a credit guarantee to DCB for disbursement of the loan. Upon being referred to Exhibit P6, he identified it as the credit guarantee or insurance policy, which he stated was signed on 20th March 2024. He further stated that the Loan Facility Agreement was signed on 21st March 2024, one day after submission of the credit guarantee.

Upon being referred to Exhibit P5, the bank statement, DW1 stated that the 1st defendant started enjoying the overdraft facility on 22nd March 2024. He explained that the delay he complained of was that the 1st defendant signed the agreement earlier, while DCB signed on 21st March 2024 and disbursed the facility on 22nd March 2024. He stated that he did not expect DCB to disburse the loan before receiving the insurance cover, but that the funds ought to have been released after the insurance cover had been issued.

In re-examination, DW1 stated that the 1st defendant intended to purchase the Goba petrol station because it wanted to own a petrol station instead of leasing. He explained that the total facility was TZS 2,600,000,000, comprising the overdraft facility of TZS 2,000,000,000 and the mortgage loan facility of TZS 600,000,000. He stated that although the plaintiff disbursed the overdraft facility, it did not disburse the mortgage loan facility, and therefore the 1st defendant could not acquire the Goba station which was expected to generate income for repayment of the facility. That marked the closure of evidence from both parties

On the closure of the parties evidence on 20th May 2026, counsels for the parties prayed for time to file their closing submissions. The Court granted parties up to 27th May to lodge their respective closing submissions. Whereas the plaintiff lodged her closing submissions within time on 26th May 2026, the 1st and 3rd defendants lodged their joint final submissions on 28th May 2026 out of time. As such, I will not dwell into the 1st and 2nd defendants' closing submissions for being filed out of time.

I now turn to decide on each issue recorded. In the course of determination, I will consolidate the third, fourth and fifth issues and determine them together whereas the rest of the issues shall be determined separately.

In the course, I will seek to determine whether the plaintiff has discharged her burden of proof imposed on her by section 3(2)(b) and 117 and 118 of the Evidence Act Cap. 6 R.E. 2023. As such, it is the primary duty and burden of the plaintiff to substantiate each and every allegations made against the defendants on balance of probability [See the case of **Charles Christopher Humphrey Richard Kombe t/a Humphrey Building Materials vs. Kinondoni Municipal Council**, Civil Appeal No. 125 of 2016 and **Olasiti Investment Co.Ltd vs. Elias Peter Nyatomwanza t/a Isagilo Express**, HC. Civil Appeal No.27 of 2019].

The first issue is whether the plaintiff advanced an overdraft loan facility to the 1st defendant.

I will not be detained much by the first issue. The testimony of PW1 and the Offer letter dated 25th January 2024 admitted as Exhibit P3, the Loan Facility Agreement admitted as Exhibit P4, and the bank statement admitted as Exhibit P5, evidence the contractual relationship between the plaintiff and the 1st defendant. DW1 who adduced evidence for the 1st and 3rd defendants admitted that the 3rd defendant engaged in the application processes and the 1st defendant applied to the plaintiff in January 2024 for two distinct loan facilities, namely: mortgage loan facility of TZS 600,000,000 for purchase of a petrol station located at Plot No. 113 Block Q, Goba Area, Kinondoni Municipality; and overdraft loan facility of TZS 2,000,0000,000 for financing business working capital of the 1st defendant to procure substantial fuel stocks, lubricants, and the necessary renovations of the newly acquired Goba station.

Through Exhibit P3, it has been proven that 1st defendant's loan application was approved by the plaintiff on 24th January 2024 and received by the 1st defendant on 26th January 2026 followed by the plaintiff's release of TZS 2,000,000,000, being an overdraft loan facility after the execution of the Exhibit P4. The only point of departure between the plaintiff and the 1st and 3rd defendant is that the plaintiff delayed to disburse the overdraft loan facility occasioning failure on part of the 1st defendant to acquire the Goba petrol station resulting to severe domino effect.

In view of the above evidence on record, I find the first issue in the affirmative that the plaintiff advanced an overdraft loan facility to the 1st defendant.

The second issue is premised on the affirmation of the first issue, and if so, to decide on the actual amount of the overdaft loan facility advanced by the plaintiff to the 1st defendant. Since the first issue has been determined in the affirmative, I now turn to decide the actual amount of the overdraft facility extended by the plaintiff to the 1st defendant.

