IN THE HIGH COURT OF TANZANIA

MWANZA DISTIRCT REGISTRY

AT MWANZA

CIVIL CASE No. 25 OF 2013

LEONARD GHATTI PETER MAGANA ---------- PLAINTIFF

VERSUS

MANAGING DIRECTOR
NATIONAL INSURANCE CORPORATION (T) LTD ------ DEFENDANT

JUDGMENT

08th April & 17th July, 2020
TIGANGA, J

This case has a chequered history, it was filed in 2014, it was for the first time finalised before the High Court on 13/08/2015. That decision was challenged before the Court of Appeal of Tanzania where the appeal was allowed on 07/12/2018, the order which finalised the matter was quashed and set aside, and the matter was ordered to start a fresh.

Following that order the case was reassigned to my brother Hon. M. M. Siyani, J, before he was transferred to another duty station consequence of which it reassigned to me for hearing and final disposal of the same.

According to the plaint, and the evidence by the plaintiff, in July 1990 the plaintiff who was a public servant employed by the Judiciary of

Tanzania as a magistrate and stationed at Kazungu Primary Court in Sengerema District was approached by the workers of the National Insurance Corporation NIC who were searching for client who would join them on various insurance policies.

After a long talk and explanation from those officers and after being persuaded on how he would benefit he agreed to join one of the product called Bima ya Majaaliwa which would mature and end for ten years. He was also told that at the end he would be paid Tshs. 150,000/= (one hundred and fifty thousands) a part from the profit.

The officer recorded his details which were his names, employer, check number, his address etc. the officer who was attending him promised him three things namely;

i. He would bring him a letter of acceptance accepting his request.
ii. He would bring him the contract to sign.
iii. That he would fill in a form using the particulars taken from the plaintiff to his employer who was the Registrar of the Court of Appeal of Tanzania by then.

When that officer was elaborating he did so, on the rough paper. The plaintiff tendered that rough paper as exhibit P1. That officer insisted that after ten years, he would be paid Tshs. 150,000/=.

When ten years lapsed according to the plaintiff, who testified as PW1, he was not paid the said Tshs. 150,000/=. Instead of paying him, they wrote him a letter changing the term from 10 years to 15 years. He tendered the letter as exhibit P2. He said the deduction, went on for

15years, and after 15 years the defendant wrote a letter to the plaintiff, that was on 30/09/2008 paying him for 1st time. It was by then 18 years already. He tendered that letter as exhibit P3. When he received exhibit P3 he wrote a statutory demand notice on 25/03/2012 of 30 days in which he was demanding to be paid the balance of the amount which he was not paid. That demand Notice was tendered and admitted as exhibit P4.

Thereafter the defendant paid him Tshs. 13,076 through life premium refund slip dated 25/06/2012, which he tendered and was admitted as exhibit P5.

While the first premium of 1990 was subsisting, the plaintiff registered himself for another life insurance that MZL/67/0664 which was Education provider with profit for five years, that was in the year 1997, which was supposed to be paid at one million at maturity. On that, the deduction was Tshs. 17,537/= per month, he tendered the letter dated 05/06/1997 in which accepted the application for that premium as exhibit P6. That premium was deducted for five years more, up to when he was paid in exhibit P3 in which the payment was below 1,000,000/= as he was paid Tshs. 816,667/= instead of one million. That according to the plaintiff was a breach of the contract.

The plaintiff testified that to his surprise without any new contract, through the forged premium No. 906736, his salary was deducted from the year 2003 up to 2010 for almost seven years the deduction in this premium without contract was Tshs. 19,337 per month for seven years, he tendered the premium as exhibit P7 though it was altered on it by the word " No contract", it was admitted as exhibit P7.

Further to that there was another policy commenced that is policy No. 919605 which he had not consented and without consultation. It was after he had asked for so long, the defendant returned Tshs. 1,325,635 in life premium refund dated 25/06/2012. That life premium refund was admitted as exhibit P8.

