

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

AT DAR ES SALAAM

CIVIL CASE NO.191 OF 2021

MSAE INVESTMENTS CO. LIMITEDPLAINTIFF

VERSUS

EXIM BANK TANZANIA LIMITEDDEFENDANT

31st May & 31st July 2023

F. H. MAHIMBALI, J

JUDGEMENT

The plaintiff herein claims against the defendant a total of Tshs 800,000,000/= and other reliefs due to the loss suffered by him, by failure to procure loan from CRDB Bank due to the information negligently sent to Credit info Tanzania Limited by the defendant, that the plaintiff is a defaulter of the loan and thus is owed a total of Tshs 4,976,066/= by the defendant. The CRDB Bank after had been availed with such information denied being guarantor of the said loan to the plaintiff.

The story goes on that, the plaintiff is a business company incorporated in Tanzania dealing with business activities including and not limited to the business of heavy duty passengers, bulk, fuel, cargo transport to East and Central Africa.

It is alleged that the plaintiff, on efforts of enhancing her business secured a capital financing Company from overseas, through COMTAZ Finance Africa Loan for the purchase of trailer and buses for the effectiveness of the Company business.

Being the case, on 8th day of April 2020 the plaintiff approached the CRDB Bank for letters of Credit (L.C). The CRDB in course of satisfying itself was enclosed with the information from Credit info Tanzania Limited, that the plaintiff is a defaulter of the loan as she is owed a total of Tshs 4,976,066/= by the defendant. Therefore, following such a scar, the CRDB bank rejected the application by the plaintiff and thus failed to procure the finance from COMTAZ FINANCE Africa Limited for procuring the alleged trucks.

The plaintiff reported the incidence to the defendant and asked for rectification but with vain but the reply by the defendant that, 30th day of October 2010, the plaintiff drew a cheque for payment of Tshs 1,800,000/= to one Hillary Gasper Mauki from the plaintiff's account from which the defendant bank paid despite the fact that the plaintiff's bank account had no sufficient funds to credit the client. The defendant bolstering on good customer relationship effected payment to one Hillary Gasper Mauki as requested in the cheque by the plaintiff.

The defendant stated that, the plaintiff from that period did not attend or even did crosschecking for his account and thus penalty was accumulated by him defaulting to pay the outstanding balance timely.

The defendant then purporting being in compliance with the BOT's mandatory regulations reported the plaintiff to Credit info Tanzania Limited, a defaulter of the loan owed a total of **TZS: 4,976,066/=** by the defendant.

The plaintiff considering herself aggrieved, injured and prejudiced by the defendant's act of reporting her company indebted to the Credit info Tanzania Limited, has then decided to file the instant matter as he believes that he had never loaned any amount to the defendant.

At the hearing of this case, the plaintiff was represented by Mr. Alex Mashamba Balomi, learned advocate while the defendant aenjoyed legal services of Wilson Mwembezi, and Ms Caster Lufungulo learned advocates. Three issues for determination of this suit were framed namely;

- i. Whether the defendant company acted negligently in overdrawing the plaintiff's bank account a sum of Tshs 1,779,113.14*

- ii. Whether the defendant company acted negligently in reporting the plaintiff's account to BOT Credit reference Bureau*
- iii. To what reliefs are the parties entitled to.*

The plaintiffs' case had only one witness namely; Wilbard E. Mtenga (PW1), the managing director of the plaintiff company whose testimony is to the effect that the relationship between the plaintiff and the defendant is customer relationship as the plaintiff opened bank account to the defendant.

He also stated that the plaintiff wanted a loan for modernizing its business. The plaintiff was asked for supply of 50 trucks and buses by MOBIKEY Truck and Bus.

The foreign Company was ready to support by issuing loan to facilitate the plaintiff on that project. The said loan was to be channelled through CRDB Bank. PW1 tendered exhibit P1 to the effect. According to Exhibit P1 being a proforma invoice for the supply of 50 units for euro 2,952,600.