The evidence of both PW1 and DW1 establish that the plaintiff extended an overdraft loan facility of TZS 2,000,000,000 that was applied by the 1st defendant together with mortgage loan facility of TZS 600,000,000. In paragraph 12 of his evdience in chief admitted as Exhibit P1, PW1 stated that the overdraft facility was approved by the plaintiff in favour of the 1st defendant and the limit of TZS 2,000,000,000 was set which was duly withdrawn and spent by the 1st defendant following the signing of Exhibit P4 on 21st March, 2024. The availability of the overdraft facility and the 1st defendant's utilization is evidenced by Exhibit P5, the 1st defendant's bank statement.

Similar stance of the overdraft loan facility of TZS 2,000,000,000 extended by the plaintiff to the 1st defendant was made by DW1 in paragraph 4 of Exhibit D1 and paragraph 7 of Exhibit D2 that the 1st defendant duly received the TZS 2,000,000,000 but there was significant and unreasonable delay by the Plaintiff to disburse the funds. During cross examination DW1 testified:

> *"It was in 2024/2025 when we intended to settle the debt of TZS 2 billion, but I have no exact recollection of the period. When I said that the Goba petrol station was to be part and parcel of the loan, I meant that according to the offer letter, the loan was TZS 2,600,000,000 in which TZS 2 billion was overdraft and TZS 600 million was to buy the petrol station. After DCB had disbursed TZS 2 billion, it did not disburse the TZS 600 million. We couldn't conduct operations as we did not acquire the petrol station as the TZS 600 million was not disbursed. The Goba petrol station was forming part and parcel of the income generation for repayment of the loan."*

Collecting from the above evdience, I find and hold that the actual overdraft facility advanced by the plaintiff to the 1st defendant was TZS 2,000,000,000 (Say Tanzania Shillings Two Billion) only.

The third, fourth and fifth issues encompasses the defendants' breach of the several undertaking made in the course of the transaction between the plaintiff and the 1st defendant. These are whether the 1st defendant breached the terms of the loan facility agreement by defaulting to repay the outstanding amount of TZS 2,194,508,259.63; whether the 2nd defendant breached the terms of the Financial Guarantee/Credit Facility Guarantee by failing to repay the outstanding amount of TZS 2,194,508,359.63 upon default by the 1st defendant; and whether the 3rd, 4th, 5th and 6th defendants breached the terms of the Directors' Joint and Several Guarantee by failing to repay the outstanding amount of TZS 2,194,508,359.63 upon default by the 1st defendant.

From the contents of pargraphs 13, 14 and 15 of Exhibit P1, and Exhibit P3, P4 and P5, PW1 proved before this Court that through the overdaft facility, the plaintiff allowed the 1st defendant to withdraw and spend more money than her available balance, up to a pre-approved limit, creating a negative balance. He further evidenced through Exhibit P5 that on 16th March 2024, prior to the plaintiff's issuance of the overdraft facility, the closing balance of the 1st defendant's bank account was TZS 3,291,450 only but on 22nd March 2024, the 1st defendant was able to withdraw TZS 60,000,000 which thereafter created a negative balance of TZS -56,708,550. Similarly, in Exhibit P5 supported by paragraph 15 of Exhibit P1, it was proven by the plaintiff that the 1st defendant continued to withdraw money from 22nd March 2024 through to April, 2025 resulting to total outstanding amount of TZS 2,194,508,358.63.

On part of the 1st defendant, DW1 testified that despite her default to repay the utilized overdraft of TZS 2,194,508,358.63, and her receipt of the plaintiff's notices of default – *Hati za Madai* dated 21st October 2024 and 15th November 2024, admitted in evidence collectively as Exhibit P8, the 1st defendant did not bother to repay the oustsanding amount.

Due to the existing collaterals extended by the 2nd defendant through Credit Facility Guarantee/Insurance Policy admitted as Exhibit P6, and the 3rd, 4th, 5th and 6th defendants' Directors' Joint and Several Guarantee admitted as Exhibit P7, PW1 attested that the 2nd, 3rd, 4th, 5th and 6th defendants aware of the 1st defendant's default but did not step in to remedy the 1st defendant's default as undertaken in the respective collaterals. Through paragraphs 16 through to 32 together with Exhibits P6, P7, P8 and reminder letters to the 2nd defendant admitted in evidence as Exhibit P9, DW1 substantiated the default by the 1st defendant, the notices and reminder letter to the defendants on the 1st defendant's default, and default by the defendants to heed to the terms of Exhibit P2, P3, P6, and P7 by paying the outstanding amount.

