IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

LAND APPEAL NO. 30 OF 2021

(Arising from Land Application No. 51 of 2015, District Land and Housing Tribunal for Tabora)

ABIEL ANDREA MAGOBORA..... APPELLANT

VERSUS

1. NATIONAL MICROFINANCE BANK PLC
2. RELIANCE INSURANCE CO. LTD } **..... RESPONDENTS**

Date of Last Order: 23.05.2023
Date of Judgment: 31.05.2023

JUDGMENT

KADILU, J.

Before the District Land and Housing Tribunal for Tabora, the appellant herein filed Land Application No. 51 of 2018 claiming for the payment of Tshs. 30,000,000/= from the respondents as an insurance cover for the goods stolen from his shop during fire accident. He also prayed for perpetual injunction to restrain the respondents and their agents from attachment and sale of his house he used to secure the loan from the 1st respondent. At the conclusion of the trial, the appellant's claim was found to have no legal base. It was the finding of the trial tribunal that the appellant had breached a loan agreement between him and the 1st respondent.

The tribunal found further that the appellant had no insurance contract with the 2nd respondent. He was ordered to repay the loan as agreed within forty-five (45) days from 10th September 2021 and in case of failure, the 1st respondent was permitted to sale the mortgaged house. Aggrieved with that decision, the appellant preferred the present appeal to this court armed with the following grounds:

1. *That, the trial tribunal erred in law and fact by ignoring his claim for compensation for the loss he incurred while he had paid for insurance.*
2. *That, the trial Chairman erred in law and fact by denying him compensation while the respondents were liable and they made part-payment of the compensation to him.*

He prayed for the court to allow his appeal and order the respondents to pay him Tshs. 30,000,000/= as a compensation for loss suffered after his properties were stolen during fire accident in his place of business.

The background of this case is that on 26/02/2015, the appellant obtained Tshs. 22,000,000/= as loan facility from the 1st respondent. The loan was to be repaid within twelve (12) months from the date of disbursement. It is also on record that the loan was secured by a house built on Plot No. 60, 'Machinjioni' area in Urambo. The loan was intended to enhance the appellant's business of a retail shop. The loan agreement consisted of a clause advising the appellant to process an insurance cover against robbery, fire and burglary. Two Hundred-Fifty Thousand Tanzanian Shillings (250,000/=) was deducted from the appellant's loan as insurance premium.

On 12/10/2014, fire accident occurred in the appellant's place of business. His shop was not involved in the fire accident, but some of his goods were stolen during fire rescue process. Value of the stolen goods was Tshs. 25,050,000/=, but the appellant asserted that if the goods were to be sold, they could yield him Tshs. 30,000,000/= which is the basis for compensation herein. The appellant alleged that his business was adversely affected by the incident something which resulted into his failure continue to deposit loan instalments as agreed. The 1st respondent sought to sale the mortgaged property to recover the outstanding loan amount. The appellant then filed Land Application No. 51 of 2015 in the District Land and Housing tribunal which was decided in favour of the respondents as shown above.

When the appeal was called for hearing, Mr. Thomas Matatizo, learned Advocate represented the appellant, the 1st respondent was represented by Mr. Macanjero Ishengoma, the learned Advocate whereas the 2nd respondent was represented by Mr. Noel Sanga, also the learned Advocate. I appreciate the well-researched arguments of Counsel for the parties. Each is so persuasive in its own right; I have to admit.

Starting with the first ground of appeal, Mr. Matatizo contended that the trial tribunal erred in law and fact by denying compensation to the appellant while he paid for insurance cover. The learned Advocate told the court that the appellant had insured his business with the 2nd respondent in case of fire, burglary and robbery incidents, but the 1st respondent failed to facilitate payment of compensation to the appellant when burglary occurred

in this shop. On the second ground of appeal, Mr. Matatizo submitted that the 2nd respondent paid to the appellant's bank account Tshs. 3,000,000/= as compensation for the incident therefore, it cannot afterwards deny the liability under insurance contract between it and the appellant. He added that since there was no assessment which was conducted before the said payment, the compensation paid was too low compared with the actual loss suffered by the appellant. The learned Counsel submitted that the appellant deserves compensation of Tshs. 30,000,000/= and not otherwise.

