

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

CIVIL CASE NO. 26451 OF 2023

NASIKIWA ABBAS BERYA..... PLAINTIFF

VERSUS

NCBA BANK TANZANIA LIMITED 1st DEFENDANT

ABSA BANK TANZANIA LIMITED..... 2nd DEFENDANT

CREDITINFO TANZANIA LIMITED 3rd DEFENDANT

RULING

18th April & 10th May 2024

MKWIZU, J

The Plaintiff suit is against the defendants jointly and severally for payment of Tanzania Shillings Five Hundred million (TZS 500,000.000.00) special damages suffered by the Plaintiff as a result of denial of a home loan facility at the instance of adverse credit reference bureau information from the Defendants, interest, general damages for turning the Plaintiff's bankable image, punitive and exemplary damages for negligently sharing and storing wrong credit information, an order compelling the Defendant to issue a public apology to the Plaintiff in widely circulating newspapers plus costs of the suit.

In response, both the 1st and 3rd defendant raised each one preliminary objection couched in the following words: -

For the 1st defendant:

(i) To the extent that the Plaintiff claims against the Defendants for negligent retention and supply of incorrect financial credit information that reports her to be in default of repayment of the loan from April 2023 to June 2023 and the Plaintiff claim that the said credit information is incorrect as per paragraph 5, 16 and 20 of the Plaint, this Honourable Court lacks subject -matter jurisdiction to try the matter pursuant to Regulations 28 (1) (d) , 29 (2), 29 (3) (c) and 29 (5) of the Bank of Tanzania (Credit Reference Bureau) Regulations, GN 416 of 2012.

For the third defendant:

(i) That the plaintiffs have no cause of action against the 3rd defendant

The plaintiff had the services of Mr. Deusdedit Luteja , learned advocate, Mr. Idrissa Juma advocate represented the 1st defendant, Mr. Sabas Shayo was in court for the 2nd defendant and Tonny Richard Mushi was for the 3rd defendant.

It was Mr. Idrissa Juma's contention that this court lacks subject matter jurisdiction to try the matter pursuant to regulation 28(1) (d), 29 (2) , (3)(c) and (5) of the Bank of Tanzania Credit Reference Bureau Regulations , GN 416 . Citing to the court the case of **Salimu Kabora V TANESCO Limited and 2 others** , Civil Appeal No 55 of 2014 Court of Appeal at Dr es salaam at page 13 and 15. And **Tanga Cement Public Co limited V Fair Competition Commission**, Civil Application No 10/20 of 2018 page 14,he said, jurisdiction of the court to entertain

matters are statutory and they are limited by the law which the court is established. It is the bedrock and foundation in which the court authority and competence to entertain and decide matters rest and therefore before any court dwells into determining a matter it should satisfy itself that it has power to determine the suit. And that where a certain law provides for a specific forum to deal with a certain dispute a resort to it first is imperative before one seeks recourse to court. Non observance of the rule renders the court decision a nullity.

To him, the plaintiff's claim is based on neglectful retention and supply of incorrect credit information labeling her a defaulter from April to May 2023 which is to be challenged under the Credit Bureaus procedure under regulation 28 (1) (b) of the credit Reference Bureau Regulations without taking a recourse to court. He maintained that the plaintiff ought to have challenged the same by notifying the credit Info bureau which is the 3rd defendant in this matter of the disputed information in accordance to Regulation 28 (2) where the 3rd defendant would have notified the data provider, 1st and 2nd defendant within 2 days and any decision therefrom would be challenged through an appeal to the Bank of Tanzania under regulation 29 (3) (c) and 29 (5) . He supported his submissions with the case of **Riziki Mwitw Kiondo and 28 Others v VODACOM Tanzania PLC and others**, Civil Case No 153 of 2022, HC DSM at page 7 and **Adella Stansalaus Assey t/a Mount kibo Famers, 2012 v VODACOMA Tanzania PLC and another** Civil case no 8 of 2023 H/c Moshi page 15 urging the court to strike out the suit with costs.

On his party, Mr. Tonny Richard Mushi for the 3rd defendant contends that in terms of regulation 6 (1) (a) and (b), 10 (3) of the Credit Reference Data Banks Regulations GN NO 417 the 3rd defendant is just a recipient of information from other banking institutions. She doesn't process the credit information. She is only a custodian of all the credit info including the borrowers information and credit history collected from the borrower, data providers and other entities engaged in a regular basis in the extension of the credit to the borrowers, guarantors or any other parties to the credit determined by the Banks pursuant to Reg 17 and 18 not at all involved in processing the data and therefore she is not responsible for information stored. Thus, the plaintiff has no course of action against the 3rd defendant. He implored the court to struck out the suit against the 3rd defendant with costs.

Mr. Shayo advocate on the other hand had nothing to say on the raised objections.

Responding to the objection by the 3rd defendant, Mr. Luteja advocate for the plaintiff admits that the plaintiffs' claims is based on a denial of loan by Stanbic Bank Tanzania Limited due to adverse findings at the Credit Info search and the information found at the 3rd defendant and since the information received from the 3rd defendant seems to be incorrect in the eyes of the plaintiff, it is the duty of the 3rd defendant to amplify on the correctness and incorrectness of such information and therefore the plaintiff has a cause of action against her more so because the 3rd defendant had a duty to ensure that such information is correct and are from reliable sources.

