

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

CIVIL APPEAL NO. 138 OF 2017

MERIDIAN EXPRESS APPELLANT

VERSUS

MWANANCHI INSURANCE CO. LTD RESPONDENT

Date of last Order: 21/02/2020

Date of Judgment: 27/03/2020

J U D G M E N T

MGONYA, J.

According to the Memorandum of Appeal and the attached Ruling and Drawn Order herewith, the instant Appeal is originating from the decision of the Resident Magistrates' Court of Dar es Salaam at Kisutu in **Civil Case No. 180 of 2016**; whereas Hon. Magistrate ruled out against the Appellant herein. It is from the said decision, the Appellant herein resolved to file the instant Appeal against that decision with four grounds of appeal as herein below:

- (1) The trial Court erred in Law and fact in rejecting the plaint on the ground that no Cause of Action was shown, while the cause of action was on non-payment of Insurance benefits by the Defendant who failed or refused to pay.***
- (2) If there was arithmetical error in the calculations, this does not waive the Cause of Action of non-payment by the Defendants.***
- (3) Whereof the Appellant prays for an order to the trial Court to re-instate the case and order the same to be tried by hearing both parties.***
- (4) Ruling of the case was made on 26/05/2018. Notice of Appeal was lodged on 26/05/2017. Judgment and Decree were obtained on 20/06/2017. Therefore the appeal is on time.***

As the Appellant could not find the Respondent's location for service, I ordered the same to be served through publication; the order which was adhered accordingly. It is from the said order and after the lapse of reasonable time, I ordered the matter to proceed ***Exparte*** against the Respondent. Further, I ordered the Appellant to file his respective written submission in support of the grounds of appeal for appeal determination.

Indeed, the submission is before the court for determination as ordered.

Going through the Appellant's written submission, I have seen it proper to quote the entire submission as it is a short one before I proceed. The same is as below:

"WRITEEN SUBMISSION ON BEHALF OF THE APPELLANT

This matter started in the Kisumu Magistrates Court as Civil Case No. 180 of 2016, whereby the Court rejected the matter; see copy of the drawn order. We indulged to Appeal to the High Court whereby the Civil Appeal is 138/2017. The Appellant was claiming Tshs. 71,800,940/= the Principal Sum, Tshs. 14,200,000/= being Interest General Damages and Costs.

When the matter came up for deliberation the Defendant Co. could not be traced as they had vacated their office at Kiko Avenue at Mikocheni "A" Dar es Salaam and their whereabouts was not known, we tried to trace the Defendants, but our efforts proved futile.

We requested the Court that we serve them by Publication and we did so in the Uhuru Paper dated 28/06/2019, see

copy of the Publication. The Defendants have not shown up to date.

We are praying that the court issue an order to the Defendants to pay Tshs. 71,800,000/= the Principal Sum, and Interest Tshs. 14,200,000/= making a total of Tshs. 86,000,000/=

Humbly submitted.

(Signed)
E. N. MASSAWE
ADV. FOR THE APPELLANT"

I have decided to quote the entire submission in order to illustrate that there is a **grave departure of facts at hand in the said submission and to the grounds of Appeal advanced before the court for determination.** As one can see above, there are four grounds of appeal that needed to be supported by relevant submission. What I have gathered from the Appellant's submission is; **1st**, the history of the matter at the lower court, **2nd**, the information that upon the Respondent's absence, the court ordered his service through publication and **finally** is the Appellant's Counsel prayer for the court to order the adverse party to pay the Appellant a sum amount of money.

