

TANZANIA LEGAL INSIGHT

CoA Upholds Bank Recovery Under Standby Letter of Credit, Reaffirming the Autonomy Principle

In *Z.A.S. Investment Company Limited and 5 Others v Equity Bank Tanzania Limited and Equity Bank Kenya Limited*, Civil Appeal No. 1321 of 2024, the Court of Appeal (CoA) of Tanzania dismissed an appeal by a borrower and its guarantors against a judgment of the High Court (Commercial Division). Judgment was delivered on 22 September 2026.

The Court held that a letter of credit issued under the ICC Uniform Customs and Practice for Documentary Credits (UCP 600) is independent of the underlying contract. It also held that a borrower who received the benefit of a foreign loan cannot avoid repaying a bank by claiming that the foreign loan was illegal. The decision gives banks clear guidance on documenting and enforcing trade finance and restructured facilities.

In this legal alert, we analyse the decision and its practical implications for banks.

Background

Z.A.S. Investment Company Limited (ZAS) obtained a loan of USD 7,013,000 from Lamar Commodity Trading DMCC (Lamar), a Dubai company. The loan was conditional on ZAS providing a standby letter of credit (LC). Lamar appointed Numora Trading PTE Limited (Numora) of Singapore to receive the LC and disburse the loan.

On 5 April 2019, ZAS signed a facility letter with Equity Bank Kenya Limited (Equity Kenya). On ZAS's application, Equity Kenya issued the LC in favour of Numora. The facility was secured by mortgages over properties in Zanzibar and Dar es Salaam, assignments of rent, and personal and corporate guarantees. Equity Bank Tanzania Limited (Equity Tanzania) held the securities as security trustee.

ZAS defaulted. Lamar called on the LC and Equity Kenya paid USD 7,013,000 to Numora. ZAS and the guarantors then signed a restructured loan of about USD 7.3 million in 2020 and a further term loan in 2021. ZAS did not repay either.

In 2022, ZAS sued the banks. It claimed that the 2019 facility never took effect, that the later facilities were void and that all securities should be discharged. The banks counterclaimed for about USD 5.43 million and USD 2.61 million. The High Court dismissed ZAS's claim and allowed the counterclaims.

Court of Appeal Decision

1. The LC was issued and is separate from the loan

ZAS argued that the banks had not proved that the LC was issued. The Court rejected this. ZAS's own witness admitted that the LC was issued and that ZAS received and used the loan.

ZAS's application and the LC both stated that UCP 600 applied. Under Article 4, a credit is separate from the underlying contract, and banks are not bound by that contract. Under Article 5, banks deal with documents only. Equity Kenya's duty was to issue the LC as ZAS requested. ZAS named Numora as beneficiary. Any dispute over whether Lamar assigned its rights to Numora was between ZAS and the foreign lenders, not the bank.

2. Illegality of the foreign loan did not affect the bank facilities

ZAS argued that the Lamar loan was not registered with the Bank of Tanzania, so the bank facilities used to repay it were void. The Court disagreed. ZAS received and used the Lamar funds. Even if that loan were illegal, section 65 of the Law of Contract Act would require ZAS to return the benefit. The Court stated that money borrowed from banks must be repaid and guarantees must be honoured.

ZAS also alleged that the 2020 and 2021 facilities were fraudulent. The Court rejected this. ZAS and all the guarantors signed them, and fraud must be pleaded and strictly proved.

3. A jurisdiction clause can be waived by conduct

The Zanzibar mortgages gave the Zanzibar courts exclusive jurisdiction. ZAS argued that the High Court of Tanzania could not hear the counterclaims. The Court held that ZAS waived the clause when it filed suit in the High Court and asked for the Zanzibar mortgages to be discharged. The suit was also properly filed in Dar es Salaam under section 18 of the Civil Procedure Code, because it was a money claim and not a claim to recover land.

4. Demands to guarantors are not Land Act notices

ZAS argued that the demand letters to the guarantors were filed late and did not comply with section 127 of the Land Act. The Court held that a demand letter is not a cause of action. The banks pleaded the demands and filed them before the hearing, as Order XIII Rule 1 of the Civil Procedure Code allows. Section 127 applies to notices before a mortgagee sells mortgaged land. It does not apply to demands under a guarantee.

5. Procedural complaints failed

The Court rejected the remaining grounds. Cross-examination is not limited to matters raised in chief, and the documents used were later admitted without objection. ZAS did not seek to join Lamar at trial, so it waived the point, and non-joinder does not defeat a suit. A judge returning a file for reassignment because of workload is not a recusal. The trial judge's comment on corroboration did not affect the result.

The appeal was dismissed with costs.

Practical Implications for Banks

Technicalities will not defeat the obligation to repay. The Court stated that money borrowed from banks must be repaid and guarantees in favour of banks must be honoured. ZAS and its guarantors raised twelve grounds, including illegality of the foreign loan, fraud, lack of jurisdiction, defective demand notices and non-joinder of the foreign lender. All failed. The borrower had applied for the LC, received the funds and signed the restructured facilities, and those documents decided the case. ZAS sued first to discharge its securities, but the banks counterclaimed against the borrower and all five guarantors in the same case and recovered the full debt with costs. Where the documents are signed, and the money has been received, a borrower's technical objections will not stand in the way of a bank's recovery.

Banks must execute documents properly and obtain every signature. The banks won because their documents were complete. ZAS signed the LC application naming the beneficiary. The borrower and all five guarantors signed the restructured facilities. The securities were perfected and registered before the LC was issued. When ZAS alleged fraud, the Court pointed to the signatures of ZAS and every guarantor on the facility documents. A missing signature, an unperfected security or an incomplete application could have given the borrower a real defence. Banks should ensure that the borrower, every guarantor and every security provider sign each facility, restructuring and security document, that board resolutions are obtained, and that securities are registered before funds are released.

Conclusion

The decision confirms that Tanzanian courts will enforce bank facilities and guarantees where the bank's documents are clear. Banks that issue letters of credit under UCP 600 are not concerned with the underlying contract.

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