While agreeing that jurisdiction is a key for any court to determine any matter brought to it, he was quick to add that this court has jurisdiction. His contention was that measures prescribed by GN No 416 of 2012 are specifically and only for rectification of the information supplied, and do not provide for damages or loss suffered by a party the centers of the plaintiff's claim in this matter. And further that a plea for rectification was made as pleaded under 22 of the plaint without a response and that since the plaintiff suffered damages and the same is not catered for by the regulations, it is only this court which is a resort. He was of the view that the cases cited, that is Civil Case No 153 of 2022 **Riziki Mwitw Kiondo** and Civil case No 8 of 2023 **Abella Stanislaus Assey** are distinguishable on the bases that while the two cases discuss the financial Consumer Protection Regulation GN 884 of 2019 providing for an award of damages and compensation where financial information by a party is disclosed contrary to what is provided for in GN No 416 of 2012 while law at issue in the **Tanga Cement V Fair Competition** case provides a forum for both a complaint and compensation. He urged the court to overrule the objections with costs.

Mr. Iddrissa Juma rejoinder is a reiteration of his submissions in chief. While Mr. Tonny was of the submissions that the credit bureau's power to access the credit information are limited until and unless so requested by the borrower.

I have considered the submissions by the respective parties. Definitely, I need not any authority to elucidate the settled principle that the question of jurisdiction of any Court is basic as it goes to the very root of the authority of the court to adjudicate upon cases of different nature. It is also true as submitted by Mr. Iddrissa's that where a particular law

provides for a specific forum to deal with a certain dispute, a resort to it first is imperative before one seeks recourse to the court.

The plaintiff claim is comprehensive and paragraph 14 to 22 of the plaint are specific to the point that:-

14. On 22nd May 2023, in compliance with the terms of the notice of termination, the Plaintiff started repaying the loan and has not defaulted to repay any single installment to date.

15. On 12th June 2023, the Plaintiff applied for a Tanzania Shillings Five Hundred million (TZS 500,000.000.00) home loan facility at Stanbic Bank Tanzania Limited. However, to the Plaintiff's dismay, Stanbic Bank Tanzania Limited refrained to approve the loan at the instance of adverse findings at Creditinfo search. A copy of letter from Stanbic Bank Tanzania Limited is annexed and marked Annexure NAB-3 to form part of this Plaint.

16. On 17th August 2023 the Plaintiff was availed her credit information from the credit information bureau, the Third Defendant. Upon being availed with the consumer report, it was revealed that the Plaintiff is reported to be in default of repayment of the home loan accessed from the First Defendant from April 2023 to June 2023 and a loan accessed from the Second Defendant .A copy of the Creditinfo consumer report is annexed and marked Annexure NAB-4 to form part of this Plaint.

17. That, while by virtue of the mutual separation and the debt acknowledgment form, the Plaintiff was to commence repayment the loan to the First Defendant on 31st May 2023, the loan accessed from the Second Defendant was fully cleared following a takeover by NIC Bank Tanzania Limited.

18. That, in terms of the mutual separation agreement between the Plaintiff and the First Defendant, the First Defendant had no justification whatsoever to designate the

Plaintiff as a delinquent and defaulter for the month of April 2023, May 2023 and June 2023. The First Defendant had a duty to update and furnish correct information with the credit reference bureau, in particular, the Third Defendant.

19. That, having accepted a takeover of the Plaintiff's outstanding loan of TZS 70,420,962.89 by NIC Bank Tanzania Limited and there being no pending unpaid credit liabilities the Second Defendant had a duty to update credit information regarding the Plaintiff such information to the Third Defendant.

20. That, it was by adverse and incorrect credit information retained by the Third Defendant, Stanbic Bank Tanzania Limited was not in a position to consider granting approval of the Plaintiff's application for a home loan facility dated 12th June 2023.

21. The Defendants' negligently acts and omissions of updating, retaining and supplying inaccurate, incorrect, wrong and outdated credit information regarding the Plaintiff, denied the Plaintiff an opportunity to utilize the home loan facility from Stanbic Bank Tanzania Limited.

22. That, despite follow ups and a plea for rectification of information, the Plaintiff was on 29th September 2023 served with a demand letter from the First Defendant on allegations of default to repay the loan. However, the said demand letter did not in any way consider the terms and conditions enshrined in the notice of mutual separation, debt acknowledgment form, Certificate of Clearance and the Plaintiff's commencement of repayment from 22nd May 2023.

The above claim is denied by the defendants.

Boldly, the dispute between the parties stems from negligent sharing and storing of incorrect credit information by the defendants. As agreed,

Regulation 29 of GN No 416 of 2012 provides for a mechanism on which the information in the credit info can be challenged. The regulations read:

29. (1) A credit reference bureau shall inform the data subjects of their right to challenge the information maintained in the credit reference system at the time the data subject requests a copy of their credit report.

