**Tuke v Dhow Mercantile (EA) Ltd**

**Division:** High Court of Tanzania at Dar-es-Salaam

**Date of Judgment:** 17 February 2004

**Case Number:** 147/02

**Before:** Kimaro J

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Contract – Loan agreement – Whether plaintiff entitled to recover – Appointment of receiver/manager in event of default.*

**Editor’s Summary**

The plaintiff became acquainted with Mr Gulamali Bohari Shah and Yohana Nyakibari who were directors of the defendant company. The defendant had a contract with the Parastatal Sector Reform

Commission which allowed it to hire Lupembe Tea Factory for six months. The defendant had no capital for running the factory and through its directors, obtained financing from the plaintiff. The plaintiff was also made a shareholder and director of the defendant company.

The plaintiff had advanced to the defendant TShs 90 million for its operations, with TShs 60 million being secured by debenture whereas the balance was made on a gentleman’s agreement.

A dispute arose between the parties as to the amount of money truly outstanding.

The plaintiff sued for payment of the outstanding balance of TShs 38 039 830. Issues framed for determination were (*a*) whether the loan amount under the debenture had been fully liquidated and (*b*) which relief’s the parties entitled to.

**Held** – The plaintiff had proved his case on a balance of probabilities. The defendant was indebted to the plaintiff in the sum of TShs 38 309 830 being the outstanding balance which had not been repaid.

Judgment would therefore be entered for the plaintiff against the defendant for the outstanding amount. The plaintiff would also be allowed to appoint a receiver/manager to manage the affairs of the defendant in the event of default in payment.

**No cases referred to in judgment**