United Bank for Africa (Tanzania) Limited vs GEFA Agriculture Limited Civil Appeal No. 807 of 2025 [2026] TZCA 1092 (31 August 2026).

Key Note: **Where successive credit facility agreements differ on the refundability of an arrangement fee, the earlier agreement's silence creates an ambiguity that is resolved against the bank as drafter.**

1.0: Brief Background of the matter

The appellant, United Bank for Africa (Tanzania) Limited, a licensed commercial bank, extended credit facilities to the respondent, GEFA Agriculture Limited, under two successive written agreements: the First Multiple Credit Facility Arrangement (FMCFA) executed on 8th February 2022, and the Second Multiple Credit Facility Arrangement (SMCFA) which superseded the first when the facility limit was reduced. Under the FMCFA the respondent paid an arrangement fee of USD 570,000. When the facility was later reduced, the applicable fee under the SMCFA became USD 144,375. The respondent sought a refund of the excess of USD 425,625.00. The bank declined.

The respondent instituted Miscellaneous Commercial Cause No. 33 of 2023 in the High Court (Commercial Division) at Dar es Salaam seeking interpretation of the two contracts and a refund of the excess fee, together with interest and damages. The trial court (Morris, J.) held that the two agreements were interdependent; that the FMCFA was ambiguous on refundability while the SMCFA expressly made the fee non-refundable; and ordered the bank to refund USD 425,625.00 with 7% court interest from the date of judgment, while dismissing the claims for general damages and pre-judgment commercial interest. The bank was ordered to pay costs. Aggrieved, the bank appealed to the Court of Appeal on five grounds.

1.1. Arguments of the Appellant's Counsel

Counsel for the bank submitted that:

1. The respondent stood to benefit from its own wrong because it failed to draw down the facility and to perfect securities in time; the fee had been paid upfront as consideration for the facility that the bank had availed.
2. The trial court wrongly applied the *contra proferentem* rule. The FMCFA was negotiated, guided by a term sheet, and the respondent had adequate opportunity to review and comment on it before execution; it was not a unilateral document prepared solely by the bank.
3. The parties had unequivocally agreed that the arrangement fee was non-refundable.
4. The bank was under no contractual or other obligation to account to the Respondent for how an agreed service/arrangement fee was utilised.

5. On the totality of the evidence the trial court ought to have entered judgment for the bank.

1.2. Arguments of the Respondent's Counsel

Counsel for the respondent (Mr. Heriel Obeid Munisi) submitted that no fault lay with the respondent under the FMCFA; any default originated from the bank's own change of procedure (as shown by the bank's email evidence). Unlike the SMCFA, the FMCFA contained no term rendering the fee non-refundable. The trial court correctly resolved the ambiguity against the bank as drafter. The bank had failed to prove that the entire USD 570,000 had been utilised; the very fact that the SMCFA directed deduction of the reduced fee from the earlier payment was inconsistent with a claim that the original fee had already been wholly spent. The appeal was without merit and should be dismissed.

1.3. The Court's Position

The Court (Fikirini, J.A., with Mgeyekwa and Masara, JJ.A. concurring) considered all five grounds together. It held that the relationship between the parties was contractual and fell to be determined according to ordinary principles of contractual interpretation.

On the wording of the agreements, the Court noted that clause 1 of the FMCFA merely provided for a fee of 0.75% "payable upfront upon execution of Offer Letter" and said nothing about non-refundability. By contrast, clause 1 of the SMCFA expressly stated that "the arrangement fee is non-refundable and payable upfront." The difference in wording was deliberate: the bank's own witness acknowledged that the SMCFA wording had been recast precisely to remove uncertainty over refundability. The trial court was therefore justified in treating the FMCFA's omission as creating uncertainty.

The Court reaffirmed that *contra proferentem* applies only where genuine uncertainty remains in a document prepared by one party. The fact that the respondent had an opportunity to comment did not alter the fact that the bank prepared the facility documents. An alleged prior oral understanding could not override the written. Courts enforce contracts as made and do not rewrite them by inserting words the parties did not use.

On utilisation of the fee, the burden under section 117 of the Evidence Act rested on the bank, as the party asserting that the whole fee had been earned, to prove it. General references to due diligence, BRELA searches and credit-reference checks did not establish particular expenditure consuming the entire USD 570,000. The SMCFA's express direction that the reduced fee be covered from the earlier payment was difficult to reconcile with a claim that the original fee had already been wholly spent. Counsel's assertion that the deduction was a "gesture of goodwill" was unsupported by the record and amounted to evidence from the bar.

The trial court had properly considered the interdependence of the two facilities (evidenced by the SMCFA's repeated references to the "previous facility," "previous approved limit" and "previous arrangement fee") and had reflected the respondent's own contribution to the failed transaction by refusing general damages and pre-judgment commercial interest. There was no basis to interfere.

The appeal was accordingly dismissed with costs.

2.0: Principles established

The judgment establishes the following key legal principles:

(a) Where successive credit facility agreements differ in their wording on the refundability of an arrangement fee, the earlier agreement's silence on non-refundability creates an ambiguity that is resolved against the bank as the drafter under the *contra proferentem* rule.

(b) Courts enforce written contracts as made; they will not insert into an agreement words (such as "non-refundable") that the parties themselves did not use.

(c) An arrangement fee paid under a credit facility agreement is, in principle, consideration for services rendered in arranging the facility. However, where a subsequent reduced facility expressly provides that the new fee is to be drawn from the earlier payment, the bank bears the burden of proving that the original fee was fully earned before it may retain any excess.

(d) Submissions from the bar cannot supply evidence that is absent from the record.

(e) The interdependence of successive facility agreements is to be determined from the language of the later agreement itself (references to the "previous facility," "previous approved limit" and "previous arrangement fee").

3.0. Conclusion and our observation

The decision underscores the importance of precise drafting in facility documentation. Banks that wish to render arrangement fees non-refundable must say so expressly in the relevant agreement. Silence, followed by a later express non-refundability clause in a superseding agreement, will ordinarily be construed against the bank. The ruling also reinforces that the burden of proving that a fee has been fully earned rests on the party seeking to retain it, and that general assertions of work done will not suffice in the face of contractual language suggesting otherwise.

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