

**IN THE UNITED REPUBLIC OF TANZANIA**

**IN THE HIGH COURT OF TANZANIA**

**AT MWANZA**

**CIVIL CASE NO. 22 OF 2019**

**ALLIANCE INSURANCE CORPORATION LIMITED ..... PLAINTIFF**

**VERSUS**

- 1. BIRCHAND OIL MILL LIMITED.....1<sup>ST</sup> DEFENDANT**
- 2. GUPTA AUTOS LIMITED.....2<sup>ND</sup>. DEFENDANT**
- 3. MANLAX TRANSPORTERS LIMITED.....3<sup>RD</sup> DEFENDANT**
- 4. KAHAMA COTTON COMPANY LIMITED .....,.....4<sup>TH</sup> DEFENDANT**
- 5. NDIYO BOTTLING COMPANY LIMITED.....5<sup>TH</sup> DEFENDANT**
- 6. BUZURUGA PLAZA COMPANY LIMITED.....6<sup>TH</sup> DEFENDANT**
- 7. SATPAL AGGARWAL T/A BIRCHAND TRADING  
STORE.....7<sup>TH</sup> DEFENDANT**
- 8. MANISH AGGARWAL.....8<sup>TH</sup> DEFENDANT**
- 9. SAPTAL AGGARWAL.....9<sup>TH</sup> DEFENDANT**
- 10. SANTHOSH AGGARWAL.....10<sup>TH</sup> DEFENDANT**

**JUDGMENT**

*Date of last Order: 16<sup>th</sup> December, 2020*

*Date of Judgment: 09<sup>th</sup> February, 2021*

**A.Z. MGEYEKWA, J**

In this suit, the Plaintiff Alliance Insurance Corporation Limited is a corporate legal entity whereas the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup>

Defendants are corporate legal entities, and the 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> Defendants are natural persons. The Plaintiff states that, the Plaintiff is suing the Defendants jointly and severally, claiming for Tanzania Shillings Two Hundred and Twenty Four Million Two Hundred and Twenty Nine Thousands and Seventy four only (Tshs. 224,229,074/=) being outstanding amount arising from Defendants' default in remitting insurance premiums to the Plaintiffs. In June, 2014 and August 2017, the Plaintiff carried out its contractual obligation of insuring the properties of the Defendants with an expectation of receiving remittance of premiums worth Tanzania Shillings Three Hundred and Sixty Two Million Two Hundred and Sixty Thousand and Eighty Eight only (Tshs. 362,260,088/=).

The Plaintiff remittance of premiums which were not done by the 1<sup>st</sup> defendant includes fire insurance with four policies a total amount of premium of Tshs. 1,950,000/=. Motorcycles insurance with four policies for a total amount of premium Tshs. 205,479. Private car insurance for a total amount of Tshs. 1,350,000/=. Commercial motor vehicles insurance with five policies for a total amount of premium Tshs. 17, 139, 597/=. Industries insurance with three policies for a total of Tshs. 40,650,000/=.



The Plaintiff also claims to have insured the 1<sup>st</sup> defendant and 4<sup>th</sup> Defendants goods in transit for a premium of Tshs. 45,236,986/= and the Plaintiff claims that he insured the 1<sup>st</sup> defendant for workman compensation for a premium of Tshs. 1,154,640/=.

The Plaintiff's claims do not end there, the Plaintiff in his Plaint claims to have issued insurance policies to the 2<sup>nd</sup> defendant as follows; a commercial motor vehicle for a premium of Tshs. 590,000/=, automobile stock and general spare parts from fire and theft for a premium of Tshs. 7,553,450/=. The Plaintiff also claims to issue insurance policies to the 3<sup>rd</sup> defendant for a premium of Tshs. 200,000/=. Personal accidents for a premium of Tshs. 2,310,000/=. Workmen compensation for a premium of Tshs. 875,520/=.

The Plaintiff also claims to have issued three cover notes against different properties of the 3<sup>rd</sup> defendant against fire and theft for a premium of Tshs. 6,050,000/= and commercial motor vehicles for a premium of Tshs. 33,261,667/=. The Plaintiff also issued motor vehicle insurance to the 4<sup>th</sup> defendant for a premium of Tshs. 236,000/= and cover notes to the 4<sup>th</sup> defendant for a premium of Tshs. 354,000/=. Workman compensation for a premium of Tshs. 1,171,872/=. Personal accident cover notes for a group for a premium of Tshs. 1,171,872/=.

