

**IN THE HIGH COURT OF TANZANIA  
(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**DC CIVIL APPEAL NO. 04 OF 2021**

**(Originating from the decision of the District Court of Masasi at Masasi in Civil Case  
No. 5 of 2018)**

**YASINTA KAMBONA.....APPELLANT**

**VERSUS**

**NATIONAL MICROFINANCE BANK**

**(NMB – NDANDA BRANCH).....RESPONDENT**

**JUDGMENT**

**28<sup>th</sup> Oct. & 9 14<sup>th</sup> Dec., 2021**

**DYANSOBERA, J.:**

The appellant Yasinta d/o Kambona sued the defendant, the National Microfinance Bank, Ndanda Branch, before the District Court at Masasi claiming payment of Tshs. 40, 000, 000/= being specific damages for the breach of contract and injury of her reputation, payment of general damages, costs of the suit. The basis of the claims on breach of contract and injury to the appellant's reputation was, according to the plaint, giving out the phone number and the bank statement to Sofia d/o Halfani which led to the appellant's apprehension by

the police and subsequent incarceration in police custody. It was averred that the respondent, around February, 2018, without any documentation, justification or knowledge to the appellant, unlawfully, illegally and dishonestly and without any approval and/or consent from the appellant, gave out her phone number and bank account to unknown person and the same respondent did not bother to inform her taking into account that they have confidentiality towards the appellant. Further that around February, 2018, the appellant received call from Sofia that she had got the appellant's phone number from the respondent's branch and the bank statement and that she claimed that she was told by the NMB Ndanda Branch's teller that they were mistakenly deposited her money in the account of the appellant's son. And furthermore, as a result of the respondent's illegal and negligent actions, the appellant suffered damages as she was arrested by the police, taken to the police custody for several days leading to the destruction of her reputation and leaving her jobless.

In her defence, the respondent disputed the contents in the appellant's averments and put her to strict proof. He prayed the suit to be dismissed with costs.

The trial court found the appellant's case not proved to the preponderance of probabilities and, on 19<sup>th</sup> day of December, 2019, dismissed the suit with costs.

The appellant was aggrieved and has appealed to this court on four grounds of appeal as follows:-

1. That the trial court grossly erred in law and fact by failure to consider that the respondent had both the duty of care and confidentiality towards the appellant, and thus, she was duty bound to communicate with the appellant
2. That the trial court grossly erred in law and fact by failure to consider that due to the respondent's negligence, the appellant suffered financial loss and psychological torture for being accused and arrested for theft.
3. That the trial court grossly erred in law and fact by failure to consider, analyse and weigh the appellant's evidence.

Before me, the appellant appeared in person whereas the respondent was represented by learned Advocate, Mr. Emmanuel Ngongi.

Arguing in support of the appeal, the appellant submitted that the trial court erred in law and fact for failure to consider that the respondent was duty bound to keep confidential the contents of her account as she had to communicate with her and that the failure resulted into the appellant's being

psychologically and economically affected by being apprehended and labeled as a thief. Further that the trial court failed to evaluate her evidence.

Responding to the grounds of appeal, Mr. Emmanuel Ngongi submitted that the appellant had, in the plaint, complained on the breach of contract but the trial court was satisfied that no contract was breached as the information was given to the Government and not to individual.

Admitting that there is confidential procedure between the bank and the customer, Counsel for the respondent argued that such confidentiality is not absolute. He placed reliance on Section 48 (1) of the Banking Financing Institution Act of 2006. It is necessary and appropriate for the bank to reveal such information if the court or lawful authority will require such a report.

In this case, DW1 told the trial court that they received exhibit D1 requiring them to issue bank statement of an account of Winfrida Shaban Madeng. The bank reported to the Police force and not to an individual. There is a case of **Light and Hurry Enterprises v. NMB Bank Public Limited Co.**, Commercial case No. 157 of 2018 at pp. 10 and 11. Hon Magoiga, J was clear that the confidentiality is not absolute. Who came to seek information was the government institution-the Police Force. There was no need of seeking consent from the appellant. She admitted to have received the information while she was at a Police Station the 1<sup>st</sup> ground of appeal is baseless. In the 2<sup>nd</sup> ground of appeal, the appellant is complaining that she suffered damages due to the divulging her account. This complaint has no basis. It is not the bank who

reported on theft but PW2 and the bank did not put her under custody. If any claim, Sofia was the right person to be sued.

As to third ground, the record is clear that the evidence of both sides was considered and analysed and came to the right decision and she was legally bound to prove the case on balance of probabilities. This is clear at p.5. The court considered the issues that had been framed. This ground has also no merit.

The appeal should be dismissed with costs.

### **Appellant in rejoinder**

The bank did not notify anybody. The police could not dream but they were informed by Sofia the bank was advised to make a following up and she went to report to the police I sued the bank because breached the confidentiality contract.

