

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TANGA DISTRICT REGISTRY**

**AT TANGA**

**CIVIL APPEAL NO. 3 OF 2020**

**(Originating from Civil Case no. 17/2017 of District Court Tanga)**

**FRANCIS VICENT @ MAHIMBO..... APPELLANT**

**VERSUS**

**THE NATIONAL MICROFINANCE BANK PLC.....RESPONDENT**

**JUDGMENT**

**MRUMA, J.**

The Appellant, Francis Vicent Mahimbo commenced a suit in the District Court of Tanga at Tanga against the Respondent, the National Microfinance Bank (PLC) for orders that the defendant be ordered to secure Tshs. 35,969,951/=) being money due and owing under a Credit facility agreement. He also prayed that the Respondent be ordered to stop forcing him through demand notices to pay the outstanding amount and to pay him Tshs. 30,000,000/=) being costs of economic and psychological hardships the Defendant caused to him and costs of the suit.

It is not denied that the Appellant applied for a loan of Tanzania Shillings 50,000,000/= the terms of payment included payment of 24 monthly

installments of Tshs.2, 569,283/00 which was agreed upon for the settlement of the principal and interest.

It was the Appellant's contention during the trial that one of the mandatory terms of the loan agreement was deduction of 0.75% of the loan amount to cover for death and permanent disability of the borrower.

From February, 2017 the Appellant became seriously sick and was attended in various hospitals including Bombo Regional Referral Hospital in Tanga and Hindu Mandal Hospital in Dar es Salaam. It was the Appellant's averment that due to his sickness he is permanently disabled i.e physically incapable of being employed in any sort of work. This condition was reported to the Respondent's bank by him orally on 19<sup>th</sup> August 2017 and through a letter dated 20<sup>th</sup> August, 2017. However on 21<sup>st</sup> August 2017 the Appellant received a demand notice from the Respondent requiring him to pay the whole outstanding sum. By that time the Appellant had already paid Tshs. 25,690,830.00, which amount he claims to have got from his relatives and friends.

The Appellant's sickness is construed by him as an event of default which entitled him to an indemnity under the insurance clause of the loan agreement.

The Respondent denied the Appellant's claims on the ground the insurance policy covered death and permanent disability and not mere sickness.

At the trial, the Appellant testified himself and called his wife Fatuma Mwinyi Juma as his sole witness. The Respondent called Fatuma Yusuph Mtangi its loan officer as its witness.

In its judgment the District Court found that the Appellant had failed to prove permanent disability on his part therefore dismissed his claims. In an unprecedented decision, the trial court went ahead and extended the loan repayment period for one year from the date of judgment and ordered each party to bear own costs.

The Appellant was aggrieved and has appealed to this court relying on the following grounds:

1. That the learned Magistrate erred in law and fact for not determining and translating the phrase "permanent disability" in its entirety and connect it to the circumstances touching the Appellant.
2. That the learned Magistrate erred in law and in fact for partly basing his decision on disputed evidence adduced by Respondent's witness without any proper citation or authority.



3. That the learned Magistrate erred in law and in fact for non-scrutinization of the competence genuineness and validity of witnesses.
4. That the learned Magistrate erred in law and fact for resting its decision on the grounds built upon the evidence adduced by incompetent nonprofessional (non-expert) for the matters that required expert witness or opinion.
5. That the learned Magistrate erred in law by entertaining hearsay evidence from an incompetent witness.
6. That the learned Magistrate erred in law and fact for deciding the case in favour of the Respondent without sufficient standard proof on the balance of Probability.

In his submission in support of his grounds of appeal, the appellant contended that the judgment of the District Court doesn't qualify to be called a judgment because it lacks analysis and evaluation of facts adduced as evidence at the trial which would include the definition, classification, translation and securing of the phrase "permanent disability" as contained and applied in insurance law.

The Appellant submitted further that that the trial court's judgment didn't comply with the requirements of rules 4 and 5 of Order XX of the Civil Procedure Code [Cap 33 R.E. 2019].

Submitting in relation to the evidence of the Respondent's witness the Appellant contended that the evidence of Fatuma Yusuf Mtangi (DW1) was hearsay because she testified on scientific and technical issues which she didn't have.

Responding to the Appellant's submissions Mr. Eric Akaro, counsel for the Respondent submitted that the judgment of the trial court complied with the requirements of the provisions of Order XX Rule, 4 and 5 of the Civil Procedure Code.

Submitting in relation to the definition of permanent disability, the learned counsel contended that the understanding of the term "permanent disability" by the trial magistrate does not fall beyond the definition of that term as provided for by the law.

Regarding the Appellant's case, counsel for the Respondent submitted that the Appellant failed to prove his claim that he had permanent disability therefore entitled to indemnity from the insurance clause.

I have carefully considered the Appellant's submissions and the records of evidence adduced during the trial.

The documentary evidence were admitted without any objection. I have also considered the authorities cited by the parties.