Accident cover notes for a premium of Tshs. 1,200,000/= Cover notes to insure policy for a premium of Tshs. 6,591,275/=. Fire and theft cover note for a premium of Tshs. 108,194,000/= and fire cover note for a premium of Tshs. 54,850,000/=.

It is the Plaintiff alleges further that he issued a policy to the 5<sup>th</sup> defendant for a premium of Tshs. 15,591,910/=. The Plaintiff also issued an insurance policy to the 6<sup>th</sup> defendant for a premium of Tshs. 250,000/= and the 7<sup>th</sup> defendant secured an insurance policy for a premium of Tshs. 1,725,750/=. The Plaintiff also claims to have issued commercial motor vehicle insurance to the 8<sup>th</sup> defendant for a premium of Tshs. 236,000/=. The 9<sup>th</sup> defendant is also claimed to receive insurance policies for a premium of Tshs. 7,584,000/= and landed property which belonged to the 9<sup>th</sup> defendant for a premium of Tshs. 4,973,000/= and Tshs. 9,140,500/=. The Plaintiff also claims to have insured insurance policies to the 10<sup>th</sup> defendant for a premium of Tshs. 2,139,000/=.

It is the Plaintiff's averment that demands for the said payments were made to no avail to the extent that the Plaintiff was forced to institute the present suit against the Defendants. Therefore, the Plaintiff is claiming against the Defendants jointly and severally for general damages and interests for failure to remit the said amount and the Plaintiff is praying



for judgment and Decree be entered against the Defendants jointly and severally for the following orders:-

- i. That, this Honourable Court be pleased to order the Defendants, jointly and severally, to pay the Plaintiff an outstanding amount of premiums in the tune of Tanzania Shillings Two Hundred and Twenty Four Million Two Hundred and Twenty Nine Thousand and Seventy Four only (TZS.224,224,074/=).
- ii. That, this Honourable court be pleased to order the Defendants, jointly and severally, to pay the Plaintiff general damages an amount to be assessed by this court.
- iii. That, this honourable court be pleased to order the Defendants, jointly and severally, to pay interest of 25% per annum of the outstanding amount stated in relief numbered (i) from the date the outstanding amount became due to the date of instituting this suit.
- iv. That, this honourable court be pleased to order the Defendants, jointly and severally, to pay interest of 25% per annum of the outstanding amount stated in relief numbered (i) from the date of filing this suit to the date of Judgement and Decree.
- v. That, this Honourable court be pleased to order the Defendants, jointly and severally, to pay interest of 12% per annum from the date of

Judgement and Decree to the date of final settlement and satisfaction in full.

vi. Costs of the suit.

vii. Any other reliefs as this Honourable court may deem just and fit to grant.

On the other hand, Defendants have filed a jointly Written Statement of Defence vehemently disputing all claims by the Plaintiff and beckoned upon this Court to dismiss the Plaintiff's suit with costs.

It is imperative at the outset to point out that, this matter has also gone through the hands of my brother; Hon. Rumanyika, J, who conducted mediation. I thank my Hon. Rumanyika, J for keeping the records well and on track. I thus heard the testimonies of the witnesses for the parties and now have to evaluate the evidence adduced by the witnesses to determine and decide on the aforementioned issues.

During the hearing of this case, the Plaintiff was represented by Mr. Mnyiwala Mapembe, learned Advocate, and later one Ms. Pooja, learned counsel took over while the Defendants were represented by Mr. Leonard, learned council assisted by Ms. Suzanne, learned counsel.

Upon completion of all preliminaries, the Final – Pre Trial Conference was conducted and the following issues were framed by this Court:-



- 1) *Whether the Insurance Policies issued to the Defendants by the Plaintiff were valid?*
- 2) *If the first issue is answered in affirmative to what extent do the Defendants owe the Plaintiff?*
- 3) *What are the reliefs' parties are entitled to?*

It is noteworthy to point out at this stage that the parties had, on 19<sup>th</sup> November, 2020 agreed to make final submissions in writing. The court blessed the agreement and proceeded to schedule the submission dates. Both counsels complied with the court order. I am grateful to the learned counsels for the energy and industrious research involved in canvassing the issues herein.