(2) Where a data subject believes that credit information maintained in the credit information system is inaccurate, erroneous or outdated, the data subject may notify the credit reference bureau of the disputed information.

(3) Where a credit reference bureau is challenged of issuing credit report containing inaccurate, erroneous or outdated information, it shall –

(a) within two working days from date of receipt of the challenge, endorse the disputed credit report with a note on specific items which are subject to dispute, until such time when the dispute is resolved;

(b) within fifteen working days from date of receipt of the challenge, investigate and correct the disputed credit information where the dispute emanates from the credit reference bureau;

(c) within two working days, inform the data provider about the findings of the investigation, where the investigation findings reveal that disputed credit information emanates from the data provider;

(d) notify the data subject of the outcome of the disputed credit information.

(4) A data subject whose disputed credit information has been corrected shall be provided with a correct credit report free of charge.

(5) Where the data provider maintains that the disputed information is accurate and the data subject maintains that disputed information is inaccurate, the data subject may appeal to the Bank.

6) Where the investigation proves that the disputed information is correct, the credit reference bureau may charge the data subject for costs incurred in conducting the investigation."

The provision above is self-explanatory. Inaccurate, erroneous or outdated information in the credit information system is to be challenged by a notice to the credit reference bureau. The Credit Reference Bureau endorses the disputed credit report, investigates and corrects the disputed credit information and notifies the data provider and the customer of the findings of the investigation. All these are done within the specified time. Any discontentment is remedied through an appeal to the Bank of Tanzania under regulation 29 (5) the same GN.

Since it is agreed that the plaintiff's claim is based on negligent retention and supply of incorrect credit information. Then, this is the procedure which the plaintiff ought to have followed before resorting to court. Mr. Lutejas argues that the plaintiff took the said root without response. And that, the procedure stipulate under GN No 416 of 2012 are specifically

for rectification of the information supplied and not for damages or losses suffered by a party which is the essence of the plaintiffs claim in this suit.

I have considered the two arguments, firstly, inaction by the Bank or even the credit reference bureau would not under the circumstances justified the filing of this suit. The remedy available is an appeal to the Bank of Tanzania under Regulation 29 (5) of the same GN and nothing was pleaded in the plaint showing compliance of that procedure. It is common knowledge that complaints resolution mechanisms in banking business are not ornamental. They are purposely set to integrate and coordinate interests of the parties/ stakeholders in the banking industry, safeguarding the smooth operation of the banking business built on confidence and trust that the consumers places on banking institutions and above all to maintain safety, stability and reliability of the banking sector. Thus, a need to have them exhausted. I am on this supported by the decision in **Salimu Kabora V TANESCO Limited and 2 others(supra)** where it was held 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..."

The plaintiffs' counsel arguments that procedures set do not cater for damages through attractive, is also without any basis. As I understand the plaint, the claim for damages is not at all a standalone claim. It is only facilitated by an affirmative finding on the key issue of negligence in sharing and storing incorrect information in the credit bureau. So to have the damages claim properly adjudicated, the plaintiff was duty bound to

first exhaust the stipulated procedures set by the law. Fortunately, this is not a virgin area. In **Tanzania Revenue Authority V Tango Transport Company Ltd.** Civil Appeal No 84 of 2009,(**Unreported**) a similar issue was raised before the Court of Appeal. The plaintiffs argument in that case was that the plaintiff's claim was for damages arising out of the unlawfully issuance of a warrant of distress, a hoax document, by T.R.A. which occasioned loss of use of the respondent's distrained vehicles and that the suit could also not have been determined under the Income Tax Act as it had no provisions granting the respondent a right to damages. In sustaining the objection, the Court of Appeal held:

*"In our respectful view, the primary case spelt out by the substance of the pleadings was fundamentally a tax dispute founded on the warrant of distress, an instrument or order issued under section 109(1) of the Income Tax Act and The Income Tax (Distraint) Rules, 1975 to recover a tax liability from the respondent by means of distress levied upon a warrant. **The allegation of or claim for damages in the respondent's amended plaint was only attendant. It was, to say the least, fully dependent on a prior determination of the respondent's correct taxable income, assessment and liability for the periods 1989, 1996 and 1997, including T.R.A's entitlement to the collection of and recovery of any due and unpaid tax by distress upon the respondent's goods or chattels under section 109(1) of the Income Tax Act and the Income Tax (Distraint) Rules, 1975...**"(emphasis added)*

Equally, the plaintiff's damages claim in this matter is only dependant on a prior determination of whether the defendants acted negligently in sharing and retaining inaccurate credit info relating to the plaintiff's credit.

It goes without saying therefore that this matter is prematurely filed in court. The plaintiff ought to have exhausted all the remedies prescribed in GN No 416 of 2012 before coming to court. The preliminary objection by the 1st defendant is thus sustained. The consequential order herein is to strike out the suit and since the first preliminary objection has disposed of the matter, I find no need to determine the preliminary objection by the 3rd defendant.

The suit is thus struck out with costs.

DATED at ES SALAAM this 10th Day of May 2024.


E.Y. MKWIZU

JUDGE

10/ 5/2024

