IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: NDIKA, J.A., SEHEL, J.A., And KHAMIS, J.A.)

CIVIL APPEAL NO. 429 OF 2020

POWER ROADS TANZANIA LIMITED ..... APPELLANT

VERSUS

BANK OF AFRICA TANZANIA LIMITED. ..... RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania

at Dar es Salaam)

(Ngwala, J.)

dated the 27th day of November, 2019

in

Civil Case No. 163 of 2016

.....

JUDGMENT OF THE COURT

19th July & 7th September, 2023

NDIKA, J.A.:

The appellant, Power Roads Tanzania Limited, vainly sued the respondent, Bank of Africa Tanzania Limited, in the High Court of Tanzania at Dar es Salaam for recovery of, one, loss of income amounting to USD. 819,568.00, and two, foreign exchange rate loss in the sum of TZS. 119,092,820.00. The appellant now appeals against the dismissal of the action.

The brief background to this case is as follows: the appellant, a company registered under the Companies Act, Cap. 212, deals in provision of construction equipment rental services. It is common ground that the appellant held a current account [particulars withheld]

at the respondent's Mtoni branch in Dar es Salaam. By its Amended Plaint, the appellant stated that on 16th December, 2014, the Tanzania Revenue Authority ("the TRA") transferred the sum of USD. 636,860.00 intended to be remitted into the account. The money, it was averred, constituted the decretal sum that the TRA owed the appellant vide a judgment and decree of the Tax Revenue Appeals Board ("the TRAB") dated 24th July, 2014. The appellant pleaded further that, although the respondent was made aware of the source and purpose of the funds, it withheld the monies without any justification and later it remitted them back to the TRA. That the respondent unjustifiably did not credit the money until 2nd April, 2015, which was five months later, despite the intervention by the TRAB on 18th December, 2014 confirming the source and purpose of the funds and the TRA retransferring the funds on 23rd December, 2014 for remittance in the appellant's account.

It was claimed that, the withholding of the funds by the respondent was a breach of banker-customer relationship. The said unjustified act frustrated the appellant's agreement with Mantrac Tanzania Limited under which the appellant was to acquire construction equipment worth USD. 925,000.00 intended to be leased to Kalago Enterprises Company Limited ("Kalago") on a six-months contract. Due to the appellant's failure to acquire and supply the equipment, Kalago terminated the contract on 10th January, 2015 resulting in loss of USD.

819,568.00 being expected income. The appellant claimed further that, it suffered foreign exchange rate loss amounting to TZS. 119,092,820.00 due to the fluctuation of the exchange rate between 23rd December, 2014 when the respondent received the funds from the TRA for the second time and 2nd April, 2015 when it credited the funds into the appellant's account.

By its Amended Written Statement of Defence, the respondent denied liability. While admitting that it remitted the funds back to the TRA, it averred that, the said action was necessary because the transaction raised eyebrows and was placed under investigations by the relevant authorities to whom it was reported in compliance with the law. It was further pleaded that, initially the transaction in issue was suspended and later the account frozen, implying that the account could not be operated while the investigations remained ongoing. The respondent also countered that it was impracticable, if not impossible, for a company to enter into an agreement to lease out equipment it does not have. Moreover, it was averred that the appellant operated a TZS account, not a USD account, meaning that the funds paid by the TRA in USD had to be converted into TZS at the rate prevailing on the day of the transaction to be credited into the account.

The High Court framed four issues for trial: one, whether the transaction in issue was suspicious. Two, whether the respondent's act of withholding the appellant's funds was unlawful. Three, whether the appellant suffered any loss and to what extent. Finally, what reliefs are the parties entitled to.

The appellant's case was exclusively based on the testimony of PW1 Aba Patrick Robert Mwakitwange, a director of the appellant. The essence of his evidence was that on 16th December, 2014 the TRA transferred USD. 636,860.00 through the respondent to be credited into the appellant's account. The said funds constituted fruits of a judgment and decree (Exhibit P1) issued by the TRAB in favour of the appellant against the TRA. In view of the expected availability of funds, the appellant entered into a sale agreement (Exhibit P2) with Mantrac Tanzania Limited under which it was to acquire construction equipment worth USD. 925,000.00. The equipment was intended to be leased to Kalago on a six-month contract (Exhibit P3) entered on 27th December, 2014.