In these two premiums in which the deduction commenced without his consent that is No. 919605 and 906736, he travelled to Mwanza seven times, before he was transferred to Karagwe. He was also forced to travel to Dar es Salaam Life House making follow up of these two alleged premiums. After such follow up and a thorough search, it was revealed that there was no contract in any of the two policies. After a finding the staff who attended him wrote him a note of a memo to the staff of Mwanza that he be assisted. That memo was tendered and admitted with its authenticity to be dealt with during the composition of the judgment; it was marked as exhibit P9. The reasons, the plaintiff complain to have been under paid are that, in policy No MZL 670664 exhibit P6 the amount which was supposed to be paid is Tshs. 1,000,000/= one million but he was paid Tshs. 816,313 that means the amount of Tshs 138,333 was unpaid.

This is because, five years in which the premium was supposed to be paid comprise 60 months, if the same is multiplied with Tshs. 17,537/= the amount which he was to be paid is Tshs. 1,052,220/= for that reason in document exhibit P6 show that even the calculation of Tshs. 1,000,000/= was a lie because there was Tshs. 52,220/= missing. He said under that premium he still claim Tshs. 190,553/=.

Further to that in alleged forged contract i.e premium No. 906736, there was a deduction of Tshs. 19,337 while in policy No. 919605, the deduction was Tshs. 28,205/=, he said since these policies were without his consent, he did not know when these deduction started and their date of maturity. He tendered the salary slip of May 2006 and that of May 2010 as exhibit P10.

It is his evidence that the deduction of 19,337/= in policy No. 909636 started in November 2003 up to May 2010. He tendered the salary slip of May 2010 and was admitted as exhibit P11.

He said he still claims on that policy as taking Tshs. 19,337/= for 80 months he was supposed to be paid Tshs. 1,546,960/= but he was paid only Tshs. 1,527, 623/= the balance was not paid, regarding to exhibit P8, he said the deduction was Tshs. 28,205/= the deduction was for four years and one mount which is equal to 49 months, if multiplied by the deduction that is Tshs. 28,205/= the amount to be paid was supposed to be Tshs. 1,382,045, but the returned amount is Tshs. 1,325,635, in that Tshs. 54,410 is still un paid, he submitted that the defendant remained with his unpaid amount for 30 years since 1990, which is equal to 360 months, if the said amount is multiplied with 10% interest he is entitled to Tshs. 900,000/= nine hundred millions.

For that reason, he prayed to be paid the following categories of claim.

i. Breach of contracts in which he claim Tshs. 100,000,000/= (one hundred millions) under policy No. MZL 452567 and the delay to refund the amount Tshs. 50,000,000/= (fifty millions).

ii. In the policy No. MZL 670664 the delay to pay for six years he claim Tshs. 50,000,000/=and the interest of another Tshs. 50,000,000/= as the Defendant is still getting profit on the said amount.

iii. In the alleged forged contract No. 906736, he claim to be paid Tshs. 150,000,000/=, while in policy No. 919605 he claim Tshs. 150,000,000/= as well.

iv. The disturbance which gave rise to the general damages as his family failed to get education and the pain caused to him to live on half salary he prayed a general damage of Tshs. 150,000,000/=.

v. That he be paid any other relief as the court may deem fit to grant as well as to the costs.

When he was cross examined by the counsel for the defendant Mr. Marko Nsimba, he said that when he contracted the defendant he was stationed at Kazunzu Primary Court in Sengerema District, but he retired while at Karagwe where he was transferred.

He said exhibit P2 is not a contract but he was paid the premium because of exhibit P1. He said he was contacted by Mr. G. S. Magaka who he recognised as an officer of the defendant. He said he did not know who was deducting his salary and sending to the defendant.

He said with his first policy the deduction was Tshs. 934 per month. The deduction was done for 16 years, if you take 16 x 934 x 12 is equal to Tshs. 179, 328/=. His premium paid to him was Tshs. 181,313, he was

also paid Tshs. 13076 making a total of the amount paid under that policy to be Tshs. 194,389. Having so answered while cross examined by leading question by the counsel for the defendant, he turned that he was paid only Tshs. 13076, but dispute to have been paid the rest including Tshs. 181,313/=.

