MISC.APP.004/2022 2022 E. NO.1

IN THE HIGH COURT OF SIERRA LEONE

COMMERCIAL AND ADMIRALTY DIVISION

FAST TRACK COMMERCIAL COURT

BETWEEN:

ECOBANK MICROFINANCE (SL) LIMITED - PLAINTIFF

ABRAHAM SAMUEL KONTEH - DEFENDANT

G.F. KAINDANEH **- COUNSEL FOR THE PLAINTIFF**

-DEFENDANT UNREPRESENTED

JUDGMENT DELIVERED BY THE HONORABLE JUSTICE LORNARD TAYLOR ON THE 16TH JUNE 2022

This matter was commenced by Originating Summons dated 21st March 2022 by the plaintiff praying for the following orders;

1. That the defendant herein do immediately pay all moneys due and owing the plaintiff under an overdraft facility agreement dated 4th May 2018 plus interests on the sums of the facility and other costs in the sum of Le 328,763,697.02 (Three hundred and twenty-eight million, seven hundred and sixty-three thousand, six hundred and ninety-seven Leones and two cents) being sums due and owing the plaintiff under the said overdraft facility agreement.
2. Interest on the said sum at the rate of 24% per annum.
3. Further or in the alternative, an order that the BMW X5 Jeep ANK 500 and receivable $ 108,800 deposited as security be sold by private treaty so as to realise all sums due under the overdraft facility plus interests accrued as at the date of Judgment.
4. Any consequential order(s) this honourable court may deem fit an just in the circumstances.
5. Costs.

The Plaintiff's case is that the defendant was granted a loan and an overdraft facitlity by the Plaintiff in the sum of Le 75 Million respectively and a total of Le 150 million. These facilities were approved by letter dated 4th May 2018 which is before this court marked Exhibit SRB1.

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Subsequently, the defendant applied for a further facility in the sum of Le 386 million. This was also approved by the Plaintiff pursuant to the terms as contained in the approval letter which is before this court as Exhibit SRB 3.

This sum was deposited into the defendant's account with the plaintiff and the defendant made withdrawals and utilised the facilities granted by the Plaintiff. The current status of the account of the defendant is contained in Exhibit SRB 7 and same shows that the Defendant is currently indebted to the Plaintiff in the sum of Le 314,906,026.79.

The defendant did not enter an appearance when served with the claim of the Plaintiff. On this basis, this court is deprived of the defendant's case and can only consider whether the Plaintiff have discharged its legal burden on the requisite standard of a balance of probabilities.

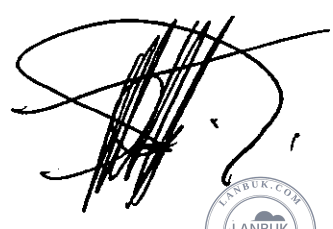
The contract between the parties if wholly in writing and as such the role of the court is limited to interpreting what was agreed between the parties. Based on the exhibits before the court the Defendant was awarded banking facilities which he utilised. As per the terms of the agreement between the parties, the defendant is to perform by liquidating the debt and the interest agreed upon. There is no evidence before this court that same have been done.

Pursuant to Order 13 rule 10 of the High Court Rules 2007, where no appearance is entered on behalf of the defendant, the plaintiff may apply for the action to be heard and determined which is the case in the present matter. The provision reads thus;

> *"Where a defendant or respondent to an originating summons to which an appearance is required to be entered fails to appear within the time limited, the plaintiff or applicant may apply to a Judge for an appointment for the hearing of such summons, and after the filing of a certificate that no appearance has been entered, the Master shall notify the plaintiff of a time for the hearing of such summons".*

I have no doubt in my mind that the Plaintiff based on the facts before this court have discharged its burden of proof on a balance of probabilities. It is also quite clear that considering that the defendant have not entered an appearance to the action that the Plaintiff is in compliance with the rules and procedure with respect to proceeding by default. In the circumstances, I make the following orders;

1. The defendant is indebted to the Plaintiff in the sum of Le 314,906,026.79 which said sum is due and owing the Plaintiff by the defendant.



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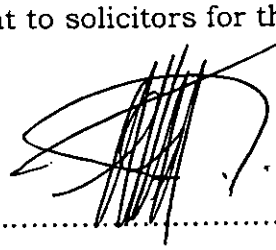
2. The Plaintiff is entitled to interest on the said sum of Le 314,906,026 or such sum remaining at the rate of 24% per annum from the date of this judgment until payment, such interest is not to bear any further interest.
3. The Plaintiff is at liberty to levy execution on all funds and property in its possession in satisfaction of the said judgment debt.
4. The cost of this application is assessed at Le 30 Million to be paid by the defendant to solicitors for the Plaintiff.



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HONORABLE JUSTICE LORNARD TAYLOR

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