The above evidence establishing the 1st defendant's utilization of TZS 2,194,508,358.63 was not controverted by the 1st and 3rd defendants. Through Exhibits D1 and D2, the defendant alleged his default to repay the overdraft loan facility was occasioned by the plaintiff's delay in disbursing the funds and that the claimed amount ought to be paid by the 2nd defendant, the insurer of the loan repayment arising out of the Credit Facility Guarantee/Insurance Policy admitted as Exhibit P6 issued by the former in her favour.

The 2nd defendant failed to adduce evidence controverting the plaintiff's evidence in respect of execution of the Credit Facility Guarantee/Insurance Policy and his default to the remedy the 1st defendant's breach. Additionally, Exhibit P6 demonstrates the 2nd defendant's commitment to repay the outstanding loan upon the 1st defendant's default to repay the same to the extent of a guarantee of US$ 1,500,000 equivalent to TZS 3,870,000,000 at exchange rate of 2,580 as of 21st April 2026 when PW1 adduced evidence to support the plaintiff's case.

In paragraphs 1 through to 20 of Exhibit P6, the 2nd defendant warranted and undertook to repay the loan on the occurrence of events including: failure to pay any instalment and such instalment continues to be outstanding for a period of more than 30 days; the Borrower defaults in observing or fulfilling any obligation to be observed or fulfilled by the Borrower under this Credit Facility letter which in the case of default capable of remedy, shall continue for a period beyond 30 (Thirty) days; the Borrower is unable or deemed to be unable to pay debts as they fall due or admits in writing, the inability to pay debts as they fall due or any insolvency proceedings being taken in respect of the Borrower; and the amount or balance of any debt of the Borrower including, without limitation, to any Term Loan Facility by the Bank or other indebtedness of the Borrower not being paid when due becomes payable prior its stated maturity by reason of default or by reason of any demand for immediate payment by any person entitled to the benefit thereof or any creditor of the Borrower becomes entitled to declare any such debt or indebtedness due and payable prior to its stated maturity for any reason.

Despite the occurrence of the above events and demand by the plaintiff through Exhibit P8 and P9, the 2nd defendant defaulted to remedy the 1st defendant's default.

As for the 4th, 5th and 6th defendants who executed the Directors' Joint and Several Guarantee together with the 3rd defendant exhibited by Exhibit P7, they defauted to oppose the suit and failed to file written statement of defence. Despite absence of their opposition, Exhibit P7 demonstrate their commitment to repay the loan upon the 1st defendant's default. In Clause 1 and 2 of Exhibit P7, the 3rd, 4th, 5th, and 6th defendants undertook to repay and continue to repay outstanding balances due to the 1st defendant together with interest, commission, fees, all legal and other costs and expenses incurred by the plaintiff.

It was further agreed under Clause 1(a) to (d) of Exhibit P7 that the Guarantee shall be exercisable by the plaintiff against the 3rd, 4th, 5th, and 6th defendants if the 1st defendant defaults payment of the loan facilities, interest or any monies due; if the 1st defendant or the 3rd, 4th, 5th, and 6th defendants stops payment of its debts; or any other events which in the opinion of the plaintiff are likely to materially or adversely affect the ability of the 1^{st} defendant or the 3^{rd}, 4^{th}, 5^{th}, and 6^{th} defendants to perform their obligations or complying with the terms of the Guarantee or Offer Letter.

Notwithstanding the 1^{st} defendant's default to pay the outstanding amount, the 3^{rd}, 4^{th}, 5^{th}, and 6^{th} defendants failed to remedy the plaintiff's default by paying the outstanding amount of TZS 2,194,508,359.63.

Discernibly, contrary to the 3^{rd} defendant's allegation through DW1 that it is the 2^{nd} defendant who ought to pay the outstanding loan, Exhibit P7 does not contain such an exception. Under Exhibit P7, the Guarantee was absolute with no articulation by the 3^{rd}, 4^{th}, 5^{th}, and 6^{th} defendants that the Guarantee will only be trigerred in the event of the 2^{nd} defendant's default to pay. Similarly, Exhibit P7 had no clause exonorating the 3^{rd}, 4^{th}, 5^{th}, and 6^{th} defendants from liability on creation or execution of the Financial Guarantee. Both the Directors' Joint and Several Guarantee and the Financial Guarantee were specific and distinct collaterals required under paragraphs 5(b) and (c) of Exhibit P2 and 5(ii) and (iii) of Exhibit P3, among other securities.