While further cross examined, he said regarding the policy MZL 670664 which was of one million, he said the deduction was Tshs. 17,537 per month which started in August 1999 up to June 2003, it lasted for four years minus two months and if you take Tshs. 17,537/= times 46 months of deduction the total amount is Tshs. 806,702/=.

He said he was the one who drafted paragraph 9 of the plaint. He said if you take Tshs. 17,537/= x 12 is equal to 210,444/= and if you minus the amount from Tshs. 806,702, the balance is Tshs. 596,258/=.

Having been so cross examined he said he was supposed to be paid for five years although the deduction was for less than five years. He said however, he received Tshs. 816,667 in the second policy and Tshs. 13,076 plus Tshs. 181,313 instead of Tshs. 150,000/= which was in the contract.

He said forgery is a criminal offence, but he did not report that forgery to the police station because the defendant was his insurer. He expected the issue would be resolved amicably.

He said the alleged policy No. 906736 was forged because he did not sign such a contract, the deduction was Tshs. 19,337/= per month since October 2003 up to May 2010, it lasted for six years as pleaded in paragraph 13.

He said mathematically if you take 19,337/= x 12 x 6= 1,362,664/= and if you take Tsh.19, 337/= x 7 which are the months you get Tshs. 135,359/= which if added to Tshs. 1,527,623/= which is the amount he said was refunded to him as per paragraph 13 of the plaint.

On further cross examination he said the other forged policy was 919605 in which the deduction was Tshs 28,205/= for 49 months which started from May 2006 up to may 2010 in four years as to per paragraph 14 of the plaint, and that if you take Tshs. 28,205/= x 47= 1,325,635/= which amount was refunded by the defendant.

He said he did not report any forgery, he said his information were in office. In the end, he said he prayed to be paid Tshs. 900,000,000/= for all evil which the defendant did to him.

He said the money be paid simply because his salary was deducted without his permit, breach of the contract and the delay to pay for the 1st and 2nd policies. He said the Registrar of the Court of Appeal said, the contract was personal, between the plaintiff and the defendant.

In re examination, he said in policy No 919605, he said some times the deduction were made twice per month. He said four years has no 47 month but 48 month and therefore he was supposed to be paid 49 months, which were the months of his deduction.

He also said policy No. 906736 started in October, 2003 and ended in June 2010 equal to 81 month which he was supposed to be paid.

That marked the plaintiff case, it was followed by the defence which called only one witness one Veronica Patrick Ochaka, an insurance officer,

a branch manager of life house of the National Insurance Corporation. In her testimony she generally told the court the procedure on how a person who wants to be a customer of the National Insurance Corporation should follow:-

She said that a person fills in an application form which contains his details, names, his employer, the date of birth, the sum insured. The cheque numbers, his personal history, health history and signature.

The second form which has fewer details, this has the name of the customer, his employer, his cheque number and the amount to be deducted and he also append his signature. The second form is normally sent to his employer to inform the employer that the under signed employee had a life policy contract, so the employer is required to deduct.

She said it is normally the employer who makes the deduction after the NIC has submitted the form with the signature of the employee.

Once the policy had matured the customer is called, informed and paid by cheque if the agreement is of the policy with profit, they normally pay the customer with profit.

She said the plaintiff contracted two different policies, one was No. 452567. That policy was of Tshs. 150,000/= which was of 15 years, that policy started in the year 1990. At its maturity they paid him Tshs. 181,313 as the principal with interest. Under that policy according to her the plaintiff does not claim anything as he has already received his dues.

The second policy is number 670664, which started in the year 1997, it was a five years policy of the sum of Tshs. 1,000,000/= under that the

plaintiff was paid Tshs. 816,667/=. This is a paid up policy as it did not reach to an end of the contract. The deduction was done and submitted for 34 months instead of 60 months, it was supposed to be 46 months but there was a deduction of one year which were not submitted, if you take 46 month and you less 12 month, you remain with 34 months which are the months for which its contribution was received.

She said by the deduction he was supposed to be paid Tshs. 596,258/= but the plaintiff was paid Tshs. 813,567/= because the additional amount was a bonus.

She said after the policy were due, they prepared a cheques but the plaintiff was nowhere to be found, so the cheque remained un paid, and it expired this was because the plaintiff's address had changed, but without the notice of the defendant.