The plaintiff requested for the letter of Credit to CRDB Bank. Whereby the plaintiff did so by requesting the CRDB bank, to wit reference letter numbered : MICL/CRDB/01/2020 dated on 8th April 2020 which requested the CRDB Bank Branch manager of Azikiwe branch to open a letter of credit to COMTAZ Finance of Africa Ltd in order to finance the plaintiff for

the purchase of trucks. The money was for financing: trailers 20 units, 10 yutoung buses, and 20 units of trucks.

The plaintiff after had written a letter to CRDB Bank, the CRDB scrutinized the plaintiff's credibility to see if it had outstanding loan with any Bank.

The CRDB contacted the Credit Info who gave them a report of which the plaintiff is indebted by Exim Bank Tanzania Limited.

According to PW1, he believes that the plaintiff had never been taken any loan from Exim Bank Tanzania Limited. And the so the acts of the defendant were totally untrue. The plaintiff's letter of credit guarantor by CRDB Bank was thus not honoured on reasons of indebtedness by the defendant.

The evidence of denial of the application is from Credit Information Bureau. He tendered Exhibit P2 being credit info report.

PW1 disputed credit number 0301125004 by the defendant and alleged that the plaintiff never loaned to the defendant. And therefore, the information sent to credit info, was false. PW1 decided to consult the BOT which summoned the defendant to the effects. The defendant apologized

his acts. PW1 referred exhibit P3 being writings of apologies from the defendant.

PW1 contended that the defendant never informed him of any banking transaction until when PW1 got such credit information from credit info, it is when he then contacted the defendant and asked for what transpired. They told PW1 that he had drawn a cheque requesting the defendant to pay one Hillary Gasper Mauki (supplier), but the plaintiff bank account had no sufficient funds to facilitate the service to the said client, instead the defendant decided to honour that cheque without informing PW1. In essence, the plaintiff had no any overdraft facility with the defendant.

Following all these, the plaintiff company being blacklisted as defaulter, could not get any bank facility from any bank within the United Republic of Tanzania from that period to date. They have incurred a huge business loss about 600,000,000/= the reputation as a company has been badly declined. And that the directors, shareholders and about two employees, could not get loan anywhere in banking institution. PW1 then pressed for the prayers contained in the plaint be awarded.

During cross-examination, the PW1 testified that he didn't know if the said account had been liquid. He however admitted to have instructed the defendant to pay the supplier an amount of Tshs 1,800,000/= by cheque,

believing his bank account with the defendant was still liquid. Thus, for the defendant to effect payment to the drawn cheque by the plaintiff without there being sufficient fund, the defendant had professionally erred to report him as defaulter as they volunteered the risk.

On the side of the defendant, DW1; **METHUSELA PHILIPO JOEL**, stated that in 2020 the plaintiff made payment by cheque it was Tshs 1,800,000/= in the said bank Account, he had no sufficient amount to honour payment of Tshs 1,800,000/=. When that situation happens, there are two options: *not to honour its payment or pay it subject to some conditions*. With the business account money is always in circulation. So, by the time plaintiff had drawn that cheque, had no sufficient fund, considering their relationship, they effected that payment, but also for safeguarding the image of the plaintiff to his client. Further it was to evade the plaintiff with penalty i.e for drawing cheque without sufficient fund. In consideration of all these, the Bank decided to affect payment. He added the acts done it is normal in banking practice to all commercial Banks with corporate clients.

DW1 referred to exhibits D2 and D3 being bank statements of the plaintiff and the bank cheque No 944234 dated 30/8/2010 by name of MASAE INVESTMENT COMPANY LTD which was paying to Hillary Gasper

Mauki an amount of Tshs 1,800,000/=. It appears by the time the cheque when was honoured, the plaintiff bank account had a balance of Tshs 20,886:86/=

After the payment, the deficit was 1,779, 113. 14. From that incidence, the defendant had not received any complaint from the plaintiff.

DW1 also added that if the funds in a certain bank account is below 20,000/= the consent of the drawer is not necessary to be sought and if it is above 20,000/= then the consent of the drawer must be sought.

After the said encashment, the plaintiff didn't appear to the Bank for any payment/complaint as customer/client as he was obliged to know the banking transaction of his account. Normally once that is done, a client has a duty to regularize his transactions. And thus, the plaintiff's account was closed on 23/6/2014. By the time of closure, the outstanding balance was on debit side.

