

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

**AT DAR ES SALAAM**

**CIVIL CASE NUMBER 59 OF 2018**

**ALLIANCE LIFE ASSURANCE LIMITED.....PLAINTIFF**

**VERSUS**

**PROMOTION OF RURAL INITIATIVES AND  
DEVELOPMENT ENTERPRISES LTD.....1<sup>ST</sup> DEFENDANT**

**PACIFIC INSURANCE**

**BROKERS (EA) LTD.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

*Date of last order 07/10/2019*

*Date of Judgment 16/10/2019*

**NGWALA, J.**

This is a non contentious matter. The defendants have defaulted both appearance and filing the Written Statement of Defence after being duly served with summons in terms of Order V Rule I of the Civil Procedure code [Cap. 33. R.E. 2002]. For this reason, the suit was ordered to proceed Ex-parte in terms of Order VIII, Rule 14(1) of The Civil Procedure Code (Cap. 33 R: E 200) as amended by GN. No. 381 of 2019.

It is gleaned from the Complaint that, on 21<sup>st</sup> May 2010, the Defendants and the Plaintiff entered into a tripartite

Agreement for provision of Group Micro-Finance, Accident and illness Insurance to the first Defendant, commonly known as Pride Tanzania Ltd. The plaintiff covenanted among others to provide insurance to the 1<sup>st</sup> Defendants' clients/borrowers and their spouses in terms of death, disability, catastrophe and accidents.

It was through the service of the 2<sup>nd</sup> Defendant, the 1<sup>st</sup> Defendant purchased credit Life and Group Life Assurance Covers for various duration from the Plaintiff. The former policy catered for the borrower, the latter was for staff and Directors.

Following total breach of insurance Policies since 2014, the Plaintiff claims for Tshs. 869,882,239.00 being outstanding premium; commercial interest accruing due to non-payment of outstanding premium; general damages; interests accruing from damages and costs of the suit.

At the commencement, of the hearing, the following issues were framed for the determination of the claims:-

1. Whether there was breach of contract between the Plaintiff and the Defendant.
2. Whether the Plaintiff suffered loss.

### 3. To what reliefs are parties entitled.

In proving their case the plaintiff, a Limited Liability Company, called Byford Mutimusakwa, PW1, the Principal and Chief Executive Officer of the Plaintiff. PW1 testified that, they are claiming unremitted premiums and other associated reliefs from the Defendants. To justify his averments PW1 tendered, a Tripartite Agreement between the Plaintiff and defendants signed on 21<sup>st</sup> May, 2010, together with the copy of the Group Insurance Policy dated February, 2010 that was admitted as Exhibit P1.

The 2<sup>nd</sup> Defendants, namely Pacific Insurance Brokers were involved and correspondences were routed through them, to ensure premiums are paid for the business placed with the insurers. The 2<sup>nd</sup> defendant did not remit the respective premiums for the covers provided. The Bordereaux Rolls and the e-mails they used send to the Defendants which contain risk notes, nature of business and premiums were also tendered by PW1 and admitted as Exhibit P2, to prove the claims.

The efforts by the Plaintiff to ensure payment of the outstanding debts proved futile, despite the admission

letter by the 1<sup>st</sup> Defendant that they owe the plaintiff and a promise to pay on 30<sup>th</sup> September, 2017. A letter dated 11/08/2017 was admitted and marked Exh. P3, to prove that the defendants failed to fulfill their obligation. It also evidenced the of acknowledgment of the premium arrears due to the plaintiff and promise to settle and repay. Consequently the Plaintiff sent them a demand letter (Exhibit P4) requesting payment of the outstanding amount.

On the first issue, it is the Plaintiff's contention that the defendants are in breach of the contract Agreement. They have failed to pay the outstanding premiums regardless of the several efforts by the Plaintiff in advice and demand.

The basis of the claim emanates from Exh. P1 that show the parties had an agreement which was dishonoured by the Defendant. Therefore it is apparent, the defendants have breached the said contract.