In opposition of the appeal, Mr. Ishengoma stated that the appellant breached loan agreement with the 1st respondent because he was supposed to complete the repayment on 26/02/2016, but to date the loan has not been fully paid. He added that clause 7 of the loan agreement required the appellant to ensure the loan against robbery, burglary and fire. For these risks, the appellant paid Tshs. 250,000/= to the 1st respondent which in turn paid it to the 2nd respondent. In addition, the appellant was advised to ensure his business with any insurance company that is why he was not paid the Tshs. 30,000,000/= he is claiming. According to Mr. Ishengoma, there has never been an insurance contract between the appellant and any of the respondents herein.

Mr. Ishengoma explained that it is true that there was fire accident in the appellant's place of business, but his shop was not involved in the said accident. The appellant claims that his goods were stolen but he did not produce any evidence to prove the allegation during the trial in the tribunal.

To the contrary, the appellant testified that he managed to rescue some goods which he took at home. The appellant did not however, specify the goods which were rescued and those which are alleged to be stolen. Mr. Ishengoma submitted that in the circumstances, it is difficult to establish with certainty the value of the goods alleged to be stolen and how the appellant had reached at the claimed compensation of Tshs. 30,000,000/=. He concluded that there is nothing to fault in the tribunal's decision. He thus prayed the appeal to be dismissed with costs and decision of the tribunal to be upheld.

Submitting on behalf of the 2nd respondent, Mr. Noel told the court that there is no contract between the appellant and the 2nd respondent to justify the claimed amount of Tshs. 30,000,000/=. He said, the appellant did not prove this point during the trial in the tribunal. The learned Counsel made reference to the case of *Berdon Tewela v Tabu Robert & 2 Others*, Land Appeal No. 79 of 2021, High Court of Tanzania at Mbeya in which it was held that the one who alleges must prove. Regarding the 2nd ground of appeal, Mr. Noel stated that there is neither justification for the appellant's claim nor evidence of the claimed loss. As such, the learned Advocate asserted that the appellant does not deserve any compensation. He urged the court to dismiss the appeal with costs.

By way of rejoinder, Mr. Matatizo submitted that there was an implied loan insurance contract between the appellant and the respondents and that is why the appellant paid Tshs. 250,000/= for it and he was compensated

for a tiny amount of Tshs. 3,000,000/= after the burglary. It was Mr. Matatizo's contention that it is undisputed that burglary occurred and the same was covered by insurance so, the appellant is entitled to compensation as claimed.

Having shown the background of the dispute and rival submissions of the parties, the issue for my consideration is whether the alleged burglary was covered by the loan insurance between the appellant and the 1st respondent hence, entitling the appellant to the claimed compensation. According to the loan agreement between the appellant and the 1st respondent, the loan was to be paid within 12 months without grace period. I should hasten to state that it is surprising how the loan which was obtained on 26/02/2015 was affected by burglary which occurred on 12/10/2014 as deduced from the records.

Concerning the insurance cover, the loan agreement provides as follows under clause 7:

> *"You are advised to process insurance cover of your business against robbery, fire and burglary."*

The appellant alleges that as advised, he processed an insurance cover from the 2nd respondent. During the trial at the tribunal, the respondents raised an objection on point of law that the appellant had no cause of action against the 2nd respondent, but the objection was overruled. I have examined the records of the tribunal but I did not find in anywhere that the

appellant dealt directly with the 2nd respondent. **Black's Law Dictionary, 8th Edition of 2004** defines the term insurance as a contract by which the insurer undertakes to indemnify the insured against risk of loss, damage or liability arising from the occurrence of some specified contingency. Therefore, it goes without saying that insurance being a contractual relationship, it is created by an agreement between the insurer and the insured. In the case at hand, the appellant has contended to have processed an insurance with the 2nd respondent but as stated, the same is nowhere to be found. In his testimony, the appellant told the trial tribunal that throughout the loan period he never met with the 2nd respondent. He was however, directed by the 1st respondent to deposit Tshs. 250,000/= as insurance premium. At page 17 of the typed proceedings of the tribunal the appellant testified as hereunder:

