

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL APPEAL NO. 146 OF 2017

*(Arising from the decision of the Resident Magistrate's Court of Dar es Salaam
at Kisutu in Civil Case No. 182 of 2015)*

FARIDA SAGGIN LUKOMA APPELLANT

VERSUS

FADHILI KALEMBA 1ST RESPONDENT

ZUBERI BUS SERVICE LIMITED 2ND RESPONDENT

JUDGMENT

Date of Last Order: 22/06/2018

Date of Judgment: 16/07/2018

BANZI, J.:

This appeal emanates from Civil Case No. 182 of 2015 instituted in the Resident Magistrate's Court of Dar es Salaam at Kisutu whereby the appellant unsuccessful sued the respondents for an order of payment of Tshs.

20,000,000/= as specific damages and Tshs. 100,000,000/= as general damages being compensation for injuries sustained following the accident.

During the proceedings, on 4th July, 2016 the trial Magistrate granted the prayer of adding a 3rd party one Tanzindia Assurance Company Ltd following the application by the defendants. However, the 3rd party didn't file the Written Statement of Defence and never appeared from 4th July, 2016. As a result, the case proceeded in their absence. After receiving testimonies of the plaintiff and the defendants, the trial court dismissed the suit without costs. Aggrieved with that decision, the appellant through the service of Apex Attorneys preferred this appeal.

Briefly, the factual background of the case is that, on the 5th day of February, 2014, the appellant was travelling from Mwanza to Dar es Salaam by public bus with registration number T119 AZZ make Scania owned by the 2nd respondent and driven by the 1st respondent. On the way, the bus was involved in the accident whereby among the injured persons was the appellant. She was shortly attended at Singida hospital and thereafter she was transferred to Bugando hospital in Mwanza and in the course of treatment her right arm was amputated. The appellant lost her earnings to

the tune of Tshs. 320,000/= to Tshs. 350,000/= per month after being terminated from her job because of the accident. The 2nd respondent directed the appellant to forward her claims to the insurance company. The insurance company offered her Tshs. 5,000,000/= but she refused to take it claiming to be little and decided to file this case against the driver and owner of the bus for compensation on sustained injuries.

This appeal was argued orally on 22nd June, 2018 whereby both parties were represented. However, in the course of preparing the judgment, I came across with legal matter concerning the procedure of dealing with insurance complaints as provided under sections 122, 123 and 124 of the Insurance Act, No. 10 of 2009 and whether or not this case was properly filed in Resident Magistrate's Court. In that regard, when the appeal came up for judgment on 12th July, 2018, I invited parties to address the court concerning this matter. The appellant was represented by Ms. Loveluck Meena the learned advocate and the respondents were represented by Mr. Mutakyamirwa and Mr. Masinga the learned advocates.

Ms. Meena submitted that, section 123 of the Insurance Act does not compel the person to file the complaint with Ombudsman service and since

the provision was not couched in a mandatory language, it is on the discretion of the appellant whether to file her complaint with the service or not. She added that, Ombudsman service barred the matters already filed in court and it has pecuniary jurisdiction of Tshs. 15,000,000/= as provided under section 123 of the Insurance Act and Tshs. 40,000,000/= as provided under its Regulations. Since the appellant's claim was above that amount she opted to forward her claims in normal court. In addition, she submitted that, the service does not allow appearance of advocates and taking the matter to Ombudsman will deprived the appellant her rights of representation. Finally, she urged this court to grant the relief as prayed in the petition of appeal.

In response Mr. Mutakyamirwa, the learned advocate for the respondents submitted that, the bodies or tribunals like Ombudsman were not established for decoration purposes. He further submitted that, section 122 of the Insurance Act establishes Ombudsman service and Regulation 3 of the Insurance Ombudsman Regulations of 2013 defines insurance consumer to include third party claimant. The appellant being a third party claimant is covered under section 122 of the Insurance Act. He added that, the case at hand was filed after the Regulations came into force hence the

appellant was bound to forward her claim to Ombudsman because section 123 of the Insurance Act does not give option to the complainant.