DW2: KIJA JULIUS NDEME, whose duty is to retrieve all customers/clients who are indebted to the BOT based on the credit information Regulation of 2012. He also stated that plaintiff's bank account had been in outstanding balance for a long time. He came to know this in 2018, after he had generated the list of bank account in which

their business had been closed for a long time with outstanding balance. He then reported it to the credit information Bureau.

The plaintiff complained for the report sent to credit info, contending that the information sent was false.

DW2 made a follow up to the system and came to know that his bank account had authorised payment by cheque in which had no sufficient fund. As it was paid by the defendant bank and it remained an outstanding unpaid balance by the plaintiff.

DW2 then reported to credit information bureau and BOT as it was an overdrawn transaction or an authorised debit.

He referred exhibit D4 which is BOT letter for Credit reference system with Ref No 130/170/01 dated 19th Jan 2012. And Exhibit D6 which is Exim Bank letter with ref No EB/CO/808/16 dated 3rd November 2016 filed to Credit Reference and Bank Statement status for the month of September 2016. Exhibit D5, it was an insurance policy by BOT following the earlier letter on uploading data system

DW2 also stated that they had not specifically received any letter for guidance in respect of plaintiff bank Account. With D1 and D6 exhibits, it is about BOT unclosed data. He also added that the plaintiff's

information on credit info that he was an outstanding debt amounting Tshs 1,800,000/= and thus MSAE investment company Ltd is indebted by the Bank to an amount of 4,976,066 is true account of what had transpired.

Having heard both parties on merit, I have now to determine this suit based on evidence before this Court.

Starting with the first issue "*Whether the defendant company acted negligently in overdrawing the plaintiff's bank account sum of Tshs 1,779,113.14*"

The plaintiff's evidence adduced in court it is undisputed that on 30/10/2020 the PW1 issued a cheque requesting the defendant to effect payment to one Hillary Gasper Mauki (supplier) a total of Tshs 1,800,000/= from plaintiff bank account. The plaintiff had no any knowledge as to whether his account had no sufficient fund to effect such payment and thus the defendant did not inform the plaintiff about the incidence and it proceeded to pay the supplier as requested by the defendant.

The plaintiff came to realise it when he wanted a loan for modernizing its business. The plaintiff was asked for supply of 50 trucks and bus by MOBIKEY Truck and Bus. The foreign Company was ready to

support by issuing loan to facilitate the plaintiff on that project. The said loan was to be channelled through CRDB Bank.

The plaintiff requested for the letter of Credit to CRDB Bank. Which they did them by requesting the CRDB bank, to wit reference letter numbered : MICL/CRDB/01/2020 dated on 8th April 2020 which requested the CRDB Bank Branch manager of Azikiwe Branch to open a letter of credit to COMTAZ Finance of Africa Ltd in order to finance the plaintiff of the purchase of trucks. Being finance of trailers 20 units, 10 yutoung buses, and 20 units of trucks.

The plaintiff after had written a letter to CRDB, the CRDB scrutinized the plaintiff's credibility to see if it had outstanding loan with any Bank.

The CRDB Bank then contacted the Credit Info who gave them a report of companies which are indebted, the plaintiff's application was therefore turned down. According to PW1, the plaintiff had never taken any loan from Exim Bank Tanzania Limited as alleged. And therefore the acts of the defendant were totally lies.

On the side of the defendant argued that, in 2020 the plaintiff made payment by cheque it was Tshs 1,800,000/= in the said bank account, he had no sufficient amount to honour payment of Tshs 1,800,000/= and thus when that situation happens, there are two options:

not to honour the payment or pay it subject to some conditions. With the business account money is always in circulation. So by the time plaintiff had drawn that cheque, had no sufficient fund, considering their relationship, they effected that payment. But also, safeguarding the image of the plaintiff to his client. Further it was to evade the client with penalty i.e for drawing cheque without sufficient fund. In consideration of all these the Bank decided to affect payment. This banking practice is normal to all commercial Banks with corporate clients.

DW1 referred to exhibits D2 and D3 being bank statement of the plaintiff and the bank cheque No 944234 dated 30/8/2010 by name of MASAE INVESTMENT COMPANY LTD which was paying to Hillary Gasper Mauki an amount of 1,800,000/=. It appears by the time the cheque when was honoured, the plaintiff bank account has a balance of Tshs 20,886:86/=

After the payment, the deficit was 1,779, 113. 14, from that incidence the defendant had not received any complaint from the plaintiff.

