

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

CIVIL CASE NO. 51 OF 2022

MOLLEL ELECTRICAL CONTRACTORS LTD PLAINTIFF

VERSUS

CRDB BANK PLC DEFENDANT

JUDGMENT

21/08 & 18/09/2023

NKWABI, J.:

It is mutual understanding between the parties that the plaintiff instructed the defendant to transfer money through swift electronic fund transfer system. The plaintiff and the defendant have a client-banker relationship respectively. It turned out that the plaintiff placed an order for materials from TANSALES (LONDON) LIMITED. On 28th March 2019 the plaintiff instructed the defendant to transfer a total of GBP 108,804.30 to a new bank account purported to be of TANSALES but later on TANSALES reported they had not received the money so transferred. On 10th April 2019 the plaintiff demanded the defendant to cancel the transaction. The defendant unsuccessfully called back the transaction.

Later on, the plaintiff issued a demand notice for the defendant to refund the money following the negligence of the defendant. The defendant disputed being negligent.

On account of the above facts, the plaintiff has brought this suit praying for reliefs about to be specified:

- (a) That the defendant acted negligently in the electronic fund transfer of funds in dispute made by defendant from plaintiff's account to the account of fraudsters and defendant also acted negligently to recover the funds from the intermediary bank and fraudsters bank (payee bank) and refund the plaintiff funds in dispute.
- (b) That the defendant with immediate effect to pay the plaintiff British Pound Sterling one hundred, eight thousand, eight hundred and four and thirty cents only (GBP 108,804.30) or its equivalent Tanzanian shillings at exchange rate of Bank of Tanzania.
- (c) The defendant to pay the plaintiff general damages at the tune of Tanzanian shillings one hundred million (T.shs 100,000,000/=) or any other amount as the Court may deem fit to grant as general damages.

- (d) That the defendant to pay interest at the tune of 24% per annum of the amount claimed in item (a) above from 28th September 2019 (the date funds in dispute were transferred) on continued accrual to the date of judgment.
- (e) That the defendant to pay the interest on the decretal amount at the rate of 24% per annum from the date of judgment to the date of full payment.
- (f) That the defendant to pay the plaintiff costs of this suit.
- (g) Such further orders or reliefs this honourable Court deems just, equitable and convenient.

The defendant has ferociously defended herself against the suit. The plaintiff was represented by Mr. Jerry Pasion Msamanga, learned counsel while the defendant was also defended by counsel one Elisa Abel Msuya.

Parties agreed and the Court framed the issues as below:

1. Whether the defendant acted negligently in the transfer of the amount of GBP 108,804.30/= from the plaintiff's account.
2. If the above issue in affirmative, then, whether the defendant was duty bound to transfer back the amount of GBP 108,804.30/= to the plaintiff's account.
3. To what reliefs are the parties hereto entitled to.

I begin to determine the first issue. On this issue, the plaintiff is adamant that the defendant was negligent on the basis of the following negligent acts:

- a. Failure to put in place proper and effective fraud risk management guidelines and policy to enable the bank to recognize fraudulent transactions in the plaintiff/clients' accounts as obligated by Risk Management Guidelines for Banks and Financial Institutions of 2010 issued by Bank of Tanzania.
- b. Failure to scrutinize and identify the discrepancies of the information contained on the invoices and those contained on the instructions forms and decline to transfer the funds for the reason that the information contained in the instruction's form differs with those contained in the export invoices.
- c. Failure to ask the plaintiff through the authorized telephone number to confirm the differences of the account on export invoices and address of information's of the beneficiary customer before the defendant transferred the funds.
- d. That the defendant accepted the instruction form which was partially filled by the plaintiff's officer and proceed to transfer the funds without first requiring the plaintiff's officers to provide all the

required information which shall be contained in electronic funds transfer and currency transaction and proceed to transfer the funds in dispute contrary to the requirement of the law.

- e. Defendant failure to make serious follow up and take legal action against the intermediary bank – Lloyds Bank and the beneficiary bank to recover the funds and refund the plaintiff's funds in dispute while knowing that the intermediary bank Lloyds Bank and beneficiary bank has no contractual or otherwise relationship with the plaintiff.
- f. Defendant failure to insure the risk which the plaintiff/client may be accounted during the electronic funds transfer and currency transaction.

The counsel for the plaintiff backed his submissions with the decision of this Court in **National Oil Tanzania Ltd v. The National Bank of Commerce Ltd & Another**, Commercial Case No. 120 of 2005 where it quoted with approval the decision in **Canara Bank v. Canara Sales Corp. & Others** AIR 1987, SC 1603 reported (1988) LRC (Comm) where it was stated that:

"... The bank could escape liability only if it could establish that the company knew of the forgery. On the issue of delay to discover the frauds... inaction of the customer

does not by itself afford satisfactory grounds for the bank to escape liability."

In submission while cementing the evidence of the defence witness, Mr. Msuya briskly maintained that the defendant refutes the allegations and states categorically that payments were made on the instructions of the plaintiff having filled in transfer of funds request form and the defendant is not to blame or at all. He pointed out that the defendant insists that it is the plaintiff who acted in negligence. He prayed the suit be dismissed forthwith with costs.

Having considered the evidence of both sides which is comprised of one witness each side and the submissions thereto, I am of a strong view that the defendant is not to blame and was not negligent. What the defendant did is backed by the law which requires the plaintiff not to mislead the defendant (the client not to mislead the bank) That is the position stated in **The Kepitigalla Rubber Estates Limited v. The National Bank of India** (1909) 2 KB 1010. In the present case there is no claim of forgery from employees of the plaintiff. It is only the negligence of the officials of the plaintiff. The injury caused to the plaintiff by the plaintiff's officials cannot be shouldered on the defendant. The plaintiff's witness admitted

in cross-examination that the plaintiff's official was negligent in executing the transaction with the fraudster.

I have examined the transfer of fund request form. I do not see any wrong committed by the defendant in acting on instructions given by the plaintiff to the defendant.

The plaintiff too talked about violation of the risk management guidelines for banks and financial institutions, 2010. This, to me, appears to have been introduced out of context. In any case, it does not provide for penalties for non-observation of the guidelines.

In my view, the plaintiff was negligent in dealing with the fraudster as well as to taking action after being informed of the fraud. She also did not take action on the advice given by the defendant on reporting to offence of fraud to the police.

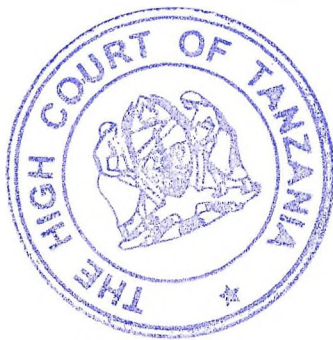
Having considered the evidence of the plaintiff as above, I am of the view that the plaintiff failed to prove the claim which is on the plaintiff to the required standard, that is, on the balance of probabilities. The first issue must be answered in the negative. It also follows therefore that the 2nd

issue collapses as it depended on the 1st issue being answered in the affirmative.

In summary, I hold that the suit fails. In determining the 3rd issue, I grant the following relief, that is, I dismiss the suit with costs.

It is so ordered.

DATED at DAR-ES-SALAAM this 18th day of September 2023.



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

J. F. NKWABI

JUDGE