The second issue is whether the Plaintiff Suffered loss. The question of loss suffered is easily deduced from unpaid premium dues by the defendants. According to PW1, the unpaid amount due to the Plaintiff is to the tune of Tshs. 869,882,239/=. The Plaintiff being a business legal person,

the question of loss out of the unpaid transaction does not require magical proof to find out. The Plaintiff, has produced in court Exh. P2 in support of this issue. Thus the question is proved in the affirmative or positively.

Regarding the reliefs to the parties, the Plaintiff prayed among others, a Declaration that the Defendants are in total Breach of the Insurance Policies for payments of Tshs. 869,882,239/=, damages to be assessed by the Court, interests and costs of the suit.

Following the breach, the Court has come to a finding that, the Plaintiff is entitled to the prayers because the Defendants are in total breach of the insurance policies. Having found so while discussing the first issue. I proceed to deal with other prayers.

The Plaintiff pleaded damages to be assessed by the Court. This is pertinent for the reason that, general damages are never quantified; they are paid at the Courts' discretion. It is the discretion of the court determine the amount to award. This position was stated in the case of **Admiralty Commissioners v. Susqueh-Hanna [1926] AC 655** which held that;

*“if the damage be general, then it must be averred that, such damage has been suffered, but the quantification of such damage is a jury question”.*

The same position is reiterated in the case of **Kibwana & another v. Jumbe [1990-1994]1 EA 223** where it was held;

*“The court, in granting damages will determine an amount which will give the injured party reparation for the wrongful act and for the all direct and unnatural consequences of the wrongful”.*

According to **Black’s Law Dictionary** (Abridged 7<sup>th</sup> Edition) by Brayan A. Garner; Editor in Chief, the term ‘damages’ is defined at page 320 and 321 as:

*“Money claimed by, or ordered to be paid to a person as compensation for loss or injury’*

And at page 321 the term is defined as;

*“Damages that the law presumes follow from the type of wrong complained of. General damages do not need to be specifically claimed or proved to have been sustained”*

In line of the cited authorities, it is my observation that as aforesaid the Plaintiff is a business legal person who has suffered damages to entitle her claims due to non

payments from the Defendants. In the circumstances the plaintiff shall be entitled to only general damages that have accrued, in the cause of his insurance business with the Defendants. In the premises, I therefore grant the Plaintiff T.shs 869,882,239/= as specific damages.

The Plaintiff is therefore entitled to claim or pray for interest on the decretal amount in damages from the date of judgment to the date of final payments as held by the Court of Appeal of Tanzania in the case of **Saidi Kibwana & another** (supra) that,

*“Interest on general damages is only due after the delivery of judgment because then the principal amount due is known. The court has discretion to award interest for the period before the delivery of judgment only on special damages actually expended or incurred, but even this at such rate as the Court thinks reasonable. This discretion does not extend to the period after the delivery of the judgment. The rate of interest to be awarded during the period after the judgment is governed by the provisions order 20 r 21 of the Civil Procedure Code which is limited between the minimum of seven per centum per annum and the maximum of twelve per centum”*

On the basis of the above discussion, there is no order regarding interest on general damages. The plaintiff is granted interest on specific damages at the rate of 07% per annum from the date of this judgment to the date of payment in full. The Plaintiff is also entitled to costs in terms of Section 30 of the Civil Procedure Code (Cap 33 R:E 2002).

In sum, Judgment and decree is entered in favour of the plaintiff as follows;

1. The defendants shall pay the Plaintiff Tshs. 869,882,239/= as specific damages.
2. The Defendants shall pay the Plaintiff interest at the rate of 7% on the decretal sum from the date of judgment, to the day of full settlement of the decretal amount.
3. The Defendants shall pay the Plaintiff the costs of this suit.

Order accordingly.

  
**A.F. Ngwala**

**JUDGE**

**16/10/2019**



16/10/2019

Coram: Dr. F. Ngwala, J.

For plaintiff - Dr. Moris (Advocate).

For Defendant - Absent

B/C Miss Lulu Masasi

**Court:** Judgment delivered in court in the presence of Mr. Moris (Advocate) and in the absence of the Defendant.

**Court:** Right of Appeal to Court of Appeal of Tanzania explained.



**A.F. Ngwala**

**JUDGE**

**16/10/2019**