It is thus my considered position that the 3^{rd}, 4^{th}, 5^{th}, and 6^{th} defendants' undertaking to remedy the 1^{st} defendant's default to pay the outstanding loan amount, was independent of the Financial Gurantee. It is a long established position of law that parties are bound by what they contracted. This is what is referred to sanctity of contract. In **Simon Kichele Chacha vs. Aveline M. Kilawe, Civil Appeal No. 160 of 2018**, the Court of Appeal articulated the principle of sanctity of contract in the following words:

> *"Parties are bound by the agreements they freely entered into and this is the cardinal principle of the law of contract. That is, there should be sanctity of the contract as lucidly stated in **Abualy Alibhai Azizi vs. Bhatia Brothers Ltd** [2000] TLR 288, at 289 thus:*
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>> *"The principle of sanctity contract is consistently reluctant to admit excuses for non-performance where there is no incapacity, no fraud (actual or constructive) or misrepresentation, and no principle of public policy prohibiting enforcement."*

I have also considered the 1st and 3rd defendant's allegations and their respective evidence adduced in Exhibits D1 and D2 through DW1, that their default is attributable to the plaintiff's delay to disburse the funds from January 2024 to 25th March 2024. This is despite the 1st defendant' acceptance and utilization of the overdraft loan facility extended to her by the plaintiff.

Again, it has been established through the evidence of PW1, DW1 and Exhibits P3, P4, P6 and P7 that the overdraft loan facility could not be made available unless the 1st defendant procures collaterals as agreed in Clause 5 of Exhibit P2 and Clause 5 of Exhibit P3. While Exhibit P7 substantiate that the Directors' Guarantee was executed on 31st January 2024, Exhibit P6 substantiate that the Financial Guarantee was executed on 20th March 2024 immediately before the plaintiff's disbursement of the overdaft loan facility on 22nd March 2024.

Apart from PW1's substantiations, DW1 attested during cross examination that the overdaft loan facility could not be disbursed by the plaintiff before the 1st defendant's compliance with offering collaterals as agreed. DW1's attested as follows:

> *"I stated that the plaintiff's own unreasonable delay in disbursing fund has had a catastrophic impact on my personal financial standing in my written statement of defence. I still believe that the plaintiff delayed disbursing the loan as there were an interval of three months from the offer letter to the date she disbursed the loan.* ***After the offer letter, there were matters to be complied by the 1st defendant before disbursement of the loan. It is true that there should have been an***

***issuance of insurance cover before the disbursing the loan**.*

It is true that from 22nd March 2024, I started enjoying the overdraft as it was made available on 22nd March 2024. I agree that I started to enjoy the overdraft on 22nd March 2024. ***The delay that I am talking about in the witness statement is that we signed the agreement on 31st January 2024, but DCB signed on 21st March 2024, a passage of two months after we signed. DCB disbursed the loan on 22nd March 2024 after a lapse of two months from when we signed. I didn't want DCB to disburse loan before they receive insurance cover. DCB should have disbursed the funds after they receive insurance cover. The insurance cover was issued on 20th March 2024.**"* [Emphasis added].

It follows that the 1st and 3rd defendants' defence that the 1st defendant's default is attributable to the plaintiff's delay in disbursement of the overdraft loan facility, are mere speculation and afterthought.

The 3rd defendant's allegation that he did not receive demand from the plaintiff is meritless. DW1, the principal officer of the 1st defendant, the 3rd defendant and one of the directors and guarantors in Exhibit P7 testified during cross examination DW1 that the defendants intended to settle the debt of TZS 2,000,000,000 in 2024/2025. This confirms that the defendants were aware of the 1st defendant's default and their obligations to pay the outstanding loan amount.

The above notwithstanding, the 3rd defendant's non-receipt of the demand does not extinguish his liability to pay the outstsanding loan amount upon the 1st defendnat's default to pay the same. See the decision in **National Bank of Commerce Limited vs. Mapele Enterprises Company Limited and 2 Others**, (Civil Appeal No. 381 of 2019) [2023] TZCA 17281 (26th May, 2023) at page 16, the Court of Appeal held:

> *"Moreover, even assuming demand or default notice was required, non-issuance of it did not extinguish the first respondent's liability. .... it is our firm view that, non-issuance of the demand or default notice did not extinguish the appellant's right to claim the outstanding balance."*

In consequence of the above evidence and observations, I find the 3rd, 4th and 5th issues in the affirmative that 1st defendant breached the terms of the Loan Facility Agreement by defaulting to repay the outstanding amount of TZS 2,194,508,359.63; the 2nd defendant breached the terms of the Financial Guarantee/Credit Facility Guarantee by her failure to repay the outstanding amount of TZS 2,194,508,359.63 upon default by the 1st defendant; and the 3rd, 4th, 5th and 6th defendants breached the terms of the Directors' Joint and Several Guarantee by their failure to repay the outstanding amount of TZS 2,194,508,359.63 upon default by the 1st defendant.

