

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

CIVIL REFERENCE NO. 7 OF 2021

(Arising from Insurance Claim No. TIO/MOA/724/23)

BONITUS BUNANE MIZAGE APPLICANT

VERSUS

MO ASSURANCE COMPANY LTD RESPONDENT

RULING

Date: 03/04 & 18/05/2023

NKWABI, J.:

This civil reference is filed by the applicant against the order of the Ombudsman dated 17th March 2021. The applicant in this reference proceedings is asking this Court for the following orders:

1. That may the honourable Court be pleased to make a finding that the ruling of the insurance Ombudsman dated 17th March 2021 delivered by Hon. Margreth Mngumi is improper for it being made in controversies of the principles of natural justice and insurance law.
2. That for the sake of advancement of justice, this Honourable Court be pleased reassess the evidence and order respondent to indemnify the applicant.

3. In the alternative, that this honourable Court be pleased to make finding that there exists good cause for granting orders being sought herein.
4. The honourable Court be pleased to issue any other order or relief as the same shall deem fit.
5. Costs of this application.

The chamber summons is supported by the affidavit of the applicant. The respondent filed a counter affidavit in opposition of the reference.

It is not disputed that the motor vehicle of the applicant was insured by the respondent under a premium insurance policy. It was, however, disputed by the respondent that the motor vehicle was stolen or that the allegations are tainted with fraud. In the end, the Ombudsman ruled that the complaint was no longer amenable to resolution by the TIO hence it was closed. That order aggrieved the applicant who preferred this reference to this Court.

This reference was heard by way of written submissions, though, the rejoinder submissions were not filed. Mr. Hardson B. Mchanu, learned counsel drew and filed the submissions for the applicant while the

respondent's submissions were drawn and filed by Ms. Neema Roman Mahunga, also learned counsel.

It was Mr. Mchanu's contention that after conducting the preliminary stages including mediation between the parties of which the respondent admitted his liabilities, on 12th day of April 2021, the applicant received a letter dated 17th March, 2021 from the Insurance Ombudsman informing him that, his claim was closed without affording his constitutional right to be heard ... he was condemned unheard. It was added that in her decision the Insurance Ombudsman relied only on the evidence produced by the respondent and the Police Investigation Report and came into a conclusion that the applicant's claims are tainted with fraud as clearly shown at item 2 of the letter ... The counsel for the applicant cited **Tan Gas Distributor Ltd v. Mohamed Salim Said**, Civil Application for Revision No. 68 of 2011 CAT (unreported) and another decision of this Court. It was prayed I nullify the decision and or any other reliefs as the court may deem fit.

Making a reply submission, Ms. Mahunga was not impressed by the submissions of her learned friend. She contended that Regulation 13 (6) (a) – (d) of the Ombudsman Regulation does not deal with hearings of the

complaint as alleged by the applicant, rather it deals with admissions of complaints by the Ombudsman. Hence there is no contravention of the regulation. She added that Regulation 15 (1) of the Ombudsman Regulations is clear that complaints before Ombudsman shall be determined by way of reconciliation, mediation and arbitration and the Ombudsman determined the complaints according to Regulation 19(1) of the Ombudsman Regulations.

The counsel of the respondent further maintained that the applicant was aware throughout the hearings at the Ombudsman on the reasons as to why the respondent repudiated the applicant's claim. ... The respondent prayed for extension of time in order to enable her to submit the report from the police so as to assist the Ombudsman in making a well-informed decision after the hearing of the complaint ... It should be noted that at this time, the hearing of the complaint had already been done and the fact the motor vehicle was not stolen had already been discussed and the applicant defended himself on that by insisting that the motor vehicle was stolen as claimed. The respondent only wanted to cement on its position that the motor vehicle was not stolen as alleged by submitting the report. The counsel for the respondent distinguished the decision cited by her learned friend, the

case of **Pastory Henry & Others v. Wema Gema**, Misc. Land Appeal No. 139 of 2021 HC. Instead, she cited the case of **Margwe Erro & Others v Moshi Bahalulu**, Civil Appeal No. 111 of 2014 CAT to support her argument. It was added that the applicant terribly failed to show at what circumstance he right to be heard was not accorded to him by the Ombudsman. This Court is invited to rule that the applicant was accorded the right to be heard by the Ombudsman and that the police report forwarded to the Ombudsman was intended to emphasize on the Respondent's position as to why the respondent repudiated the applicant's claim. It is prayed that the application be dismissed with costs.

I have passionately considered the submissions of both counsel, I am of the considered view that the reference is merited on the basis that the applicant was condemned unheard. That is supported even by the submissions of the counsel for the respondent when she argues that the police report forwarded to the Ombudsman was intended to emphasize on the Respondent's claim. In the premises, the applicant was entitled to counter that report as he might have come with evidence to contradict that of the respondent which was sent allegedly for emphasizing. Even if the applicant would have admitted the correctness of the subsequent police report, that would amount to being

accorded the right to not only a hearing but also a fair hearing. It has been held time without number that a decision given in violation of the right to be heard is bound to be overturned even if the same decision would have been reached after hearing both parties, see **Abbas Sherally and Another v. Abdul S.H.M. Fazalboy**, Civil Application No. 33 of 2002 (unreported) (CAT) where it was stated that:

*"The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by courts in numerous decisions. **That right is so basic that a decision which is arrived at in violation of it will be nullified**, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice."*

[Emphasis added].

In the circumstances, I find the reference application merited. It is granted to the extent as indicated herein below. The decision of the ombudsman to the effect that the complaint is closed is nullified. I order that the Ombudsman carries out arbitration proceedings and determines the complaint on merit. Therefore, the invitation made to me by the counsel of

the respondent to rule that the applicant was accorded the right to be heard by the Ombudsman and that the police report forwarded to the Ombudsman was intended to emphasize on the Respondent's position as to why the respondent repudiated the applicant's claim does not find favour with me, so, it is rejected. The applicant should have his costs of this reference application. It is so ordered.

DATED at **DAR-ES-SALAAM** this 18th day of May, 2023.



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi".

J. F. NKWABI

JUDGE