

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: SEHEL, J.A., FIKIRINI, J.A. And KHAMIS, J.A.)**

**CIVIL APPEAL NO. 135 OF 2022**

**UAP INSURANCE TANZANIA LIMITED.....APPELLANT**

**VERSUS**

**AKIBA COMMERCIAL BANK PLC.....RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of Tanzania,  
Commercial Division at Dar es Salaam)**

**(Magoiga, J.)**

**dated the 16<sup>th</sup> day of July, 2021**

**in**

**Commercial Case No. 24 of 2018**

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**RULING OF THE COURT**

27<sup>th</sup> September & 31<sup>st</sup> October, 2023

**KHAMIS, J.A.:**

When this appeal was slated for hearing before us on 27<sup>th</sup> day of September, 2017 Messrs. Karoli Valerian Tarimo and Robert R. Rutaihwa, learned advocates, appeared for UAP Insurance Tanzania Limited, hereinafter to be referred to as the appellant, the insurer or UAP. Messrs. James Andrew Bwana and David Benjamin Wasonga, learned advocates, acted for Akiba Commercial Bank, hereinafter to be referred to as the respondent, the banker or AKIBA. As the rival counsel were about to address the Court on the substance of the appeal, we invited them to

submit on the competency of Legal Link Attorneys, a law firm representing the appellant (the law firm), to act as counsel in this appeal and in the High Court proceedings.

Responding, Mr. Karoli Tarimo of Legal Link Attorneys, conceded that there was a potential conflict of interest for the law firm to represent the appellant throughout the proceedings in the High Court and in this appeal as it was one of the beneficiaries to the guarantee agreement executed between UAP and AKIBA which was the epicenter of the parties' dispute.

Mr. Tarimo contended that, the trial judge wrongly dismissed the concern when it was raised before him as reflected in pages 196 and 197 of the record, hence causing an irregularity in the proceedings. He submitted that, the mix-up violated the law and rendered the entire proceedings a nullity. In view of that, the learned counsel invited the Court to quash the entire proceedings in terms of section 4(2) of the Appellate Jurisdiction Act, Cap. 141 R.E 2019 (the AJA) and prayed that each party be ordered to bear own costs as the predicament was raised by the Court *suo motu*.

In reply, Mr. James Bwana welcomed Mr. Tarimo's concession on the point and implored the Court to quash the trial court's proceedings from

the stage of filing the written statement of defence. He asserted that, the plaintiff suffered no hiccup as the irregularity started with the written statement of defence which was drawn and filed by Legal Link Attorneys.

In the alternative, Mr. Bwana prayed for judgment on default allegedly because the troubled written statement of defence was a nullity on account of conflict of interest and deserved to be struck out. As the appellant's counsel had nothing to rejoin, we reserved our decision for consideration.

We have carefully considered the submissions of the counsel as outlined above. The main issue of dissension is whether Messrs. Legal Link Attorneys is competent to appear in this matter as counsel for the appellant considering that in the pleadings and proceedings of the High Court, it featured as a beneficiary to the disputed guarantee agreement between UAP and AKIBA with a potential conflict of interest.

In order to sufficiently highlight the question under consideration, it is necessary to recap the facts of the matter and then analyse the relevant provisions of the law.

AKIBA is a financial institution incorporated in Tanzania and licensed to operate as a commercial bank under the law. UAP is a limited liability

company licensed to operate as an insurance company throughout the country. The parties entered into a business relationship agreement wherein UAP undertook to guarantee various customers who would receive loans in various forms from AKIBA by issuing them with payment guarantee bonds (the bonds).

Based on the understanding, AKIBA disbursed loans to the customers and accepted bonds issued by UAP as securities for such credit. In the course of operations, some borrowers defaulted to repay the loans which prompted AKIBA to demand from UAP full payment of the outstanding sum in accordance with the terms and conditions of the bond. UAP allegedly failed and or ignored to perform its contractual obligation on the bonds, hence filing of the suit, Commercial Case No. 24 of 2018, in the High Court, Commercial Division.

In the said suit, AKIBA claimed payment of the sum of TZS. 1,990,816,547.02 and US \$ 531,970.60 being the principal outstanding sum, interest thereon, general damages, costs and any other relief as the court deems necessary.