According to PW1, it came to light that the respondent did not credit the funds into the account. On 18th December, 2014, he went to the TRAB seeking their intervention in the matter. In response, the TRAB issued a letter confirming that the funds were proceeds of a

decree it issued in favour of the appellant. Despite all this effort, the respondent did not remit the funds to the credit of the appellant.

PW1 testified further that due to the respondent's withholding of the funds, the appellant was unable to acquire and supply the equipment to Kalago, which in turn terminated the contract for equipment hire vide a letter dated 10th January, 2015 (Exhibit P4). The termination, it was alleged, resulted in a loss of income in the sum of USD. 819,568.00 coupled with foreign exchange rate loss in the sum of TZS. 119,092,820.00 due to the fluctuation of the exchange rate between the date the TRA remitted the funds for the second time (23rd December, 2014) and 2nd April, 2015 when the respondent finally credited the funds into the appellant's account.

In contesting the claim, the respondent produced two witnesses: Ms. Ninaeli Geofrey Mndeme (DW1), once the respondent's Manager at Mtoni Branch, and Ms. Julieth Mwanga (DW2), who at the time she testified was the respondent's Compliance Manager at the headquarters. DW1 recounted that, while she was the Branch Manager at Mtoni branch on 6th March, 2012, the appellant opened a current account in TZS currency at the branch. The account began with a debit balance and later it became dormant until 8th September, 2014 when it was activated and the sum of TZS. 100,000.00 deposited by Atu Patrick Mwakitwange.

The said person deposited a further sum of TZS. 100,000.00 on 29th October, 2014. DW1 averred further that on 16th December, 2014, the respondent's headquarters received a swift message on 16th December, 2014 with an order to credit into the appellant's account the sum of TZS. 1,097,309,780.00. Following initial internal consultations between Mtoni branch and the headquarters in line with the Anti-Money Laundering Regulations, 2012, Government Notice No. 286 of 2012 ("the 2012 Regulations"), the transaction was deemed suspicious and, according to DW1, it was reported to the respondent's Risk and Compliance Department for further steps.

According to DW1, the basis of the suspicion was that, the account had never been credited with a sum of money of that magnitude before, that the customer had not notified the respondent in advance about the source and purpose of the funds and that no supporting documentation was tendered. On the following day, an official from the appellant visited the respondent's offices and was, accordingly, informed that the funds could not be credited into the account due to absence of the supporting documentation.

DW2 told the High Court that, as Compliance Manager in the respondent's Risk and Compliance Department, she received a suspicious transaction report originating from Mtoni branch. After a

preliminary analysis of the appellant's operations of the account, she noted that the account was mostly dormant for over two years but suddenly a colossal sum of money was to be credited into it without any advance notification from the appellant and in the absence of any supporting documents. Moreover, her department established, based on an official search conducted through the Business Registration and Licensing Agency, that, two companies existed with almost identical names – Power Roads Tanzania Ltd. and Power Roads (T) Ltd. It was further established that, while the appellant's account was in the name of Power Roads (T) Ltd, the swift message indicated Power Roads Tanzania Ltd. as the beneficiary. Due to this name discrepancy, the funds were remitted back to the TRA, and the transaction reported to the Financial Intelligence Unit ("the FIU") in keeping up with the statutory obligation on every commercial bank to monitor and report any suspicious transaction.

Furthermore, DW2 adduced that in response to the report, the FIU instructed the respondent vide a letter dated 24th December, 2014 referenced as CED/216/28/Vol.II/2 (Exhibit D1) to suspend all transactions or activities relating to the transfer of TZS. 1,097,309,780.00 pending investigations in terms of section 6 of the Anti-Money Laundering Act, Cap. 423 ("the AMLA"). That letter was followed up with another letter from the FIU dated 8th January, 2015

