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Borrowers should not Turn Courts into a Bush to Hide

- Court of Appeal issues stern warning to borrowers
- High Court's decision in favour of a defaulted borrower overturned
- Unframed issue cannot be determined by the Court
- Mortgagor's obligation under the Land Act to provide information emphasized

In what will be seen as a lifeline for banks, the Court of Appeal yesterday ruled in favour of a bank by reversing a decision of the High Court (Commercial Division) (High Court) in the case of Equity Bank Tanzania Limited and Equity Bank Kenya Limited versus Nas Hauliers and 10 others. The Judgment comes out timely as a major triumph for various banks that have been hit with judgments by the High Court ruling in favour of defaulters based on deemed minor technicalities without considering basic banking principles.

Background

Nas Hauliers borrowed USD 16,275,000 from Lamar Commodity Trading DMCC of U.A.E (Lamar Trading), with Equity Bank Kenya acting as the guarantor under an LC Agreement. The borrower failed to repay the loan compelling the guarantor, Equity Bank Kenya, to pay the lender and stepping into the shoes of the lender. The guarantee from Equity Bank Kenya was secured through various mortgages, securities and collaterals held by Equity Bank Tanzania as security agent on behalf of Equity Bank Kenya.

Before Equity Bank Kenya could recover the money, the borrower sued Equity Bank Kenya and its security agent, Equity Bank Tanzania, and got a judgment in which the High Court ruled that there was no lending between Nas Hauliers and Lamar Trading falling within the confines of the SBLC/LC agreement. The High Court further discharged all the securities without addressing how the borrower even got the loan and cash flow in the first place. To add fuel to fire, the High Court also awarded the defaulter damages of TZS 300,000,000. The counterclaim by the banks was also thrown out by the High Court sending shock waves in the banking industry. Equity Bank Kenya and Equity Bank Tanzania appealed to the Court of Appeal whereby the Appellants prayed for the High Court's judgement to be set aside and the counterclaims to be upheld with costs.

The decision

The three Justices ruled that the borrowers indeed borrowed money from the lender; Equity Bank Kenya had guaranteed the loan; the borrower had defaulted in paying back the loan forcing Equity Bank Kenya to step into the shoes of the lender and that the loan would not have been disbursed had the LC not been issued by Equity Bank Kenya; and Equity Bank Kenya was, therefore, entitled to recovery of the loan, interest with costs.

This decision will also go a long way to bring back confidence by the banking sector of the Tanzania Judicial System and serves as a warning to would be defaulters who sue banks after defaulting to repay their loans. The judgment serves as a stern signal to the "defaulters club" which has been instrumental in pushing banks to take extreme precaution in lending, to the detriment of genuine borrowers and the economy at large. A welcome decision for the banking fraternity.

To read a copy of the judgment, [click here](#)

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