The plaint supplied details of the bank's customers who defaulted payment of the loan amounts. Among them, Legal Link Attorneys was listed under item (g) in page 6 of the amended plaint, thus:

**"g)   LEGAL LINK ATTORNEYS**

- i)   *Legal Link Attorneys (the customer) borrowed TZS. 330,000,000.00 from the plaintiff. The loan was secured by payment guarantee bond numbered 010/130/1/021443/2016 dated 3<sup>rd</sup> August, 2016 issued by the defendant in favour of the plaintiff with liability on the loan limited to the payment of a total of TZS. 412,500,000.00. Copy of the said bond is attached herein and marked as annexure -13 forming part of pleading.*
- ii)   *The customer defaulted to pay the loan and despite repeated reminders the loan stands unpaid. Failing to recover the loaned money, plaintiff demanded from defendant payment of TZS. 338,607,931.97 that stood outstanding on the date of making demand. Copies of demand notices sent to the defendant and other correspondences thereof are attached herein and marked collectively as annexure -14 forming part of pleading.*
- iii)   *Despite all efforts by the plaintiff to have the loaned and defaulted money paid, defendant has refused and/or ignored to honour his contractual and equitable obligations under the bond. The loan remaining*

*outstanding is TZS. 220,056,238.74 as on 31<sup>st</sup> December, 2017.”*

On 26<sup>th</sup> day of March, 2018 UAP presented a written statement of defence that was drawn and filed by Mr. Kephass Mayenje, learned advocate, who practice under the name and style of Legal Link Attorneys. Upon amendment of the plaint, the amended written statement of defence drawn by the same law firm was lodged on 21<sup>st</sup> day of June, 2019.

Throughout trial in the High Court, UAP was fully represented by learned Advocates from Legal Link Attorneys who drew up pleadings, prepared witness statements, argued preliminary objections, attended first and final pre-trial conferences, mediation, examined, cross examined and re-examined witnesses and made both oral and written submissions for and on behalf of UAP. Upon delivery of the High Court judgment, the law firm issued a notice of appeal and prepared the memorandum of appeal featuring on pages v-vi of the present record of appeal.

The issue for consideration is whether Legal Link Attorneys has a conflict of interest in representing UAP in these proceedings. Regulation 35 (1) of the Advocates (Professional Conduct and Etiquette) Regulations,

2018 (the Advocates Etiquettes) provides that an advocate shall not act for a client when the interests of the client and the personal interests of the advocate or, the interests of any person in his firm are in conflict.

'Conflict of interest' is defined under regulation 3 of the Advocates Etiquettes to include a situation that has the potential to undermine the impartiality of an advocate because of the possibility of a clash between the advocate's self-interest and the public interest. Regulation 45 (1) of the Advocates Etiquettes provides that a conflict of interest is one that would be likely to affect adversely the advocate's judgment or advice on behalf of, or loyalty to a client or prospective client. A conflict of interest also includes the duties and loyalties of the advocate to any other client, whether involved in the particular transaction or not, including the obligation to communicate information (regulation 45(3) of the Advocates Etiquettes).

Under regulations 55, 82, 92, 103, 106, 112 and 113 of the Advocates Etiquettes, general and specific duties of an advocate to the client, other advocates, the court, the public, while in public service, as a prosecutor and to the legal profession, are enlisted, thus: to represent the client resolutely, honourably and within the limits of the law; to deal with

other advocates in a fair and courteous manner so as to promote the public interest that requires a matter entrusted to an advocate be dealt with effectively and expeditiously; as an officer of the court, shall treat the court with candour, courtesy and respect; to make legal services available to the public in an efficient and convenient manner that will command respect and confidence, and by means which are compatible with the integrity, independence and effectiveness of the profession; an advocate in public service is bound to adhere to standards of conduct as high as those which are required of an advocate engaged in private practice; when acting as a private prosecutor, to act in the exercise of his prosecutorial function fairly and dispassionately, and; to uphold the dignity and integrity of the profession and promote its reputation for fairness, justice and honesty.