She said there is nothing like policy No. 906736, she said that is a dummy number, which means, a number, retaining the money which finds itself in the account of the defendant without the defendant having a contract with the source. The money is kept in an account with dummy number waiting to be collected by a person who would appear and prove that the money is his.

The witness DW1 said the amount of Tshs. 1,527,623/= and Tshs 1,328,635/= were payment made via Exhibit P7 and P8, in respect of dummy number 906736 and 919605 respectively.

All amount received without contract in these dummy number were returned to the plaintiff. She said the money were deducted erroneously by the plaintiffs employers, it was not a forged policy as alleged.

According to her, it was the defendant who informed the plaintiff that there was his money and required him to go and collect the same. They told him that the money was erroneously deducted by the employer.

She said the amount of Tshs. 900,000,000/= claimed has no base, because the plaintiff was paid his dues, therefore he had no claim against the defendant. She prayed the claim to be dismissed with costs.

When cross examined by the plaintiff she said, the plaintiff being a magistrate could not have entered into the contract without understanding the terms of the contract, she said exhibit P2 was written on 11/09/1990, on 24/07/1990 it the date of the discussion.

He said the 1st policy which was of 15 years, was supposed to be due in the year 2005. However it did not end immediately, but it was the employer who failed to stop the deduction, and that the amount which was over deducted.

She said all documents are in the file but the DW1 said she did not see the demand letter as exhibit P4.

She went on and stated that, the second policy of 1997, it was of five years and was supposed to end in the year 2002, the deduction was Tshs. 17537, and the policy amount was Tshs. 1,000,000/= through if the calculation is made which is Tshs. 17,537 x 60 which is deduction the time of deduction, we get the amount which was supposed to be the policy

amount payable, however in that policy the result after the above multiplication was 1,052,220/= he said the extra 52,220/= are the service charges, risk of business etc.

Regarding the dummy numbers, she testified that as the amount was deducted from the salary the employee was also duty bound to make follow up with his employer if he saw the deduction which he did not authorize. She said all the money which was supposed to be paid was so paid.

On re examination, she said that excess deduction was of the said with exhibit P7, the total deduction was Tshs. 1,527,623/= while exhibit P8 had a total deduction of Tshs 1,325,635/=.

She said the plaintiff had a contract of two policies that is why he had never complained for all those years. She said in the normal circumstances whenever a person is over deducted. He is expected to make follow up to know where his money was going. She said a dummy number means no contract at all but it was the money erroneously deducted by employer. In the end, she said the plaintiff has no any claim against the defendant. She prayed the claim to be dismissed with costs.

Parties also filed their respective final submissions which in my analysis of evidence in this judgment I will consider. But in summary the plaintiff submitted that the defendant is deemed to have admitted and confessed all the facts in the plaint as he did not specifically deny the same. Having so said, he submitted that the first issue framed by the court, which is whether the defendant breached the contract with policy

No. MZL 452567 between the parties has been proved in affirmative in the sense that the defendant changed the duration of contract from 10 to 15 years, secondly by hiding Tshs. 18,120/= and insisting that the policy amount was 150,000/=, thirdly, by effecting the deduction for 16 years and 1 month instead of 10 years which is a contract term, fourthly, by effecting the last payment after 22 years, fifthly, by omitting to pay the profit as per contract, and last by not supplying the plaintiff with life premium refund slip for the period from 1990 up to September 2005.

With regard to the second, issue the plaintiff submitted that, he managed to prove the same that the defendant breached he contract, first by deducting for 5 years and 11 months which is beyond the contract, secondly, making payment of Tshs. 816,667/= without profit, thirdly, the payment of the last money about 11 years after the commencement of the contract, fourthly, for not supplying the plaintiff with a life premium.

On the 4th issue which is whether the defendant invented and conducted an illegal transaction between the parties with policy No. 919605 without any contract thereof. According to him the same was pleaded in paragraphs, 14, 15 and 16 of the plaint, and the contents of exhibit 24, 26 and 27, he said the same is deemed to have admitted.