On the issue of pecuniary jurisdiction, he submitted that the same cannot be determined by party but rather by law. It was further submitted that the advocate for the appellant failed to cite any section which restricts the appearance of the advocates on the service. Responding to the issue of damages he added that, the cited section provides for direct loss and there were no supportive documents established by the appellant to prove the same. In addition, he submitted that, the body does not bar the matter which are already filed in court but it bars those which were already in court before the establishment of the body. Finally, he stated that, the appellant filed the civil case number 182 of 2015 to the court which lacks jurisdiction and he prayed for the court to invoke its revisionary powers and quash the trial proceedings.

In her rejoinder Ms. Meena reiterated what she submitted in her main submission and insisted that, it is not mandatory for complainant to forward his complaint to Ombudsman under section 123 of the Act.

It is a common knowledge that, in Tanzania besides the courts system, there are various bodies established by Acts of Parliament vested with powers to resolve disputes among the parties. When it comes to insurance disputes two bodies were established under the Insurance Act, No. 10 of 2009 (hereinafter to be referred as the Act) namely Ombudsman Services and the Insurance Appeals Tribunal.

Ombudsman has been established under section 122(1) of the Act for the purposes of resolving disputes arising between insurance consumers, and insurance registrants' business in Tanzania. It has its own regulations known as the Insurance Ombudsman Regulations, 2013 published through Government Notice No. 411 of 2013 (hereinafter to be referred as the Regulations) whereby regulation 3 defines 'insurance consumer or complainant' as policy holder, a third party claimant, an administrator of the deceased's estate, a successor in title or a beneficiary.

The Regulations provides for procedures of dispute resolution from the admission stage up to final determination of relevant complaint between parties. It also provides for procedures of challenging the decision of the Ombudsman. Regulation 20 provides that;

"A complainant who is aggrieved by the decision of the Ombudsman shall make reference to the High Court in accordance with the provisions of the Act".

In the view of provision above, it is quite clear that the complaint of this nature is brought to courts and to be precise the High Court by way of reference after being decided by Ombudsman.

Reverting to the matter at hand, the evidence on record from both parties revealed that, the appellant after being discharged from hospital, she went to the 2nd respondent and she was given the insurance cover note dully signed by DW1 and they directed her to insurance company. After a while the appellant was called by insurance company to collect her cheque worth Tshs. 5,000,000/= as compensation for sustained injuries. However, she refused for the reason that, the amount was little to fulfill her needs including purchasing artificial hands. It is obvious from evidence on record that, the appellant's contention was on the amount paid by the insurance and not either on the negligence of the 1st respondent or on the liability of the 2nd respondent for the acts of his employee which could have led into a cause of action under tort.

It is my considered view that, the moment the appellant c
claim to Tanzindia Assurance Company Ltd whatever followed thereafter she
was bound to adhere with dispute resolution system as provided under the
Insurance Act and its Regulations. Therefore, it was not about choice or
discretion on where to file the complaint as contended by Ms. Meena in her
submission but it is about bringing the dispute to the right body established
by law. Concerning the pecuniary jurisdiction submitted by the learned
counsel for the appellant, it is my considered view that the matter at hand
was within the limit prescribed by Regulation 6(1)(a) of the Regulations
which is forty million shillings because the appellant's claim for specific
damages was twenty million shillings.

It is my firm view that, Ombudsman was not established for decoration
purposes but rather it was established for the purposes of resolving
insurance disputes among them being the appellant's complaint. Therefore,
it was not proper for the appellant to file a normal suit at the Resident
Magistrate's Court after being dissatisfied with the payment given by
insurance company. In my view she was supposed to submit her complaint
to the requisite body established by law to deal with such complaints. For

the reasons thereof, the Resident Magistrate Court had no jurisdiction to entertain the matter at hand.

Since the subordinate court had no jurisdiction to entertain the complaint of this nature, I hereby nullified the proceedings of the trial court, quash the judgment and set aside the decree. In the event the appeal is dismissed. Owing to the nature of the appeal, I make no order as to costs. Order accordingly.



A handwritten signature in blue ink, appearing to read "Banzi".

**I.K. BANZI
JUDGE
16/07/2018**