Based on the above facts it is my firm view that, the defendant's acts for *overdrawing the plaintiff's bank account sum of Tshs 1,779,113.14"*, acted negligently on the sense that, immediately the defendant after had discovered that the plaintiff account had no sufficient

funds was supposed to notify to the effect the plaintiff and if possible the transaction so requested by the plaintiff being payment of Tshs 1,800,000/= ought to be rejected.

Worse of the matter, the defendant proceeded to overdraw the plaintiff account to sum of Tshs 1,779,113.14 after had reduced from the existed balance which is Tshs 20,886.86/=: and proceeded to penalise the plaintiff up to Tshs 4,976,066/=. Similarly, the defendant went further to report the incidence to BOT credit info as un serviced loan secured by the plaintiff which fact was not true but rather internal outstanding transaction.

Responding to issue No. 2 "*Whether the defendant company acted negligently in reporting the plaintiff's account to BOT Credit reference Bureau* "

The plaintiff's evidence submitted that, the acts by the defendant to report the plaintiff's company to the credit info was lie as the plaintiff had never secured any loan from the defendant bank. Therefore, the claims by the plaintiff that the defendant paid one Hillary Gasper Mauki Tshs 1800,000/= from plaintiff's account which had no sufficient funds hold no water as the plaintiff at the time issued the cheque, he had no knowledge as to whether his account had no sufficient fund to effect payment and

the defendant never notified about the event. Thus, it was wrong for the defendant to report the plaintiff to the BOT credit info as indebted for defaulting to pay loan secured to the defendant by the plaintiff.

On the side of the defendant argued that, the incidence happened in normal practice in banking institution. DW1 ***"....as per banking, payment by cheque from an insufficient fund account is normally done, if the funds in a certain bank account is below 20,000/= the consent of the drawer is not necessary to be sought and if it is above 20,000/= then the consent of the drawer must be sought"***

I have looked for concept of bank and customer relationship, and my observation is that, it is incorrect to do anything against customer's bank account unless there is due notice. The notification is very vital to any matter affecting customer's account. If it was necessary to honor the said cheque without prior notice to the plaintiff, the defendant was duty bound to effect notice to the plaintiff soonest. Not doing that, and subsequently reporting him to BOT's credit info system suggested ill will against the plaintiff. In any case, there was no any legal justification for such an evil report.

The defendant acted ultravires, when he reported the incidence to BOT Credit info that the defendant is owed a loan by the defendant while in facts was not true, see Exhibit D1 to the effect.

Being the case, the defendant was penalised by BOT due to his acts act of reporting the incidence similarly with the claims of the defendant. See exhibit D6.

With all these pieces of evidence, it easier to conclude that, the defendant acted negligently in reporting the plaintiff as loan defaulter, thus black listed to the BOT's credit reference bureau.

In regards to issue No.3 that "*To what reliefs are the parties entitled to.*"

According to plaintiff's pleadings, he prayed that this Court be pleased to issue the following orders;

1. *An order for payment of suffered business loss in the sum of Tshs 800,000,000/=*
2. *A declaratory order that the caused indebtedness liability published in the BOT date base and in the Credit Tanzania Limited was incorrect.*

- 3. The defendant had breached its duty of care towards the plaintiff who suffered general damages to be assessed by the Court.*
- 4. And order to the defendant for immediately refile with the correct data to Tanzania Credit Limited and BOT.*
- 5. An order to pay 11 court interest per annum on the decretal sum from the date of filing suit to the date of satisfaction of the decree.*
- 6. Order to pay commercial rate interest of 13 %*
- 7. Costs of the suit and other reliefs*

Now, I have gone through the centre of plaintiff's claims that, he specifically claims the defendant a total of Tshs 800 million, being business loss suffered following false and supplied non existing indebtedness data to Tanzania Credit Limited and the BOT reference Bureau.