with reference number CED/45/216/28/8 (Exhibit D2) intimating that the reported transaction was still under investigation and that a freezing order against the account would be issued soon. On the following day, the respondent received two letters from the Director of Criminal Investigation ("the DCI"). The first one, dated 8th January, 2015 with reference number CID/HQ/C.212/2/Vol.XIV/39, required the respondent to submit to the DCI all documents related to the appellant's account and the transaction in issue. The second letter, dated 9th January, 2015 referenced as CID/HQ/C.8/11/Vol.IX/41, contained an instruction for freezing the appellant's account as it was under police investigation. Both letters were admitted collectively as Exhibit D3. Subsequently, on 2nd February, 2015, the respondent was served with a letter from the DCI dated the same day with reference number CID/HQ/C.8/11/Vol.IX/51 (Exhibit D4) attached with an order issued by the Resident Magistrate's Court of Dar es Salaam at Kisutu in Miscellaneous Civil Application No. 1 of 2015. This order directed the freezing of the account in issue for two months with effect from 2nd February, 2015. In compliance with the order, the respondent froze the account.

In cross-examination, DW2 admitted that the funds were re-transferred by the TRA on 23rd December, 2014 in the name of Power Roads (T) Ltd but the respondent could not credit them into the account

because, the FIU had suspended any activity or operation relating to the funds with effect from 24th December, 2014 and that the account in issue was subsequently frozen by court order for the period up to 2nd April, 2015.

In its judgment, the High Court found, at first, that the respondent justifiably formed suspicion over the transfer. It accepted the respondent's evidence that the history of the account, which was mostly dormant for over two years and had a paltry credit balance, raised red flags upon the swift message on the colossal remittance being received without any supporting documentation or advance notification from the appellant. That the respondent acted reasonably in reporting the suspicious transaction to the relevant authorities. On the legality of the act of withholding of the funds, the court believed the respondent's evidence that after the funds were re-transferred by the TRA to the respondent, they could not be made available to the appellant because at the time, the transaction in issue was suspended by the FIU and that, later the account was frozen for two months.

Then, the High Court considered section 22 (1) of the AMLA that provides immunity to reporting persons, witnesses, and whistleblowers, against criminal, civil or administrative proceedings, who, in good faith, submitted a report or supplied information in compliance with the AMLA.

Having done so, the court took the view that the respondent could not be held liable as nothing malicious in the reporting was proved by the appellant. Accordingly, the court dismissed the suit with costs, as stated earlier.

The appellant assails the above findings and outcome on two grounds: one, that the learned judge erred in fact and law in holding that the respondent's act of withholding the appellant's funds was lawful; and two, that the learned judge failed to evaluate the evidence on record resulting in wrong findings.

Ahead of the hearing of the appeal on the merits, we dealt with a preliminary objection raised by Mr. Karoli V. Tarimo, learned counsel, on behalf of the respondent.

The essence of the respondent's protest was that the appeal was lodged out of time contrary to the dictates of rule 90 of the Tanzania Court of Appeal Rules, 2009 ("the Rules") by which it had to be instituted within sixty days of the filing of the notice of appeal subject to exemption of the period necessary for preparation and delivery of the copy of the proceedings as certified by the Registrar.

It is on record that following the delivery of the impugned judgment of the High Court on 27th November, 2019, the appellant duly lodged a notice of appeal on 4th December, 2019 and, on the same day,

applied for a copy of the proceedings. The letter bespeaking the copy of proceedings, which was referenced as **BLT/CAT/PRT/206**, was properly copied to and served on the respondent. On 18th September, 2020, the Registrar notified the appellant that, the requested copy of proceedings was ready for collection and proceeded to issue on the same day a certificate of delay exempting a total of 290 days, computed from 4th December, 2019 to 18th September, 2020, in reckoning the sixty days limitation period.

Mr. Tarimo took issue with the letter of notification from the Registrar, which referred to the appellant's request for a copy of proceedings by reference number **PRTL/DSM/03/19**, instead of **BLT/CAT/PRT/206.** To illustrate the point, we extract the relevant part of the said notification:

> "Kindly refer to your letter with Reference No. **PRTL/DSM/03/19** dated 4th day of December, 2019 regarding the above quoted matter.
>
> The requested copies of proceedings, decree and exhibits are now ready for collection."