He submitted that, in that the deducted amount was 28,205/= X 49 months = 1,382,045/= but only 1,325,635/= was refunded without profit while the balance of Tshs. 56,410/= remain unpaid to date.

On the 5th issue, this is the relief if any that the parities entitled to, He submitted that, as the four issues must be resolved in affirmative, it is obvious that, the plaintiff is entitled to damage.

He prayed in the end to be awarded the Tshs. 900,000,000/= which he claimed to the tune of T.shs. 150,000,000/= on the first issue, and so to the second issue while on the 3rd and 4th issue each to be awarded T.shs. 300,000,000/=

Regarding the final submission by the defendant, Mr. Marko Anthony Nsimba submitted on the first issue that the plaintiff was paid in respect of policy number MZL 452576, Tshs. 181,313 which is a full amount plus interest of 13,076/= on the refund of the amount deducted in one year of the 16th year.

While in relation to policy number MZL 670664 he was paid Tshs. 816,667/= including bonus and profit as he contributed 34 months instead of 60 months. He said that the plaintiff did not prove the allegation that the defendant breached the contract. He cited the case of **Bartelia Karangirangi vs. Asteria Nyahwambwa**, Civil Appeal No. 237 of 2017 CAT - Mwanza (unreported).

In which the burden of proof in civil cases was discussed in which it was held that the burden lies to the plaintiff. He also cited Section 110 and 111 of the Evidence Act [Cap 6 R.E. 2019] which provides to that effect.

He also reminded the court that as parties are bound by their pleading, he cited the case of **Aspepro Investment Ltd vs. Jawinga**

Company Ltd, Civil Appeal No. 08/2015 CAT-Dar es Salaam - unreported, which also held to that effect.

He submitted that there was no justification for the plaintiff to submit on what he did not plead in his plaint on the 3rd issue in which the plaintiff adduced evidence that the defendant forged his signature and document in respect of policy No. 906736 and 919605. While the defendant adduced evidence that there was no forgery. The plaintiff gave no evidence to support the allegation that there was a forgery. On this issue he also reiterated the argument and authorities he used in the first and second issues.

On the 4th issue, whether the plaintiff was not paid the premium by the defendant under the insurance he contracted. He submitted that there is enough evidence to prove that in policy No. MZL 452576, the plaintiff was paid Tshs. 181,313/= and profit as well as Tshs. 13,076/= as the refund which the plaintiff admitted while in policy No. MZL 670664 the plaint was paid Tshs. 816,667/= being the amount he contributed only 34 months and the profit as his policy was not full contributed for 60 months.

He also submitted that even the amount collected through dummy Accounts No. 906736 and 919605 the plaintiff was paid in full. He relied on the same arguments and authorities in the first and second issue.

While on the 5th which is to what reliefs are the parties entitled, He said that, the plaintiff has not proved the entitlement of Tshs. 900,000,000/=. He submitted that in the case of **Director Moshi Municipal Council Vs. Stan Leonard Mnes and Roise Peace**

Sospiter, Civil Appeal No. 246 of 2017 Court of Appeal of Tanzania at Arusha (unreported) at page 17 where it was held that special damages need to be specifically pleaded and strictly proved, but the plaintiff did not prove the claim of T.shs. 900,000,000/=.He asked the suit to be dismissed with costs.

That being the comprehensive summary of pleadings, the evidence and the submissions by the parties, in the normal circumstances I would have straight forward started to tackle the issues. However, before going to the issue No. 1 let me start with the concern raised by the plaintiff that the defendant admitted the claim in the plaint.

I find it important to start with this because, once we find that the defendant so admitted, there will be no need to waste time discussing issues which have already been admitted.

I have passed through the plaint and the corresponding written statement of defence, to see whether the claim has been admitted. I with respect to the plaintiff have not seen where the defendant expressly or by necessary implication had admitted the claim. The defendant either disputed the allegations or strongly contested the claim in the plaintiff. The defendant in the plaint went ahead and enumerated each number of paragraphs and at the end of the day they remain disputed. That being the case I will therefore go on to deal with the issues as framed.

The first issue is whether there was a breach of insurance contract between the plaintiff and the defendant.