As there are already the grounds of appeal before the court, though the appeal is to proceed *Exparte*, it was expected that the Appellant's submission in respect of the appeal at hand will focus to the said grounds of appeal. However, in this appeal, that was not the case. Though the sole submission comes from the Appellant himself, but the same has to adhere to the rules of submission and further make easy for the court to determine the appeal accordingly. I have to declare that, in the current departure of the grounds of appeal and submissions hereto, this court has nothing at hand to determine as **the Appellant through his Advocate has failed to prosecute his appeal deliberately.**

On this, I have a word to the learned Counsel who is representing the Appellant herein. Having being trusted to represent the client in this appeal, the Appellant herein has placed his entire trust and confidence to the Advocate of whom he is expecting that he will use his knowledge and skills in representing him. It is my belief that before one is trusted in representing the litigants at this level, there are of course the qualifications and tests to that effect. **That is why it is not every lawyer can be an Advocate.** The advocacy in this sense means one has to employ his legal academic skills applying the required legal skills and procedures over the matter so as he can represent the party **justly and fairly to**

meet ends of justice, short of that, I can term the omission as **representation suicidal**. And this too can be looked at as **unethical conduct by the Advocate**.

As I am disappointed with the submission before the court which does not reflect the grounds of appeal for determination, I cannot hesitate to emphasize that the lawyer/client relationship is recognized as a trust-based relationship. That is to say, the relationship is one wherein (the client) places her or his **trust, reliance, confidence** and **faith** in another (the lawyer), whose advice and/or representation is sought in some matter. The Lawyer-Client relationship creates several legal duties for the person for whom the trust has been placed (the lawyer). Generally, this person must act in the best interests of the other. However, an Advocate's duty to the court and the Administration of Justice, always trumps the duty to the client to the extent of any inconsistency with any other duty. In addition to their duties to clients, Advocates have other obligations under the law. As officers of the Court, Advocates must not only obey the law, they also must ensure the efficient and proper Administration of Justice through their doings.

In the case of ***RONDEL V WORSLEY [1969] 1 AC 191, 227***, Lord Reid made the following observations in relation to the Duty owed by a Lawyer to the Court, he said:

"As an officer of the court concerned in the administration of justice [a legal practitioner] has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests"

It is well-established that, as an officer of the court, Advocate's paramount duty is to the court as part of the duty to the proper Administration of Justice. The oath or the affirmation that Advocates take means they have this additional level of responsibility and that they may not be driven by their client's wishes alone, but with their **professionalism**.

This duty to the Court by a legal practitioner arises because of the position entrusted on as an officer of the court and an integral participant in the administration of justice. The practitioner's role is not merely to push his or her client's interests in the adversarial process, rather the practitioner has a duty to assist the court too in the doing of Justice according to law.

The duty often requires that the legal practitioner act **honestly**, with **candor** and **competence**. Importantly, Advocates should not and must not mislead the Court and must be frank in their responses and disclosures. For

that reason, in ***GIANARELLI'S CASE (1988) 165 CLR 543, 578***, Brennan J. states:

"The purpose of court proceedings is to do justice according to the law. That is the foundation of a civilized society".

From what I have emphasized above, it is my other disappointment and sympathy to the Appellant that, looking at the authenticity of the Advocates certification in representing clients before the court, it came to my knowledge through ***"tams.judiciary"*** application that the same Counsel **who is representing the Appellant herein is not permitted to represent clients before the courts as he doesn't have a valid practicing license for this year 2020**. The application further reveals that the prohibition was also the case for the last two years 2018 and 2019. I have to say that this is a very unfortunate and embarrassing situation, and again this act offends the client as his appeal will be taken in vain as the Advocate is not qualified and recognized in representing him.

From this situation, I urge the **learned Counsel Mr. Massawe** to look into this matter seriously and rectify the situation in the earliest possible time and think about being fair to the public.

From the above explanation, **I proceed to DISMISS the Appeal for WANT OF PROSECUTION.**

As the matter was heard *Exparte* against the Respondent,
I make no order as to costs.

It is so ordered.

Right of Appeal Explained.



L. E. MGONYA
JUDGE
27/03/2020

Court: Judgment delivered in my chamber in the presence of
Mr. Massawe, Advocate for the Applicant, the *exparte* and Ms.
Janet Bench Clarke in my chamber today 27th March, 2020.



L. E. MGONYA
JUDGE
27/03/2020