It is also pertinent at this juncture to highlight some I am grateful to the learned counsels for the energy and industrious research involved in canvassing the issues herein.

To prove the above issues the Plaintiff called two (2) witnesses in the defence of his claims against the defendant, the witnesses were George Samson *who* testified as **PW1**, and George Feliston M Kangala who testified as **PW2**. On the part of the Defendant he also called one (1) witness; Arshad Jetha who testified as DW1. The Plaintiff tendered a total of *six (6) documentary Exhibits*, to wit letter as admitted and marked as

**Exhibit P1**; Policies were admitted and collectively marked as **Exhibit P2**; a letter written by Alliance Insurance Corporation Ltd were admitted and marked as **Exhibit P3**; a letter written by Birchand Group was admitted and marked as **Exhibit P4**; a **Demand** Notice with an intention to sue was admitted and marked as **Exhibit P5** and a Notice with an intention to sue was admitted and marked as **Exhibit P6**.

To prove this case, the Plaintiff witness; George Samson (PW1) testified that he works with Eastern Insurance Broker Limited as a Principal Officer and his duties are to issue policies and settling claims. He went on to testify that failure for the Defendants to pay premium weakened the Company's activities. PW1 testified that the Plaintiff is one of their clients in insurance matters. PW1 continued to testify that the Alliance Insurance Cooperation Ltd issued the policies through Eastern Insurance Company Ltd. To substantiate his testimony PW1 tendered Exhibit P1.

PW1 continued to testify that the premium was paid in two ways. He testified that before and after 2017 premium was required to be paid within a year before the expiration of the policy but clients were not able to pay the premium therefore in 2017 the Tanzania Insurance Regulatory Authority introduced a new premium payment mode. PW1 testified further



that a client was required to pay the premium in cash before issuing a cover.

PW1 continued to testify that all Defendants have formed a group Company and they dealt with the Director of the 9<sup>th</sup> defendant. PW1 testified that they issued a cheque to all Defendants requesting them to clear their outstanding premiums. PW1 lamented that non-payment of the said premium before 2017 affected the company operations. He insisted that the Plaintiff's non-payment of premium before 2017 was part of their arrangement therefore the policies were valid. PW1 closed his testimony by praying this court to order the Defendants to pay the outstanding premium.

When PW1 was cross examined by Mr. Leonard, learned counsel for the Defendants he testified that he was collecting the premiums from the Defendants on behalf of Alliance Insurance Cooperation Ltd. PW1 testified to the effect that the insurance Company suffered loss such as costs of preparing documents, survey, and risk before cover. PW1 went on to testify that the Defendants were covered with motor vehicle insurance, Transportation of Goods insurance, Building insurance, fire insurance, and theft insurance. PW1 said that they were dealing with each defendant

separately but the cheque was issued to a group of Companies. PW1 further testified that their business was based on good faith.

PW2, Mr. George Felistian Mkangala testified that he is the General Manager of Operations working with Alliance Insurance Cooperation Ltd. PW2 testified to the effect that among his duties is to make sure that their clients possess genuine documents, to make sure that their clients pay their premiums and to make a follow up if there were any pending payments. PW2 went on to testify that the Defendants are among their clients who benefited from their services through Eastern Insurance Broker. PW2 said that the debt includes unpaid premiums from 2014 to 2017.

It was PW1's further testimony that the Defendants owe the Plaintiff a total sum of Tshs. 363,000,000/= but they only paid Tshs. 65,000,000/= and the remaining payment of Tshs. 224,000,000 is unpaid. PW1 added that the Defendants kept promising to effect the said payments. To substantiate his testimony he tendered policies that were admitted and collectively marked as Exhibit P2. PW2 went on to testify that the Plaintiff issued a reminder letter to the defendant. To substantiate his testimony he tendered a reminder letter which was admitted and marked as Exhibit P3 and a reply letter which was admitted and marked as Exhibit P4. PW2



also tendered a demand notice that was admitted and marked as Exhibit P5. A notice of intention to sue was tendered by PW2 and the same was admitted as Exhibit. P6.

PW2 continued to testify that the policies are valid since it was issued by Alliance Insurance Cooperation Ltd and the Company has adhered to the required procedure. PW2 lamented that in case the Defendants will not pay the outstanding amount then the Plaintiff will incur a big loss since it will not be able to receive income, pay taxes and pay salaries. PW2 concluded by praying for this court to order the Defendants to pay the debt with interest from when the parties entered into a contract to the date of the decision of the court.