The factual matters in this appeal are not controversial and as I noted before, there was no dispute that the Appellant applied for and was granted a loan facility of Tshs. 50,000,000/=. There is also no dispute that the loan agreement (offer letter – which was admitted as exhibit P1) contained a life assurance clause. Clause 7 of the offer letter (Exhibit PR) provides that:

*"The borrower shall pay to the Bank the following fees (which shall be debited to the borrower's loan/current account with the bank.*

*(ii) A onetime of credit life assurance premium of 0.75% per annum of the approved loan amount to cover death and permanent disability where applicable). Benefit payable under is limited up to the free cover limit currently at TZS 350 Million and above free cover limit only after medical underwriting"*



The first of the Appellant's claim arose from that clause (i.e clause 7 (ii)) and he claimed that he is entitled to indemnity upon being permanently disabled by sickness.

In relation to his sickness, the Appellant gave evidence to the effect that he fell sick in February 2017.

He was first attended at Ngamiani Hospital before he was referred to Bombo Regional Referral Hospital where he was diagnosed to have Kidney and Liver problems. He was then referred to Hindu Mandal Hospital where one Dr. Kaushik suggested that he should undergo surgery. He tendered in evidence several medical examination reports (Exhibits P3, P4 and P6) indicating laboratory and medical examination conducted and clinical notes (report) (exhibit P6) Exhibit P3 is a letter written and signed by. Dr. Violet G. Bakari (for medical Officer) of an undisclosed hospital and addressed to whom it may concern. In that letter which is dated 18/07/2017 about a month before he was medically examined at Shree Hindu Mandal Hospital on 03/08/2017 (exhibit P6), the attention of the addressee is drawn on two areas;

First that the Appellant was being attended at that (undisclosed) hospital and two; that he was weak and under treatment and care and support

which will take him sometime to resume to his daily activities and be able to work. The author also advise the addressee to assist the Appellant and (if need arise) to contact them.

The Appellant did not lead evidence to establish who was actually targeted by this letter (i.e Exhibit P2) but assuming that it was intended to draw the attention of the Respondent's bank and in relation to the loan agreement [exhibit P1] and particularly clause 7 (ii) thereof which is about death and permanent disability insurance, the question that follows is whether this alone was sufficient to prove permanent disability? In my view it does not.

In the first place as I ruled before the letter (which was admitted as part of exhibit P3 & P4 did not disclose from which hospital it originated. The office of Regional Medical Officer (RMO) from which the letter was authored is not a hospital. Regional Medical Officer, is a medical officer in-charge of a region concerned and it is common ground that under the office of RMO, there are several hospitals therefore it was the duty of the Appellant to disclose which hospital that was.

Secondly, permanent disability under insurance law is a technical term which means that because of a sickness or injury a persons is unable to work in his own or any occupation for which he is suited to work.



In the case at hand a letter addressed to "whom it may concern" cannot be evidence that the appellant was because of sickness, permanently disabled to work.

Thirdly and still on the issue of permanent disability, while the laboratory and medical examination reports [exhibits P4 and P6] tendered in evidence do not show anything in respect of the Appellant's physical condition and they are all from Shree Hindu Mandali Hospital of P.O. Box 581 Dar-es-Salam, the "covering letter" purporting to substantiate that the Appellant is permanently disabled does not come from that hospital but from the office of Regional Medical Officer of P.O. box 452 Tanga. There was no Medical report to support what is stated in the letter signed by Violet G. Bakari.

Another controversy revolve around the payment of premium of 0.75% of the loaned amount in clause 7 (ii) of the offer letter (Exhibit P1) by the Appellant. There is no dispute that 0.75% of the loan amount was deducted as death and permanent disability insurance. The question is whether in the first place the deducted amount was subsequently paid to any insurance company and if yes, whether the insurance policy agreed between that company and the Respondent's bank stipulated that the

appellant would be indemnified by the said insurer in the occurrence of permanent disability.

I have critically considered the contractual documents and particularly the facility letter (offer letter) (Exhibit P1). Among other relevant terms the letter provides that the borrower shall pay a onetime credit life insurance premium of 0.75% per annum of the approved loan amount to cover for death and permanent disability.

As stated hereinbefore there is no dispute that such percentage of the loan amount was deducted from the amount the Respondent disbursed to the Appellant. According to the Appellant's own evidence such percentage constituted Tshs 750,000/= which amount was deducted. However, there is no evidence that after such deduction the same was paid to an insurance company in order to ensure the loan. Had there been evidence to that effect, the next question would have been whether the Appellant would be covered by such insurance policy. An insurance policy is a document detailing the terms and conditions of a contract of insurance. Thus, in absence of any insurance policy document between the Respondent and an Insurance company, the Appellant cannot be heard claiming indemnity from the Respondent's bank.

For the foregoing reasons the <sup>Appellants</sup>~~Applicant's~~ appeal is dismissed with costs here and below.



A handwritten signature in blue ink, appearing to read "A.R. Mruma", is written above the printed name.

**A.R. Mruma**

**JUDGE**

**16/11/2020**