I now move to the 6th issue as to whether defendants are jointly and severally liable for payment of the outstanding amount of TZS 2,194,508,359.63.

Considering the affirmative resolution of the 3rd, 4th and 5th issues above the the defendants breached the respective agreements, I also find the sixth issue in the affirmative.

Under Exhibit P3, and P4, the 1st defendant ought to have complied with the terms stated therein by servicing the overdraft loan through deposits which he defaulted. Similarly, under Exhibit P6, the 2nd defendant ought to have paid the outstanding loan amount upon the 1st defendant's default in accordance with her commitments under the Financial Guarantee. Likewise, under Exhibit P7, the 3rd, 4th, 5th and 6th defendants should have remedied the 1st defendnat's default by paying the outstanding amount together with interest and other fees and expenses as per their undertaking in the Directors' Joint and Several Guarantee.

The specific defaults, render all the defendants liable to pay the outstanding amount of TZS 2,194,508,359.63. Accordingly, I find the sixth issue in the affirmative.

The seventh and last issue is the reliefs the parties are entitled.

Since the 1st defendant breached the Offer Letter and Loan Facility Agreement, the 2nd defendant breached the Financial Credit Gurantee and the 3rd, 4th, 5th and 6th defendants breached the Directors' Joint and Several Guarantee, they are obliged to indemnify and pay the plaintiff the sum of TZS 2,194,508,359.63, being an outstanding overdraft loan amount comprising of TZS 2,000,000,000 and interest of TZS 194,508,359.63 as of 2nd April 2024; interest at the agreed rate of 19% per annum as agred in Clause 7 of Exhibit P3; penalty interest of 5% per annum as agreed in Clause 7 of Exhibit P3; interest at the court's rate from the date of judgement to the date of full satisfaction of the decretal amount; and costs of the suit.

Regarding general damages, DW1 duly testified in paragraph 34 of Exhibit P1 that the defendants' default to pay the outstanding loan to the plaintiff, occassioned negative impact on the capability of the plaintiff to issue loan to other customers, and adversely affected the plaintiff's cashflow. I have also ascertained the plaintiff's quest to recover the loan through issuance of notices and reminders for recovery. As such, I hold that the plaintiff is entitled to general damages. I find it reasonable to order the defendants to pay the plaintiff TZS 50,000,000 (Say Tanzania Shillings Fifty Million) only as general damages.

Consequently, I enter judgment in favour of the plaintiff against the defendants jointly and severally, and proceed to declare and decree as follows

1. The 1st defendant breached the terms and conditions of the offer letter, and Loan Facility Agreement by its failure to discharge the duties and obligations contained in the said Agreement especially failure to repay the full amount of the credit facility.
2. The 2nd defendant breached the Financial Guarantee/Credit Facility Guarantee by failure to comply with the terms, conditions and covenants of the guarantee especially on payment of the entire

amount of the outstanding amount of the Credit facility following default by the 1st defendant.

3. The 3rd, 4th, 5th and 6th defendants breached the Directors Joint and Several Guarantee by failure to comply with the agreed terms, conditions and covenants of guarantee especially on payment of the entire amount of the outstanding amount of the credit facility following default by the 1st defendant.
4. The defendants jointly and severally should immediately pay the plaintiff the entire outstanding amount of the credit facility which is TZS 2,000,000,000 (Say Tanzania Shillings Two Billion) being the principal amount of the outstanding credit facility and interest of TZS 194,508,359 (Say Tanzania Shillings One Hundred Ninety-Four Million Five Hundred Eight Thousand Three Hundred and Fifty-Nine).
5. The defendants jointly and severally should immediately pay the accrued interest at the rate of 19% per annum from the date of default to the date of full and final payment.
6. The defendants jointly and severally should immediately pay penalty interest of 5% per annum for failure to pay the credit facility and financial/credit guarantee on time.

7. That the defendants jointly and severally should pay the plaintiff general damages of TZS 50,000,000 (Say Tanzania Shillings Fifty Million) arising from their failure to honour terms and conditions of the Credit facility, Financial/Credit Guarantee Agreement and Directors Joint and Several Guarantee Agreement.
8. The defendants jointly and severally should pay the plaintiff interest at the rate of 7% on decretal amount from the date of the judgement to the date of full satisfaction of the decree at the prevailing commercial rate.
9. The defendants should pay costs of the suit.

It is so ordered.

Right of Appeal to the Court of Appeal fully explained.

DATED at **DAR ES SALAAM** this 30th day of June 2026.

H.A. KINYAKA

JUDGE

30/06/2026