On that, the plaintiff has alleged in his evidence that there was a breach of the contract, the first aspect of that alleged breach was that first the agreement between the parties was that the policy was of 10 years, but the defendant raised it to 15 years. The plaintiff relied on exhibit P1 which is the memo allegedly given to him by the officer of the defendant who enticed him to join the policy.

He relies on the facts that on the top of that exhibit it is written (10years) and so at almost the end.

This was disputed by the evidence on the defence side which evidence relied on exhibit P2 which is titled "Barua ya kukubaliwa ombi".

That letter was directed to the plaintiff and it was informing him that his request was accepted and the contract term was to be 15 years that was signed by the General Manager. Now on this aspect making a comparison of the two documents, a memo with calculation without any signature of the officer who prepared it, without stamp and without the name of the office from which it is coming. Weighing these two documents, I find the exhibit P1 wanting, compared to exhibit P2, and find therefore that the contract term was of 15 years as opposed to the allegation of 10 years. On that aspect, there is no breach of contract as the contract terms were not changed but were originally 15 years.

The second aspect in the first issue was that the deduction was enlarged for more than 15 years as the deduction was 16 years. According to the plaintiff that is a breach of the contract. The defendant's evidence on that is that it is true that the deduction was effected for 16 years as

opposed to the agreed term of 15 years, however, they said it was the employer of the plaintiff who exceeded the deduction period an issue which was also the duty of the plaintiff to tell his employer to stop the deduction.

On that, I find myself convinced by the evidence of the defendant. This is because it is not the defendant who effect the deduction, but the employer. As the defendant had submitted the agreement to the employer showing 15 years it was the duty of the employer to deduct in accordance to the submitted policy/contract, exceeding to deduct by the employer cannot be taken to be the negligence of the defendant.

Further, to that it was also the duty of the plaintiff who was aware of the contract terms to inform the employer to stop over deduction in order to mitigate the suffering. Failure to do so meant that, the plaintiff also contributed to the suffering if any.

The third aspect in the first issue is that, the defendant did hide Tshs. 18,120/= which was in excess of Tshs. 150,000/= the policy amount, on that he pray that the court find that was an element of breach of contract. On that the defendant did not specifically came with the straight forward answer, however, as it is the principle of law that he who alleges must prove, it was the duty of the plaintiff to prove by evidence that the said Tshs. 18,120/= which seemingly was in excess but which was paid at the premium refund meant to breach the contract.

It is important to note that the parties relationship is built on contract which means, the terms and conditions were known to each other, there is nowhere in exhibit P2 where it was stipulated as a duty for the defendant

to disclose, that being the case I do not see any element of breach of contract on this aspect.

The other aspect which was raised on this issue of breach of contract is the fact that after the maturity of the policy the plaintiff was not paid on time. He said that was breach of contract because they were supposed to pay him as soon as the same matured. The defendant while countering that said aspect through DW1 that they prepared a cheque, but could not find him because he changed the address and duty station without informing them. When they engaged him, he was in Sengerema District but when the policy matured he had already shifted to Karagwe.

Therefore the prepared a cheque, could not be collected by the owner, it remained unpaid, cashed, up to when it expired. While the plaintiff did not tell the court what he did, while aware that the policy had already matured and deduction ceased, whether he made follow up to be paid by the insurer, and if not what prevented him to do so. The defendant also did not tell the court in the evidence, that after they had failed to reach the plaintiff through his re known address, whether they asked the employer to assist locate the plaintiff. Failure to give such explanation exposes both parties to the blame that each party did not act.

However, of the two parties, the plaintiff had a duty to make follow up, it was not expected of him to keep quiet and prepare to sue later for being paid late. Had he in his evidence demonstrated that he made follow up in vain and prove that they did not pay him even after his follow up, he would have shifted the blame to the defendant. Having so said, I find the

aspect to be short of evidence to prove that it is the plaintiff who breached the contract.

Last is the failure to supply the plaintiff with the life premium receipt refund slip for the period between 1990 to September, 2005.