It was Mr. Tarimo's strong contention that, the letter with reference number **PRTL/DSM/03/19** mentioned by the Registrar as the basis of the certificate of delay was neither copied to nor served on the respondent, implying that, in terms of rule 90 (3) of the Rules, the appellant was not entitled to any exemption of the period necessary for

the preparation and delivery of the copy of proceedings. Even when we probed him whether the reference by the Registrar to **PRTL/DSM/03/19** was an innocuous error, Mr. Tarimo stuck to his guns and urged us to find the certificate of delay invalid and proceed to strike out the appeal with costs. He relied on our decisions in **Njake Enterprises Limited v. Blue Rock Limited & Another**, Civil Appeal No. 69 of 2017 [2018] TZCA 304 [3 December, 2018; TanzLII]; and **Puma Energy Tanzania Limited v. Diamond Trust Bank Tanzania Ltd.**, Civil Appeal No. 54 of 2016 [2020] TZCA 263 [27 May, 2020; TanzLII].

Rebutting, Mr. Frederick M. Werema, learned counsel for the appellant, submitted that the reference in the notification by the Registrar to the letter with reference number **PRTL/DSM/03/19** was a harmless typographical error for which the appellant should not be blamed. And that, in any event, it was not prejudicial to the respondent. He urged us to ignore it.

Without any hesitation, we agree with Mr. Werema and uphold his argument. We think, with respect, Mr. Tarimo's submission was, by any benchmark, an attempt to make a mountain out of a molehill. In our view, the error was made by the Registrar and that, it was not prejudicial to the respondent who acknowledged receiving the copies of

both the notice of appeal and the letter requesting a copy of the proceedings. Based on those two documents in the respondent's possession, it cannot be refuted that, the appellant met the requirements of rule 90 (1) and (3) of the Rules for the exemption granted by the Registrar vide the impugned certificate of delay. It would be a travesty of justice if courts of law allowed irreproachable parties to be punished for the mistakes of court officials, not to speak of such a trivial error as in the instant appeal. In the premises, we find no substance in the preliminary objection. We dismiss it.

We now turn to the substance of the appeal. At the outset, we wish to state that, we think the two grounds of complaint are entwined, their common thread being the issue whether the learned trial judge's finding, that the respondent was justified to withhold the funds, is based on soundly and properly evaluated evidence.

Submitting on the above ground, Mr. Werema censured the High Court for not finding that the respondent failed to comply with the safeguard measures intended to avert malicious or negligent reporting of suspicious transactions. He claimed that the respondent failed to conduct due diligence on the suspected transaction in terms of section 17 (1) of the AMLA. That, the respondent was aware of the beneficiary and source of the funds but without keeping up with its statutory

obligation under Regulation 23 of the 2012 Regulations (now replaced by the 2022 Regulations, Government Notice No. 397 of 2022), it raised an unreasonable suspicion over the transaction in issue. The learned counsel urged us, in conclusion, to find that, the reporting to the FIU was a negligent misstatement.

Undoubtedly being aware of the immunity under section 22 (1) of the AMLA, Mr. Werema submitted that, the respondent's act of reporting the transaction to the FIU was malicious. He urged us to find malice or bad faith imputed from the respondent's actions. To illustrate the point, he contended that if the respondent had already remitted back the funds in issue to the TRA, it had no basis to report the matter to the FIU. Citing **Makubi Dogani v. Ngodongo Maganga**, Civil Appeal No. 45 of 2017 [2020] TZCA 1741 [21 August, 2020; TanzLII], Mr. Werema urged us as a first appellate court to re-appraise the evidence and come up with our own inferences of fact.

On the other hand, Mr. Tarimo was very brief in his rebuttal. He contended that, the approach taken by the respondent fully complied with its reporting obligation under section 17 of the AMLA. He contended that the money transfer was questionable given the history of the appellant's account and that the respondent's suspicion over it was

reasonable. He countered that, the reporting to the FIU was not a negligent misstatement.

Rejoining, Mr. Werema submitted that, the respondent ought to have inquired from the appellant about the source and purpose of the funds instead of rushing to report the transaction to the FIU. It was his submission that, the reporting by itself without any verification constituted an unreasonable legal action from which malice ought to be imputed.