During cross examination, PW2 testified that the risk of any insurance is realized after receiving a premium. He testified that a policy is valid after the payment of the premium. PW2 went on to testify that all Defendants' debts fall under the period of payment before issuing of cover. He claimed that all Defendants failed to pay their premium within time.

The defence on their part called one witness DW1, Arshad Jetha. DW1 testified that he is a Relation Officer working with Birchand Company. DW1 said that is he is appeared in court to represent all Defendants. He

testified that he is dealing with insurance matters of the whole group; Birhand Oil Mill, Birchand Trading, Gupta Autos, Manlax Transporter Ltd, Kahama Cotton Company Ltd, and Associated. In support of the contention by the defendant to repudiate the policy it was his testimony that they insured their insurance with Jubilee Insurance Company then later they insured with Alliance Insurance Company through Eastern Insurance Broker. DW1 testified that the Plaintiff's claims are unfounded. He lamented that the Plaintiff comes up with their claims that the Defendants owe them while they were supposed to follow a normal procedure to issue them the outstanding amount and sort it out.

It was DW1 further testified that there was no any pending outstanding. DW1 went on to state that in the policy it is stated that payment be effected first then insurance will be issued after payment. DW1 testified that the validity of the policy clause means the policy will be implemented after payment. DW1 further testified that the defedants wrote the Plaintiff a letter requesting for reconciliation instead the Plaintiff denied and opted to institute a suit. DW1 went on to testify that they canceled the cheque because of invalid policies. DW1 testified that the Defendants had no any contract with the Plaintiff which required them to pay Tshs. 362,000,000/=. DW1 continued to testify that as normal



procedure they lodged their claims before Alliance Insurance Company whereas some of their claims were sorted out and others were not.

In conclusion, DW1 urged the court to dismiss the suit because of invalid policies.

When DW1 was cross examined by Ms. Pooja, learned counsel for the Plaintiff, he testified that the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Defendants are Directors of the listed Companies. DW1 testified that he is aware that there are other insurance cover bearing the personal names of the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Defendants. DW1 insisted that he was instructed to represent the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Defendants. DW1 further testified that the Plaintiff insured the cover notes and stickers thus on their part they considered that the policies were effected hence valid. He added that when one applies and receives a policy means he is covered and protected.

DW1 continued to testify that a policy means payment is made first before issuing a policy. DW1 insisted that the policies were invalid because the Defendants did not affect any payment. DW1 went to testify that the 1<sup>st</sup> defendant wrote a letter to the Plaintiff (Exh.P4) and stated that the 1<sup>st</sup> defendant was required to pay Tshs. 107,345,391/= the outstanding for the year 2018/2019.

By consent of the parties, on 30<sup>th</sup> November, 2020 both learned counsels filed their Final Written Submissions and I am grateful to all learned counsels for the energy and industrious research involved in canvassing the issues herein. I, however, will not be able to reproduce their submissions here as the course will make this judgment unnecessarily long. I shall however be referring to them in the course of determination of the issues in the present case.

Before I proceed to determine the issues framed by this court, I found it prudent to tackle the concern raised by Ms. Pooja, the learned counsel for the Plaintiff. She requested this court to write a default judgment for the reason that the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> Defendants did not appear in court to provide evidence. I have revisited the court records and found that the Plaintiff's Advocate did not raise her concern during hearing. I am saying so because DW1 testified to the effect that he is representing all Defendants and when he was cross examined by Ms. Pooja, DW1 insisted that although the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Defendants were sued in their capacity level he is appearing to defend them too. In my considered view, I find that as long as DW1 appeared and represented all Defendants I find that all Defendants were represented. Therefore, Ms. Pooja request



to proceed *ex parte* against the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> Defendants cannot be granted.