An advocate is a law scholar to the general public. He has a duty to uphold and administer justice. Whenever engaged to represent a client, the first question that should come to his mind is whether he has a conflict of interest followed by the need to do justice. Conflict of interest would arise when the advocate is required to uphold justice but his personal interests or the interests of his client reveals a contrary intention. The

importance of avoiding conflict of interest was well explained in the case of **Oceanic Life Limited v. HIH Casualty & General Insurance Limited** [1931] KB 38, thus:

*"in the realm of conflict of interest and conflict of duty, the lawyer's duty to the court may not be much different from his or her fiduciary duties to former and present clients. However, the duty to the court tends to be expressed in such a way as to emphasise the public interest in preserving confidence in the administration of justice and therefore in the appearance as well as the reality of independence, and the court's practical approach to its supervisory discretions..."*

In **Moody v. Cox** [1917] Ch. 71, Lord Cozens Hardy, MR addressed conflict of interest in the following manner:

*"A man may have a duty on one side and an interest on another. A solicitor who puts himself in that position takes upon himself a grievous responsibility. A solicitor may have a duty on one side and a duty on the other, namely, a duty to his client as solicitor on the one side and a duty to his beneficiaries on the other...I think it would be the worst thing to say that a solicitor can escape from the obligations, imposed upon him as solicitor, of disclosure if he can prove that it is not a case of duty on one side and of interest on the*

*other, but a case of duty on both sides and therefore impossible to perform”.*

We find the above legal stance highly persuasive and fully adopt it as it reflects the duty to avoid conflict of interest on part of the advocate and its importance to the integrity of the administration of justice. In our view, given the circumstances of the matter, we find that it is impossible for an advocate to act on the client's interests and at the same time for his personal benefits without violating the Advocates Etiquettes. Even if a litigant is assured of the undivided loyalty of the advocate, neither the public nor the litigant will have confidence that the legal system, which may appear to them to be hostile and hideously complicated environment, is a reliable and trustworthy means of resolving their disputes and controversies.

In the present case, annexure 13 to the amended plaint is the payment guarantee bond no. 010/130/1/021443/2016 dated 3<sup>rd</sup> August, 2016. The bond issued by UAP in favour of AKIBA guaranteed Legal Link Attorneys for fulfilment of its obligations under the loan facility dated 2<sup>nd</sup> August, 2016. AKIBA advanced the said loan to the law firm for the purpose of buying furniture, fittings and motor vehicles necessary for

running its business. Under the contract, UAP undertook to irrevocably pay AKIBA on the first written demand irrespective of the validity and the legal effects of the credit relationship and waiving all rights of objection and defence arising from the said credit relationship. That being the case, the law firm cannot effectively discharge its professional calling in the case without violating the Advocates Etiquettes.

The cumulative effect of the foregoing is that the trial court's proceedings, as correctly asserted by both counsel, were strained rendering them a nullity on account of lack of fair trial. We say so taking into account that any court is bound to proceed in a manner calculated to promote justice within the bounds of law and procedure which include observing the Advocates Etiquettes. Had the trial court been adverted to the Advocates Etiquettes, it would not have allowed the Legal Link Attorneys to act for the insurer against the banker. This irregularity, in our view, boiled down to the merits of the case and caused injustice.

In the circumstances, we are inclined to exercise our revisional powers under section 4(2) of the AJA, and quash the entire proceedings of the High Court except the amended plaint which is left intact and set aside the judgment and decree that ensued from the null proceedings.

Consequently, we remit the original record to the trial court with an order that, the case file be placed before another Judge to preside over the matter in accordance with the law from the stage of filing the amended plaint.

Since this decisive issue was raised by the Court *suo moto*, we refrain from making any order for costs. It is so ordered.

**DATED at DAR ES SALAAM** this 26<sup>th</sup> day of October, 2023.


B. M. A. SEHEL  
**JUSTICE OF APPEAL**

P. S. FIKIRINI  
**JUSTICE OF APPEAL**

A. S. KHAMIS  
**JUSTICE OF APPEAL**

The Ruling delivered this 31<sup>st</sup> day of October, 2023 in the presence of Mr. Karoli V. Tarimo, learned counsel for the appellant and in the absence of the respondent is hereby certified as a true copy of the original.



  
S. J. KAINDA  
**REGISTRAR**  
**COURT OF APPEAL**