According to PW1 averred that, he wanted a loan for modernizing its business, he was asked for supply of 50 trucks and buses by MOBIKEY Truck and Bus. The foreign Company was ready to support him by issuing loan to facilitate the plaintiff on that project. The said loan was to be channelled through CRDB Bank.

The plaintiff requested for the letter of Credit to CRDB Bank. Whereby they wrote a letter to CRDB bank with reference letter number

MICL/CRDB/01/2020 dated on 8th April 2020 which requested the CRDB Bank Branch manager of Azikiwe Branch to open a letter of credit to COMTAZ Finance of Africa Ltd in order to finance the plaintiff of the purchase of trucks. Being finance of purchase 20 trailers units, 10 yutong buses, and 20 units of trucks.

The plaintiff after had written a letter to CRDB, the CRDB scrutinized the plaintiff's credibility to see if it had outstanding loan with any Bank.

The CRDB contacted the Credit Info who gave them a report of companies which are indebted. CRDB replied to the letter of the plaintiff and informed him that the defendant had contacted them that the plaintiff is indebted by the defendant. According to PW1, he believes that the plaintiff had never been taken any loan form Exim Bank Tanzania Limited. And the so the acts of the defendant were totally lies. Following that incidence, the plaintiff was unable to secure loan from the foreign Company which was ready to support by issuing loan to facilitate the plaintiff's project.

The PW1 was cross-examined as to whether he had a proof of evidence from the foreign company that he requested for a loan and that if he had evidence of proof form CRDB Bank notifying him that the bank

failed to process for the loan due to info sent to BOT credit info reference Bureau and to Credit Tanzania Limited.

The reply by PW1 was that he had nothing to prove to that effect.

On this I am guided by the Court of Appeal decision in ***Paulina Samson Ndawavya Vs. Theresia Thomas Madaha, Civil Appeal No. 45 of 2017*** (unreported), in which the Court stated:

"It is trite law that he who alleges has a burden of proving his allegation as per the provisions of section 110 of the Tanzania Evidence Act, Cap 6, R.E. 2002. It was therefore the duty of the appellant to prove the claims on a balance of probabilities. "

Now, it is trite law that, specific damages ought to be proved. See in the case of ***Zuberi Augustino versus Anicet Mugabe (1992) TLR 137, the case of Jnakirama Lyer versus Nilkanta Lyerx, AIR 1962 SC 633***. And the case of ***Solvochem Holland BV versus Chang Quing International Invetsment Co.ltd, Commmercila Case No 63 of 2020*** (unreported)

In the case of Zuberi Augustino (supra) the Court of Appeal was of the view that:

"It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved. Cost of repair was pleaded but not proved."

In the case of **Xiubao Cai and Maxinsure (T) Ltd vs. Mohamed Said Kiaratu**, Civil Appeal No.87 of 2020 at Page 8 the Court, exploring what does special damages entail, stated, and quoting from other persuasive and authoritative sources, that:

"Special damages are such a loss as will not be presumed by law. They are special expenses incurred or monies actually lost. For example, the expenses which a plaintiff or a party has actually incurred up to the date of the hearing are all styled as special damages; for instance, in personal injury cases, expenses for medical treatment, transportation to and from hospital or treatment centre, etc... Unlike general damages, a claim for special damages should be specifically pleaded, particularized and proved. I call them three P's."

Guided by the principle set out in the case of **Zuberi Augustino Mugabe (supra) and Stanbic Bank Tanzania Ltd vs. Abercrombie & Kente (T) Limited, Civil Appeal No.21 of 2001 (CAT) (unreported)**, the Court emphasized that, a claim for specific or special

damages must not only be pleaded but also its particulars must be specifically stated and strictly proved. These are three limbs which must be demonstrated, failure of which the objection is to be found merited.

Back to the case at hand, the plaintiff's claims against the defendant is for a total of Tshs 800 million being business loss suffered for failure to secure loan from foreign company which was ready to facilitate the project by crediting him funds.

The incidence was caused by the defendant after had reported false information to BOT credit refence Bureau and Credit Tanzania Info Limited, that the plaintiff is defaulter as he is owed loan by the defendant and is not yet settled. Following the acts by the defendant, the plaintiff was denied allocation of loans and thus the projects to be performed was no longer performed and the company incurred loss as its directors and shareholders were not reliable to secure loan from any bank institution.