The foregoing said, let me now confront the issue framed by the court in the determination of the present dispute between the parties. I should state at the outset that, in the course of determining this case I will be guided by the principle outlined in civil litigation and will guide this Court in the course of determining this suit. The said principles include the following; the one who bears the burden of proof is he who wants the Court to believe him and pronounce judgment in his favour. Therefore, the burden of proof lies with the persons who instituted the suit. Section 110 (1) of the Law of Evidence Act, Cap.6 [R.E 2019] states categorically to whom the burden of proof lies as follows:-

*"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist".*

Additionally, in civil cases proof is on the balance of probabilities, the burden lies to a party who alleged the existence of that fact. Section 110 (2) of the Law of Evidence Act, Cap. 6 [R.E 2019] provides that:-

*" When a person is bound to prove the existence of any fact it is said that the burden lies on that person".*

Similarly, in the case of **Hemedi Said v Mohamedi Mbilu** (1984)

TLR 113 it was held that :-

*" He who alleged must prove the allegations".*

From the above position of the law, the Plaintiff is the one who filed this suit before this Court. Thus, he is the one who is required to prove his case to the required standard of the law.

To start with the first issue, whether the insurance policies issued by the Plaintiff were valid? The bone of contention here is the question whether, with the facts at hand, the insurance policies issued to the Defendants were valid. It was pleaded by the Plaintiff that the required premiums of total Tshs. 224,229,074/= being the outstanding amount arising from the Defendants' default in remitting insurance premium payments to the Plaintiff was unpaid. The question which immediately comes to the fore at this juncture is whether the Plaintiff's claims are valid.

The Plaintiff in his final submission insisted that the insurance policies were valid. Ms. Pooja referred this court to PW1 testimony that in normal procedure a premium is paid in two scenarios before 2017 and after 2017. She claimed that before 2017, the Defendants were required to make payments in installments on the issuance of a policy before the expiration



of the policy. Ms. Pooja further submitted that after 2017, Tanzania Regulatory Authority brought the requirement of cash before cover which required the client to pay before the policy was incepted. On the other side, the defendant's learned counsel Ms. Suzane, learned counsel for the respondent in her final submission submitted that the Plaintiff's claims are invalid since it is based on invalid insurance policies for want of consideration. Ms. Susane further submitted that the parties have never contracted and or entered into a binding contract. She insisted that the insurance policies were never validated therefore the insurance cover cannot stand for lack of payment of premium.

I have scrutinized both parties' evidence as far as the validity of the insurance policies. The main battle ground to determine this dispute between the Plaintiff and Defendants is whether the insurance policies issued to the Defendants by the Plaintiff were valid.

Briefly, an insurance contract in a simple definition and language from Concise Oxford Dictionary 10<sup>th</sup> Edition defines it as a "contract of insurance" on how the insurance policy could be detached from being a contract of insured and insurer. At law, to have a binding agreement/contract there must be an offer, acceptance, and lawful consideration.

In accordance with section 10 of Law of Contract Cap. 345 [R.E. 2019], the insurance contract must meet four conditions to be legally valid, it must be for legal purpose; free consent of parties, the parties must have a legal capacity to contract and there must be a consideration with a lawful object. Section 10 of the Law of Contract Cap. 345 [R.E 2019] state that:-

*" 10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object..."*

Based on the above provision of law, the only question to be answered is whether the insurance policy contained those elements? In answering this question, without hesitation; my interest is on the challenged element of consideration in the insurance policy (the contract). It is my opinion that consideration in the contract must be apparent to parties. As to the evidence of PW1 and PW2, they testified that there is a consideration whereas a partial payment of Tshs. 65,000,000/= was paid. While DW1 contested that the Defendants are not indebted.

I now proceed to determine the issues as agreed upon and in the order, they have been argued by both learned counsels. But before I embark on that task, let me, firstly, highlight some principle governing proof of case



in a civil suit. The settled general rule is that he who alleges must prove. The Rule finds backing from sections 110 and 111 of Evidence Act, Cap 6 R.E. 2019 see also the cases of **Attorney General and two Others v Eligi Edward Masawe and Others**, Civil Appeal No. 86 of 2002, **Ikizu Secondary School v Sarawe Village Council**, Civil Appeal No. 163 of 2016 and **Godfrey Sayi v Anna Siame Mary Mndolwa**, Civil Appeal No. 114 of 2012 (all unreported).

Similarly, in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on a balance of probabilities.

