

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR-ES-SALAAM DISTRICT REGISTRY)**

AT DAR-ES-SALAAM

CIVIL CASE NO. 153 OF 2022

RIZIKI MWITU KIONDO	1st PLAINTIFF
BARTHLOMEW MASOUD	2nd PLAINTIFF
ONESMO AYUBU KASSIM	3rd PLAINTIFF
ESTHER EMMANUEL MASHAURI	4th PLAINTIFF
VALENTINA SAIDY MALULU	5th PLAINTIFF
EPHRAIM SULTAN MWAMBETE	6th PLAINTIFF
AYAM RAMADHANI KALINGONJI	7th PLAINTIFF
YOWER YAKOBO BARANKEKA	8th PLAINTIFF
CHALWE MOSES CHIPASANGE	9th PLAINTIFF
STEPHEN MUSA MUSIBA	10th PLAINTIFF
FRANK KICHANJA	11th PLAINTIFF
JOSHUA EMMANUEL MBOJO	12th PLAINTIFF
MARIA THEODORI LONDO	13th PLAINTIFF
MICHAEL STEPHEN	14th PLAINTIFF
VIVIAN ABDALLAH SEIF	15th PLAINTIFF
HIDAYA MUSSA SAID	16th PLAINTIFF
SARA GEOFREY MKONO	17th PLAINTIFF
MIRIAM JONAS CHILANGAZI	18th PLAINTIFF
MASULA JAPHET NGULU	19th PLAINTIFF
MACRINA HENRICO RWEBUGISA	20th PLAINTIFF
JAMES EMMANUEL JAMES	21st PLAINTIFF
OBEID ANDREW KIMILIKE	22nd PLAINTIFF
HELLEN CHIJUA NKHOMA	23rd PLAINTIFF
GLORIA EDWARD	24th PLAINTIFF
JOSHUA EMMANUEL KUBOJA	25th PLAINTIFF
NYABWIRE EMMANUEL KUBOJA	26th PLAINTIFF

MKIWA AKIDA 27th PLAINTIFF
MAGDALENA LIGWA STEPHANO 28th PLAINTIFF
JOSEPH SELEVESTA ERNEY 29th PLAINTIFF

VERSUS

VODACOM TANZANIA PLC 1st DEFENDANT
YESCOM GENERAL TRADING COMPANY LIMITED 2nd DEFENDANT
BOPOREA COMPANY LIMITED 3rd DEFENDANT

Date: 06/04 & 26/05/2023

RULING

NKWABI, J.:

The plaintiffs are in this Court for judgment and decree against the defendants as follows:

1. That the defendants' actions of conspiring and tricking to block the 2nd and 3rd defendants' accounts that were used by the plaintiffs in various transactions is a breach of duty of care and is an illegal and be paid a compensation of T.shs 20 million,
2. The defendants have breached the contract,
3. The defendants to pay individual and severally to the plaintiffs to the tune of T.shs 90,000,000/= (Tanzanian shillings eighty (sic) million) being as compensation for a breach of duty of care of blocking accounts services without informing the plaintiffs and therefore

causing them to suffer the psychological torture, disturbance, loss of income,

4. The defendants to pay the plaintiffs monies at the tune of T.shs 20,000,000/= being a compensation for breach of contract,
5. The defendants to pay the plaintiffs to the tune of T.shs 20,000,000/= being a compensation for special damages causing the plaintiffs and their families for the mental and psychological torture, disturbances caused by them to the plaintiffs without probable and justifiable cause.
6. The defendants to return back each amount that the plaintiffs had invested from the account of the 2nd and 3rd defendants,
7. The defendants to return the plaintiffs interest at the tune of 30% from the claimed amount in item (i) per month from the date of judgment to the date of fully settlement in full,
8. Costs of this suit be borne by the defendants,
9. Any other relief that this honourable Court of law deems fit, just and equitable to grant.

Upon being served with the copy of the plaint, the 1st defendant filed a written statement of defence comprising of a preliminary objection on a point of law. The same is that:

The plaintiffs have no cause of action against the 1st defendant.