> *"... I never signed an agreement with the 2nd respondent. The agreement was to take the loan and hence repay it. There was a statement that the Bank would ensure my business; if it is written in English, I do not know English..."*

Based on the above extract, it is obvious that there was no insurance contract between the appellant and the 2nd respondent. The appellant appeared to have confused between loan insurance and business insurance. He was advised to process business insurance, the advice which he never heeded. As for the loan insurance, indeed the loan agreement between the 1st respondent and the appellant included an insurance cover for which the appellant paid Tshs. 250,000/=. Exhibit P5 which was admitted by the trial tribunal shows that the applicant was entitled to compensation for the loss

he had incurred in his business. The exhibit is clear that the compensation was limited to the amount of premium paid.

In that regard, exhibit D2 indicates that on 18/09/2015 the appellant was paid through his Bank Account Number 51310002609 held by the 1st respondent Tshs. 3,000,000/= as insurance refund in respect of fire disaster. The said amount was nevertheless appropriated by the 1st defendant in part-payment of the appellant's outstanding loan. This was also the testimony of the appellant on page 18 of the trial tribunal's typed proceedings. The appellant has complained that the amount of compensation paid to him was very small. Nonetheless, he failed to establish the basis for his claim of Tshs. 30,000,000/=. He did not tender any evidence to prove that he is entitled to that amount and not Tshs. 3,000,000/=.

DW1 explained to the tribunal that for any claimant to be compensated, he should have a document to establish that theft had occurred, a report showing the stolen property, a report indicating the property which were available before theft and the purchase receipts to enable the insurer to assess the loss incurred. It was the testimony of the appellant that he did not have a tendency of taking stock of goods at the end of each day of business. He as well told the court that he did not have receipts for the goods he purchased by using the loan.

It is not contested between the parties that the appellant managed to rescue some goods from being stolen during burglary and he took them at

home. He admitted that he does not know the value of goods which were stolen and those which he kept at home. He also informed the court that out of the loan amount, only Tshs. 5,000,000/= was injected into the business and the rest was diverted to other expenditures. It should be noted that the purpose of the loan is very clear from the loan agreement that it was to facilitate the appellant's business and not otherwise. With all these facts and circumstances, I do not agree with the appellant that the Tshs. 3,000,000/= compensation paid to him was peanut. It should be recalled that general damages is awarded after a thorough assessment of the claim, supporting documents, and all the prevailing conditions.

No general damages can be awarded on a mere statement or prayer of the claimant. The same was observed in the landmark case of ***Cooper Motors Ltd v Moshi Arusha Occupational Health Service*** [1990] TLR 90, in which it was held that a mere statement or prayer of a claim for damages will not support a claim for any particular injury or loss. The appellant in this case has just asserted that the value of his stolen goods was Tshs. 30,000,000/= without supporting it with any evidence. On the basis of the foregoing analysis of evidence and the law, I find and hold that the appellant has failed to prove that he is entitled to the amount of Tshs. 30,000,000/= claimed in this appeal.

In a different complaint, the appellant is faulting the trial tribunal's decision ordering him to pay the outstanding loan amount and in case of failure, his mortgaged house to be sold by the 1st respondent to recover the

loan. The appellant does not however refute that, he obtained Tshs. 22,000,000/= as a loan from the 1st respondent. He does not either dispute that he mortgaged his house built on Plot No. 60, 'Machinjioni' area in Urambo District as a security for the said loan. Likewise, the appellant does not dispute that he did not service his loan to the completion as per the agreement.

On the basis of the above and, having found that the compensation paid to the appellant was adequate as I have endeavoured to show, I wish to state that this does not bring to an end the contractual relationship between the appellant and the 1st respondent in respect of the loan agreement (exhibit P1), which as elaborated, both parties agree that it exists. It follows therefore that, all the appellant's consequential prayers which were intended to obstruct the recovery of the alleged outstanding amount have failed.

To be specific, I dismiss the appeal with costs. The appellant is ordered to repay the loan as per the loan agreement between him and the 1st respondent. In case he fails to repay the loan amount within sixty (60) days from the date of this decision, the 1st respondent shall have the right to sale the mortgaged house so as to recover the loan, after compliance with all legal procedures.

Order accordingly.

KADILU, M.J.
JUDGE
31/05/2023