In addressing a similar scenario on who bears the evidential burden in civil cases, the Court of Appeal in the case of **Anthony M. Masanga v Penina (Mama Ngesi) and Another**, Civil Appeal No. 118 of 2014 (unreported) cited with approval the case of **In Re B** [2008] UKHL 35, where Lord Hoffman in defining the term balance of probabilities states that:-

*"If a legal rule requires a fact to be proved (a fact in issue), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates in a binary system in which the only values are 0 and 1. The fact either*

*happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof falls to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it; a value of 1 is returned to and the fact is treated as having happened"*

Taking the vertical position of the case of **Anthony M. Masanga (supra)** The good point to start with is the contents of Paragraph 13 of the Plaintiff which stated that:-

*" With Mwanza on or about June 2014 to August 2017, the Plaintiff insured different properties owned by the Defendants with the **promise to remit the premium** of such insurance policies within one hundred and twenty days (120) after securing insurance cover note" (Emphasize added).*

What can be construed from the 13 paragraph of the Plaintiff is that the Defendants promised to remit the premium. I had to go through the Plaintiff to find out if the Plaintiff has established his claims. The Plaintiff's learned counsel in her final submission particularly when referring to PW2 evidence, submitted that PW2 tendered all policies which form the basis of the outstanding amount, and the same were admitted and marked as Exhibit P2 collectively.



Going further, PW1 testified that the premium was agreed by parties to be paid in installments, this might be a good spirit of handling and maintain clients if the same is backed up with cogent documents. PW2 testified that the Defendants paid Tshs. 65,000,000/= through Broker - Eastern Insurance Company and they demand the balance of Tshs. 224,000,000/=. This is the base of PW1, PW2 evidence. On the other side, the Defendants are claiming that the claim is invalid since it is based on invalid insurance policies. It should be noted that issuing of policies is one thing but to prove that the policies were valid is another thing. It is the burden of the Plaintiff to prove the said promise purposely for the court to prove its contents.

Basing on collaboration evidence of PW1 and PW2 what I did not well captured from their testimonies, is which legal installment was established? What is the number of the said installments, the presence of habitual agreement or any terms in the insurance policy to effect the installments and the invoice (s) issued to the Defendants.

Moreover, in the court record, there is no any evidential document to prove that the advance payment of Tshs. 65,000,000/= as premium out of Tshs. 362,000,000/= was paid. As claimed by the Plaintiff, even if Tshs. 65,000,000/= could have been paid, there is no any evidence to

established such paid amount are for which insurance policies as far as tendered policies contain different dates and years.

I have scrutinized the Plaint closely and noted that the Plaintiff was expecting to be paid the said outstanding amount without furnishing his professional obligation on protecting the interest by legally documenting the said outstanding amount as stipulated under paragraph 14 paragraph of the Plaint which reads that:-

*"Between June 2014 and August 2017 or thereabout the Plaintiffs carried out its contractual obligation of insuring the properties of the Defendants with **expectation** of receiving remittance of premium worth Tshs. 362,260,088/=..."*

Reading the above paragraph, the Plaintiff had expectations that do not build a legal contractual obligation to sue on it, easily, it is the same as to say, the premium was not paid. It is clear that there is no any documentary evidence to support their claims. Reading paragraphs 1 to 35 of the Plaint all are claims which require to be supported by documents. As stated in the case of **In Re B** (supra) the court is required to decide whether or not it happened and the court must be certain that the thing happened since there is no room for finding that it might have happened. In case this court is left in doubt the doubt is resolved by a rule that one



party or the other carries the burden of proof. In the instant case, there is no any documentary proof to settled and initiate officially the said payment of premium to affect the insurance contract then it is obvious that the Plaintiff's claims has to fail.

I have scrutinized the Plaint but I was not able to find any paragraph which justifies the Plaintiff's claims specifically the series of communication. Apart from Exhibit P2, the Plaintiff tendered various documents to prove her case; Exhibit 1 a letter from the 1<sup>st</sup> defendant, Exhibit P3, a letter from Alliance Insurance Corporation Limited ' Payment of outstanding premium for Birchand Group'. Exhibit P4, a reply letter from the 1<sup>st</sup> defendant ' Payment of outstanding premium for Birchand Group' Exhibit P5 a demand notice and Exhibit P6 Notice with an intention to sue.

In my considered view, I think that the Plaintiff was supposed to back up their claims with series of communication; arrangement that the Plaintiff is issuing the policies for the Defendants to pay in later dates. The Plaintiff was required to show how the policies were issued to the Defendants' i.e tendered invoice(s) before the court. Also, the Plaintiff was required to establish his claims by issuing reminder notice to the Defendants requiring them to pay the premium (a specific claim).