I ordered the preliminary objection be disposed of by way of written submissions. The counsel for the 1st defendant filed the submission and served the counsel for the plaintiffs. The counsel of the plaintiffs did not file a reply submission on time. On the mention date, a counsel who held his brief prayed for extension of time to file the reply submission. Upon hearing submissions of both parties in respect of the prayer, this Court refused extension of time for the reason that there was no any reason leave alone sufficient reason for extension of time given by the counsel for the plaintiff. In refusing the prayer, I had in mind various decisions of this Court including **Olam Tanzania Limited v. Hawala Kwilabya**, Civil Appeal No. 17 of 1999 HC (unreported) it was stated that:

"Now what is the effect of a court order that carries instructions which are to be carried out within a predetermined period? Obviously, such an order is binding. Courts orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a halt or it will be so chaotic that everyone will decide to do

only that which is convenient to them. In addition, an order for filing submission is part of the hearing. So, if a party fails to act within the prescribed time, he will be guilty of indiligence in like measures as if he defaulted to appear.”

As said, the plaintiffs’ counsel did not file written submissions in reply, so, it is the plaintiffs themselves who denied this Court the chance to hear their side against the preliminary objection, I will proceed to determine the preliminary objection based on the submissions filed by the counsel for the 1st defendant.

On the preliminary objection, the counsel for the 1st defendant, while being flanked by the case of **R. S. A. Limited v. Hanspaul Automechs Limited & Another**, Civil Appeal NO. 179 of 2016, CAT (unreported) to the effect that an objection on the point of law on jurisdiction can be raised and argued at any time, added that point of objection and argued it.

On the criticism on the suit to the effect that this Court lacks jurisdiction, the counsel for the 1st defendant maintained that the plaintiffs’ claims are based on the alleged customer relationship with the 1st defendant’s affiliate company, M-Pesa Limited. The plaintiffs allege to have obtained Sim cards

from the 1st defendant for various services including sending money to the 2nd defendant and 3rd defendant. The 2nd and 3rd defendants were also registered with electronic accounts with short codes 971952 and 971953. It was added that plaintiffs' allegations (claims) at paragraphs 14, 15 and 16 of the plaint, are based on the protection of the consumer's assets. It is the view of the counsel for the 1st defendant, that electronic financial services are protected under the Bank of Tanzania (Financial Consumer Protection) Regulations G.N. No. 884 of 2019 where regulation 42 provides that:

"Every consumer shall have the right to file a complaint against a financial service provider upon dissatisfaction or being aggrieved by the conduct of the financial service provider contrary to the manner set out in these Regulations."

It is thus prayed that this Court finds that it has no requisite jurisdiction to entertain the matter and strike it out with costs.

I have carefully deliberated the submissions of the counsel for the 1st defendant. I have also gone through the plaint lodged by the plaintiffs particularly paragraphs 12, 13, 14, 15 even 17 which clearly show that the matter ought to be lodged with the Bank of Tanzania in accordance with the

Bank of Tanzania (Financial Consumer Protection) Regulations G.N. No. 884 of 2019 which was cited by the counsel for the plaintiff.

It is trite law that where it is provided by law that a specific forum be used to settle a certain dispute, then that forum has to be exhausted first, see **Salim O. Kabora v Tanesco Ltd & 2 Others**, Civil Appeal No. 55 of 2014 CAT (unreported) where it was stated that:

"The import of the above quoted excerpt is that where a certain law provides for a specific forum to first deal with a certain dispute, a resort to it first is imperative before one seeks recourse to court. Where that is not observed, the attendant court's decision is rendered a nullity."

Indeed, the Bank of Tanzania (Financial Consumer Protection) Regulations G.N. No. 884 of 2019 provides for an elaborate avenue to address any complaint of this nature and actually provides with what reliefs the Bank of Tanzania may grant and penalties for any service provider who fails to comply with the decision of the Bank of Tanzania. I am of the settled view that the plaintiffs, have to lodge their complaint at the Bank of Tanzania, thus, this Court has no jurisdiction to entertain this suit.


Since I have determined that this Court has no jurisdiction to entertain this suit, I find no need to address my mind on the preliminary objection on the point of objection to the effect that the plaintiffs have no cause of action against the 1st defendant.

Finally, based on the above discussion, the preliminary objection is sustained. This suit is struck out with costs.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 26th day of May, 2023.




J. F. NKWABI
JUDGE