Sofia was clear that she did not know me. She only knew me after she was advised by the bank. The bank did not notify me before giving my account number. The letter requesting the bank account bore my name. The bank and Sofia could not know me and my account if the bank had not divulged the particulars.

Having taken into account the rival submissions by the appellant and the learned counsel, the grounds of appeal and the record of the trial District Court,

There is no dispute that banker's duty of confidentiality to customer is statutory.

As rightly pointed out by Mr. Emmanuel Ngongi, section 48 (1) of the Banking

and Financial Institutions Act, provides for the bank's duty of confidentiality to its customers. It is stated thereunder that a bank shall not disclose information relating to its customers or their affairs except in circumstances in which it is necessary or appropriate for the bank to reveal such information. To emphasize the importance of confidentiality, the same Act provides that before assuming their position and discharging their duties, a director, a member of committee, auditor, advisor, manager, officer or employee of a bank shall make a written declaration of fidelity and that the Chief Executive Officer or the Secretary of a Bank shall witness the signing of these declarations. The law, however, permits the duty of confidentiality to be lifted in certain specific circumstances such as where the information related to customer's transactions is required to prevent or control unlawful activities such as money laundering, terrorism, drug trafficking or corruption or to facilitate the conduct of legal proceedings in courts. This means that the rules of confidentiality and prohibition against the disclosure of information under Tanzania's banking laws do not apply to law enforcement officers carrying out their duties while investigating or searching for information for purposes of criminal prosecution. In other words, there is compulsion of disclosure of customer's affairs by law. In our jurisdiction, such compulsion of

disclosure of information are of two major categories. One, compulsion by statutory law and two, compulsion by court orders.

As far as the first category is concerned, some statutes in Tanzania compel banks to disclose information about the affairs of their customers, there is the Prevention of Terrorism Act [Cap. 19 R.E.2002], section 41 (2) in particular. There are also Sections 3 and 17 (1) (a) and (b) of the Anti-Money Laundering Act [Cap. 423 R.E.2002]. Likewise, there is the Prevention and Combating of Corruption Act [Cap. 329 R.E.2002] specifically section 8 which empowers the Director General to authorise in writing officer of the PCCB to perform the functions authorised therein.

With regard to the second category, there are the Civil Procedure Code [Cap. 33 R.E.2019] and the Evidence Act [Cap.6 R.E.2019] which relate to Discovery, Production and Inspection of certain documents. There is also the Proceeds of Crime Act whereby under section 65 (1) the Director of Public Prosecutions may apply to court for grant of a monitoring order directing the bank to give information to the Inspector General of Police provided the court is satisfied that the holder of the account has committed or is involved in the commission of the specified crime or has benefited from the commission of such offence.

Another law is the Mutual Assistance in Criminal Matters Act, [Cap. 254 R.E.2002] whereby under section 35 (1) the relevant authority of a foreign country may request the Attorney General to obtain a monitoring order under the Proceeds of the Crime Act to compel the bank to release the sought for information.

In the instant case, there was no evidence under which law or order of the court the respondent released the bank statement to the police. For that reason, the respondent breached the trust bestowed on him.

The next issue is whether the respondent is liable to pay compensation for the appellant's claims on breach of contract and injury she is alleged to have suffered. To answer this question, a revisit of the case of **Hadley v. Baxendale** [1854] 9 Ex. 341 which supplies two principles of remoteness of damages: which damages are proximate and recoverable and which are too remote and therefore, unrecoverable. Do the damages naturally arise from the breach, or were the damages reasonably contemplated by both parties when they made the contract as being a probable result of the breach?

On the above first and second tests, although the respondent breached the confidentiality trust, such damages if at all were suffered, did not arise from the

breach. There is no dispute that account in question in which the money was wrongly deposited did not belong to the appellant but to her son one Walafrid Shaban. Furthermore, money the appellant withdrew from the said account belonged neither Walafrid, the account holder, nor the appellant but had been wrongly deposited by PW 2. Besides, what the respondent did was giving out the bank statement to the police authority and was not responsible for what befell the appellant. there is no evidence to establish that the respondent ordered or directed the police force to arrest and detain the appellant.

With that analysis, I am satisfied that the damages the appellant allegedly suffered, if any, were not proximate and were too remote hence unrecoverable from the respondent.

Ground number one is allowed, the rest grounds are dismissed. This appeal is partly allowed but partly dismissed.

No order as to costs is made.

Order accordingly.

**W.P.Dyansobera**

**Judge**

**14.12.2021**



This judgment is delivered under my hand and the seal of this Court on this 14<sup>th</sup> day of December, 2021 in the presence of the appellant and Mr. Emmanuel Ngongi, learned Counsel for the respondent.



**W.P. Dyansobera**

**Judge**