As summarized above, it is contended for the appellant that, the respondent was aware of the source and beneficiary of the funds in issue, that, the respondent did not conduct any due diligence on the transaction, that, its suspicion over the transfer was unreasonable and that, its reporting of the matter to the FIU was a negligent misstatement peppered with malice. Conversely, it is argued for the respondent that, the money transfer was questionable given the history of the appellant's account, that the respondent's suspicion over it was reasonable and that its handling of the matter fully complied with its reporting obligation under section 17 of the AMLA. From these contending submissions of the learned counsel, the sticking question is whether the respondent duly complied with its statutory reporting obligation.

Section 3 of the AMLA defines the term *"reporting person"* to include *"banks and financial institutions."* Being a licensed commercial bank, the respondent was a reporting person under the AMLA, bound to report any suspicious transaction in terms of section 17. This provision stipulates as follows:

> *"**17**.-(1) Where a reporting person suspects or has grounds to suspect that, funds or property are proceeds of crime, or are related or linked to or are to be used for commission or continuation of a predicate offence or has knowledge of a fact or an activity that may be an indication of money laundering or predicate offence,* ***he shall within twenty-four hours after forming that suspicion and, wherever possible, before any transaction is carried out-***
>
> *(a)* ***take reasonable measures to ascertain the purpose of the transaction or proposed transaction, the origin and ultimate destination of the funds or property involved, and the identity and address of any ultimate beneficiary****; and*
>
> *(b) prepare a report of the transaction or proposed transaction in accordance with subsection (2) and communicate the information to the FIU by secure means as may be specified by FIU.*

(2) A report required under subsection (1) contain such particulars as may be specified in regulations to be made.

(3) A reporting person who has reported a suspicious transaction or proposed suspicious transaction in accord with this Part shall, if requested to do so by the FIU or a law enforcement agency investigating the suspicious transaction give such further information in relation to such transaction.

(4) Any person who contravenes the provisions of subsection (1) commits an offence and shall, on conviction –

(a) if the person is an individual, be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years.

(b) if the person is a body corporate, be liable to a fine of not exceeding ten million [shillings] or three times the market value of the property, whichever is greater."[Emphasis added]

On a plain meaning, subsection (1) of section 17 above imposes an obligation on any reporting person to report any suspicious transaction to the FIU. The reporting person must discharge this statutory duty within twenty-four hours after forming the suspicion and, wherever possible, before any transaction is carried out, by taking two

steps: first, the reporting person must, in terms of paragraph (a) of subsection (1) above, take reasonable measures to ascertain the purpose of the transaction, its origin and ultimate destination, and the identity and address of the ultimate beneficiary. In other words, the reporting person is enjoined to conduct due diligence on the transaction in issue. Secondly, in consonance with paragraph (b) of subsection (1) above, the reporting person must prepare a suspicious transaction report in accordance with subsection (2) and communicate the information to the FIU by secure means as may be specified by FIU.

Subsection (2) above requires the reporting person to give such particulars on the suspicious transaction as specified by the regulations. In this regard, regulation 23 of the 2012 Regulations required the following particulars to be stated in any report to the FIU:

> *"**23**. A report made under sections 4 (2) and 17 of the Act, shall contain the following information –*
>
> *(a) date and time of the transaction, or, in case of a series of transactions the period over which the transactions were conducted;*
>
> *(b) type of funds or property involved;*
>
> *(c) amount or value of property involved;*

(d) currency in which the transaction was conducted;

(e) method in which the transaction was conducted;

(f) method in which the funds or property were disposed of;

(g) amount disposed;

(h) currency in which the funds were disposed of;

(i) purpose of the transaction;

(j) names of other institutions or person involved in the transaction;

(k) bank account numbers in other institution involved in the transaction;

(l) the name and identifying number of the branch or office where the transaction was conducted; and

(m) ***any remarks, comments or explanation which the person conducting the transaction may have made or given in relation to the transaction.***" [Emphasis added]

As part of carrying out due diligence, it is expected that, the reporting person would, among others, seek an explanation of the person conducting the transaction, which, in our view, may include the

beneficiary. That is why regulation 23 (m) commands that, the suspicious transaction report must include any remarks, comments or explanation made by the person conducting the operation in relation to the transaction.

In the light of the foregoing discussion, we are enjoined to determine whether the respondent's reporting of the transaction was in accordance with above provisions of the law. In resolving this issue, we have painstakingly reviewed and recalibrated the evidence on record while conscious of our mandate, as the first appellate court, which is not only to rehear and reappraise the evidence but also to come up with our own inferences of fact.