On that, I do not see in the contract that it was a condition in the contract that the defendant was duty bound to supply the plaintiff with the life premium refund slip, and that non supply shall constitute a breach of the contract. That said, I find the evidence by the plaintiff have not proved the breach of contract on the side of the defendant.

That said, I find there is no evidence to prove that the defendant breached any term of the agreement which would have constituted the breach of contract. The first issue is therefore resolved in negative.

On the 2nd and 3rd issues which are whether the defendant invented an illegal transaction between the parties with policies No. 906736, and 919605 without any contract thereof.

The evidence by the plaintiff is that, he had only two contracts, but to his surprise, there were two other policies which he did not contract or consent the deduction. Those alleged policies are No. 906736 and 919605. These were not disputed by the defendant but called them dummy numbers, explaining that these were the numbers in which the money whose source is not known, meaning that which they have no policy with the source, are kept awaiting for the owner to appear and collect the money after proving that he is the owner.

In respect of these two numbers complained of in issue number 2 and 3, DW1 admitted to have been receiving that money and that, the same were erroneously deducted by the PW1's employer. However, he said that, they did not know where the money were coming from, but also the plaintiff did not make follow up to know why his money were deducted and why were they taken.

It is the opinion of DW1 that had the plaintiff made follow up with his employer he would have discovered earlier. The plaintiff while complaining to have his money stolen by the defendant, through an illegal transaction, which he allegedly said, they had forged his signature, and other documents, he failed to tell the court, how did he know that his money were with the defendant.

He also did not tell the court that while knowing that any deduction must have involved his employer why he failed to consult his employer. Also having reason to believe that there was forgery, he did not give reason in his evidence why he did not engage the police to investigate who forged so that they can assist to establish the person who forged. In the circumstances of the case the plaintiff was expected to have taken necessary steps, either to establish the said forgery if any or rectify the error which led to the deduction without contract.

Without proof that the said dummy numbers were a result of forgery, then he cannot blame, that the same was forgery which was illegally done by the defendant. That said, I find the second and third issues also resolved in negative, for the reasons given.

On the last but one issue which is whether the plaintiff was not paid the premium under insurance policy he contracted. From the evidence and submission, there is no dispute that the plaintiff was paid under both the premium and dummy numbers. However, the plaintiff complain that there is a balance of Tshs. 348,757/= unpaid.

That being the case then if this amount is charged the interest at 10% per month times the 360 months which is the period when the defendant has remained with the money of the plaintiff he said he claim Tshs. 51,978,743.28.

According to the plaintiff, in charging this amount, the plaintiff has also taken into account the inflation from 1990. The value of Tanzania Shillings against the US Dollar he said he need to claim Tshs. 3,430,597,056.50/=. That is why he decided to estimate his claim to be Tshs. 900,000,000/=.

He submitted in his final submission that, he deserves the damages which was caused by substantial, physical inconvenience and discomfort caused by the breach of contract.

The defendant in the evidence and in cross examination of the plaintiff showed that in policy No. MZL 670664, the deduction was made for 34 months, the plaintiff was paid all his dues as per contract and that included the profit and bonus. DW1 said he could not have paid him 1,000,000/= because it was the employer who stopped the deduction.

She also said that they paid him all his dues which he was claiming. That said, they prayed the claim to be dismissed.

In this issue, it is important to note that under insurance contract, a party is normally paid according to the policy agreement and his contribution. He cannot expect to be paid even where he did not contribute. Looking at the way the plaintiff was paid, the way he contributed, as per his evidence both in examination in chief and in the cross examination, and the evidence given by DW1. I find that the plaintiff was paid all his entitlements and has no claim against the defendant.

Having so found I find the claim to be devoid of merit and it stands to be dismissed. Given the position of the winning party vis-a-vis the loosing party, I make no order as to costs.

It is so ordered.

DATED at **MWANZA** on 27th day of July, 2020.

J. C. Tiganga

Judge

17/07/2020

Judgment delivered in open chambers in the presence on line through tele conference, of the plaintiff and Mr. Marko Nsimba Advocate for the defendant. Right of appeal explained and fully guaranteed.

THE HIGH COURT OF TANZANIA
MWANZA

J. C. Tiganga

Judge

17/07/2020