There is no proof that the policies were delivered to the Defendants or collected by the Defendants. PW1, who testified on behalf of the Eastern Insurance Broker Ltd, he did not specify the series of communication to prove how they issued the policies to the Defendants. PW2 testified to the effect that the Plaintiff reminded the Defendants to pay their outstanding premiums and PW2 tendered policies, a reminder letter, a letter from the 3<sup>rd</sup> defendant, and a notice to sue which were admitted by this court. The Plaintiff in his Plaint has shown the claims of each defendant without tendering any supporting documents to prove the said claims. I can say that the Plaintiff has based his claims on policies issued to the Defendants which were collectively admitted as Exhibit P2, however, the same was unsigned by the Defendants. That means the Plaintiff's claims contain statements by one party because Policies (Exh. P1) and Demand Notice (Exh.P4) alone cannot justify the Plaintiff's claims.

Furthermore, it is clear from the record that, the Plaintiff did not prove whether the Defendants promised to pay the said premiums and the Plaintiff did not prove whether advanced payment of premiums were done by the Defendant. The Plaintiff was required to prove her case. This is the position of the law as observed by the former East African Court of



Appeal in the case of **East African Road Services Ltd v J. S Davis & Co. Ltd** [1965] EA 676 at 677, stated that:-

*"He who makes an allegation must prove it. It is for the Plaintiff to make out a prima face case against the defendant."*

Similarly, in the case of **Abdul Karim v Raymond Nchimbi Alois and Another**, Civil Appeal No. 99 of 2004 (unreported). The court of Appeal of Tanzania held that:-

*".... It is an elementary principle that he who alleges is the one responsible to prove his allegations."*

Borrowing a leave from the above authorities, the insurer is under legal duty to prove her case. From the above analysis, I have to say that the anatomy of the policy document which constitutes the contract of insurance between the Plaintiff and the Defendants does not justify the Plaintiff's claims. Failure for the Plaintiff to prove his case as required by the law has invalidated the Plaintiff's claims or repudiate the policies.

Another contention relates to the Plaintiff's claims that the Defendants through a letter dated 11<sup>th</sup> December, 2017 (Exh.P4) acknowledged the outstanding amount of Tshs. 107,212,391/= . I have gone through Exh.P4 and found that the claimed outstanding amount was not negotiated and

agreed upon between both parties. In my considered view, exhibit P4 could stand if it could not have controverted by the Defendant both in his defence and during hearing. Otherwise, it could be safe to have been supported by other substantive proof. What was expected of the Plaintiff was to bring to the attention of the Defendants specific claims which they relied upon to support their claims.

In these circumstances and for the reasons stated above. I am satisfied that on a balance of probabilities the Plaintiff has not discharged the burden of proof against the defendant. Therefore, I subscribe to the learned counsel for the Defendants that the Plaintiff's claims that the insurance policies issued to the Defendants by the Plaintiff were invalid. Thus, the Plaintiff's claims cannot succeed.

Next for consideration is the second issue, *If the first issue is answered in the affirmative to what extent do the Defendants owe the Plaintiff?* As far as this matter is concerned, the first issue answered in negative it fetches also the contents of the second issue which suffocated and died silently.

Next for consideration is the third issue, what relief are parties entitled to. It is clear from the evidence and from what I have endeavoured to



state above that the Plaintiff did not prove his case against the Defendant to the required standard of the law. In the view of the real situation which was obtained during the hearing of the case, this court fails to see how the Plaintiff is entitled to claims which he did not prove. Therefore, in my view, the Plaintiff is not entitled to the prayers sought in the Plaint.

In the upshot, the case is decided for the Defendants thus, I proceed to dismiss the suit in its entirety with no order to costs.

Order accordingly.

DATED at Mwanza this 09<sup>th</sup> February, 2021.



  
A.Z MGEYEKWA  
**JUDGE**  
09.02.2021

Judgment delivered on 09<sup>th</sup> February, 2021 via audio teleconference whereby Ms. Pooja, learned counsel and Ms. Susane for the Plaintiff and Defendants respectively were remotely present.

  
A.Z MGEYEKWA  
**JUDGE**  
26.02.2021

Right to appeal fully explained.