In our view, the testimonies of DW1 and DW2 are unchallenged that when the transfer in favour of the appellant was made on 16th December, 2014, it clearly had all the hallmarks of a suspicious operation. Such a vast sum of money must have raised eyebrows to any reasonable banker given the unassailable evidence that, the account was mostly dormant for over two years, that, it got reactivated about two months before the questioned transfer was made perhaps in anticipation of it, that, the standing credit balance in the account was a paltry sum of TZS. 200,000.00 or less, that, no advance notification from the appellant was given and that, there were no supporting documents

to assure that the transfer was not contaminated. On these facts, we entertain no doubt that, the respondent rightly suspected, at least at the initial stage, that, the transfer was tainted.

On whether the respondent handled the transfer in accordance with the law after initially forming the suspicion, we have revisited the testimonies of DW1 and DW2 once again. Starting with DW1, she testified that, after establishing shortly after the swift message was received (that is 16th December, 2014) that the transfer was suspicious, the matter was reported internally to the Risk and Compliance Department. Meanwhile, the wired funds remained in a suspense account at the central bank since the appellant's account was not credited. On the following day, an official of the appellant was notified that the funds could not be remitted into the account due to absence of the supporting documents, but still the official presented no such documents. DW1 was definite that, her role ended upon reporting the matter to the Risk and Compliance Department.

For her part, DW2 stated that, after her department had received the suspicious transaction report from Mtoni branch, it established upon an official search that two companies existed with almost identical names – Power Roads Tanzania Ltd. and Power Roads (T) Ltd. That, while the appellant's account was in the name of Power Roads (T) Ltd,

the swift message indicated Power Roads Tanzania Ltd. as the beneficiary. She testified further, as shown at pages 180 and 181 of the record of appeal, that:

> *"So the money was returned to [the] TRA because of the difference in the name. After returning the money, we reported to [the] Financial Intelligence Unit. We received the report on 17/12/2014, and on 19/12/2014 we reported the matter to [the] FIU."*

At this point, we wish to interpose and make two observations: first, that, based on DW2's testimony, the wired funds were remitted back to the TRA because of the name discrepancy. Suspicion might have been hovering over the monies but that was not the paramount consideration at that point. Secondly, although it is not clear when exactly the funds were remitted back to the TRA, DW2 was definite that, the transmittal was made before the matter was reported to the FIU on 19th December, 2014. It means, therefore, that, the report to the FIU was made three days after the respondent's officials at Mtoni branch had formed suspicion over the funds following the receipt of the swift message on 16th December, 2014. This inference is necessary since the respondent did not introduce into the evidence the suspicious transaction report it filed with the FIU.

In view of the above observations, we are of the considered opinion that, the respondent's handling of the matter did not fully comply with the dictates of section 17 (1) of the AMLA. First and foremost, the respondent reported the questioned transfer three days after it formed suspicion over it. There is a clear delay of about forty-eight hours in filing the report. Secondly, since the transfer was doubtful it was improper for the respondent going ahead remitting the money back on the ground of name discrepancy contrary to the edict under section 17 (1) of the AMLA that, no activity be carried out before a report is made to the FIU. Thirdly, although both DW1 and DW2 stated that, the appellant failed to produce documentation supporting the transfer, the respondent did not give much detail on the level of due diligence it conducted in terms of section 17 (1) (a) of the AMLA and regulation 23 (m) of the 2012 Regulations to gather remarks or explanation from the appellant, or even the TRA, in relation to the transaction.

We are certainly mindful that, after the suspicious transaction report was lodged with the FIU, on 23rd December, 2014, the TRA re-transferred the funds to the appellant via the respondent, but these monies could not be released to the appellant. It is in the evidence (Exhibits D1, D2, D3 and D4) that, after all operations relating to the transaction in issue were suspended by the FIU, the appellant's account

was frozen for two months by court order from 2nd February, 2015. At this juncture, we are enjoined to answer whether the respondent is liable for whatever loss suffered by the appellant due to the suspension of the transaction in issue and eventual freezing of the account.

