

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT ARUSHA

COMMERCIAL CASE NO. 08 OF 2019

ACTIVE PACKGAGING (T) LIMITED.....PLAINTIFF

Versus

TIB DEVELOPMENT BANK.....DEFENDANT

Last Order: 22nd July, 2020

Date of Judgment: 08th Sept, 2020

JUDGMENT

FIKIRINI, J.

The plaintiff, Active Packaging (T) Limited on the 25th May, 2011, applied for a loan from the defendant, TIB Development Bank. The loan was a long term loan to the tune of Tzs. 420,000,000/= and an overdraft facility amounting to Tzs. 80,000,000/= as a working capital to her project. The said loan was approved on 24th September, 2014 and executed on 10th November, 2014, upon the plaintiff securing it by the landed property: Plot No. 24-27 situated at Loovilukunyi area, Arumeru District with certificate of title No.37976 and LO No. 447730 and as well Mr. Prosper Fidelis Swatty securing it by personal guaranteeing it with his landed property on Plot No. 189, Block "GG" Kimandolu area, Arusha city with certificate of title No. 18078 and LO No. 212561. To the contrary to what was

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agreed the defendant has not provided or issued the overdraft facility to the plaintiff.

The plaintiff is now suing for breach of contract and seeking for declaratory order in that respect; specific performance of such terms and conditions as stipulated in the credit facility agreement; such as return of the mortgaged land and release of collateral; payment of Tzs. 200,000,000/= being compensation for loss of business and profit at interest at 12% per annum from the date of commencement of the agreement to the date of breach of the facility agreement; at 7% commercial interest for breach of contract from the date of filing these proceedings to the date of judgment; costs to the plaintiff and plaintiff's advocate, and any other relief(s) that this Court deems fit and just to grant.

The defendant, TIB Development Bank, filed written statement of defence in which each and every allegation raised by the plaintiff was denied and prayed for the dismissal of suit entirely.

Before commencement of the hearing, parties agreed on the following framed issues to be determined by the Court which are:

- i) Whether the defendant breached the terms and conditions of credit facility agreement;