Form the foregoing piece of evidence, I have gone through exhibits to satisfy myself as whether the plaintiff applied for loan to the foreign Company. Indeed, no supporting documentary evidence to prove PW1's assertion, in other words the evidence of PW1 is not corroborated by any evidence.

Exhibit P1 it is only proforma invoice, it does not mean that it is the contract for supply, it is just entailed to know much if the company is hired to supply such items how much cost would charge them.

Meanwhile, Exhibit P1 which is enclosed with the letter for the request for the letter of Credit (L.C) written by the plaintiff to the CRDB Bank, it does not entail anything other than requesting to be supplied with the letter of Credit. It does not mean that the plaintiff applied for the loan to CRDB bank and an indication that there is a company which was ready to support their project. Again, no proof of documentary evidence to that effect.

Further my other consideration to the effects is how the PW1 calculated and got Tshs 800 million. It is not provided as to whether if the loan would have been secured how much would have been achieved. Exhibit P1 only mention the price of EUR 2,952,600, if the plaintiff is desirable to supply the items mentioned. There is no evidence of proof as to whether the plaintiff agreed to the invoice sent to him.

When PW1 was examined by defendant's counsel about his claims, he asserted that what he claims is general damages. I have gone through the plaint by the plaintiff particularly on the reliefs prayed before this

Court, item(i) prays for specific damages which is Tshs 800 million, item(iii) prays for general damages to be assessed by the court.

Being the case, I am contrary with the assertion of the PW1 when testified that the Tshs 800 million is general damages since general damages were prayed in other item and of which is the discretion of the court.

From the above observation, I must conclude that the plaintiff failed to prove specific damages so claimed.

Based on the reliefs stipulated under roman (ii) to (iv) of the plaint by the plaintiff, this Court has this observation. It is undisputed facts from evidence that, the defendant reported the incidence of outstanding balance owed to the plaintiff and thus termed as defaulter to BOT Credit reference Bureau and Credit info Tanzania Limited that the plaintiff is owed Tshs 4,976,066/= by the defendant.

Also, it is undisputed that the acts by the defendant was wrong to treat the incidence as a loan secured while in fact was not, and thus the defendant was penalised to that effect.

Based on those facts, the defendant agreed the same that, it reported the matter to such financial institutions.

“ DW2 ***“...I reported to credit information bureau and BOT as it was an overdrawn transaction or an authorised debit ...”***”

Therefore, the defendant is accountable to the effect by rectifying the information to the relevant institutions and deal with the plaintiff in another internal different modal.

In view the plaintiff is entitled with all relies prayed under roman (ii) & (iv) on his plaint.

Meanwhile, looking to item (v) to (vi) of the reliefs claimed by the plaintiff, I hereby hold that, the same cannot be granted since are not justifiable and the specific damages were not proved to warrant the grant of the reliefs claimed under such items. Since the calculation of which would have resulted from specific damages which could have been proved. Likely roman (vii) and (viii) are enclosed in the discretion of the Court and not a guarantee to the effect.

With regard to issue of reliefs claimed under roman (iii) which is general damages, this Court has this observation. What is discussed about are special damages, does not however affect the general damages heading, which is discretionary. There is no doubt that there was an infringement on the plaintiff's trade. That infringement by defendant occurred when reported to BOT Credit reference Bureau that, the plaintiff

is a defaulter of the loan which barred the plaintiff to proceed with the ongoing planned business activities.

Indeed, it tarnished the plaintiff's image as he could not be able to secure loan to generate his business. Worse enough the information sent by the defendant to the BOT Credit Reference Bureau in fact it was about loan secured by the plaintiff to the defendant rather the outstanding which accumulated unknowingly as the plaintiff had never informed about the incidence. According to BOT that incidence ought not to be reported, that is why it penalised the defendant for that effect.

It is from such facts and considering the suffering by the plaintiff, this Court awards the plaintiff with general damages to the tune of Tshs: 50,000,000/=.

No order of costs to the effect, taking into consideration that the defendant had been penalised by BOT.

It so ordered.



DATED at DAR ES SALAAM this 31st day of July, 2023

F.H. MAHIMBALI
JUDGE.