Section 22 (1) of the AMLA provides as follows:

> *"**22**.-(1) Notwithstanding any other written law, no criminal, civil or administrative proceedings for breach of banking or professional secrecy or contract shall be instituted against a bank or a financial institution, cash dealer, designated non-financial businesses or professions or their respective staff or partners **who, in good faith, submitted a report or supplied information in compliance with this Act.**"* [Emphasis added]

The above provision protects reporting persons, witnesses, and whistleblowers from criminal, civil or administrative proceedings for breach of banking or professional secrecy or contract if such persons, in good faith, reported or supplied information in compliance with the AMLA. The catchphrase here is "*good faith*", which, according to Black's Law Dictionary, 9th Edition at page 713, means a state of mind consisting of:

> *"(1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of*

reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage."

In **Public Protector v. South African Reserve Bank** [2019] ZACC 29, the Constitutional Court of South Africa (as per Mogoeng, CJ), at paragraph 71 defined the phrase *"bad faith"*, which is the antonym of *"good faith"*, to include:

> *"malicious intent [which] is generally accepted as extending to fraudulent, dishonest or perverse conduct; it is also known to extend to gross illegality."*

The said court added in paragraph 72 that:

> *"... bad faith exists only when the office-bearer acted with the specific intent to deceive, harm or prejudice another person or by proof of serious or gross recklessness that reveals a breakdown of the orderly exercise of authority so fundamental that absence of good faith can be reasonably inferred and bad faith presumed."*

In the instant case, Mr. Werema submitted that, bad faith or malice could be imputed from the respondent's actions. He labelled the respondent's act of reporting the transaction to the FIU as malicious because it was made after the respondent had already remitted back the

funds in issue to the TRA, implying, in his view, that, there was no longer any basis for reporting. Conversely, Mr. Tarimo submitted that, the appellant neither pleaded nor adduced evidence to prove existence of bad faith or malice in the reporting. He added that, so long as the question of bad faith was not an issue framed for trial because it had not been pleaded it could not be decided by the trial court.

Indeed, it is true that the appellant did not plead bad faith or malice and, consequently, that question was not one of the framed issues for trial. We are mindful that parties are bound by their pleadings, and it is not open for a court to base its decision on an unpleaded issue.

It is trite law, and the provisions of Order XIV of the Civil Procedure Code are clear that, issues for determination in a suit generally drizzle from the pleadings, and unless the pleadings are amended in accordance with the provisions of Order VI rule 17 of the Civil Procedure Code, the trial Court in accordance to Order XX rule 5 of the Civil Procedure Code, may only pronounce judgment on the issues arising from the pleadings or such issues as framed at the commencement of trial.

We are constrained to state that the function of pleadings is to give a fair notice of the case to the opposite party so that he may prepare and direct his evidence on the issues recorded. The Civil

Procedure Code under order VI, rule 10, requires malice, fraudulent intention, knowledge, or any other condition of mind, to be specifically pleaded.

Contrary to Mr. Werema's assertion, bad faith or malice on part of the respondent ought to have been specifically pleaded. Our scanning of the Amended Plaint reveals that the appellant who instituted these proceedings in the High Court, did not make any averment on the aspect of bad faith or malice as it ought to have done.

We noted that, the respondent expressly denied liability in the Amended Written Statement of Defence on the ground that, it acted lawfully in discharging a statutory obligation to report the suspicious transaction, but the appellant did not present any Reply to the Amended Written Statement of Defence to contradict the assertion. In such circumstances, we are of the view that, to condemn the respondent on a ground of which no fair notice has been given amounts to an immense denial of justice, which this Court is not set to approve.

Having taken account of all the circumstances, we hold that the withholding of the funds by the respondent was fully justified. Consequently, the two grounds of appeal must fail.

In the final analysis, we find the appeal unmerited and, consequently, dismiss it in its entirety. The respondent shall have its costs.

DATED at **DAR ES SALAAM** this 4th day of September, 2023.

G. A. M. NDIKA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

A. S. KHAMIS
JUSTICE OF APPEAL

The Judgment delivered this 7th day of September, 2023 in the presence of Mr. Robert Mwakitange, Director for the Appellant and Mr. Kephas Mayenje, learned counsel for the Respondent is hereby certified as a true copy of the original.

F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL