

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

**AT DAR ES SALAAM**

**CIVIL CASE NO. 152 OF 2023**

**JOEFF GROUP TANZANIA LIMITED ..... PLAINTIFF**

**VERSUS**

**AFRICAN BANKING CORPORATION**

**TANZANIA LIMITED ..... DEFENDANT**

Date of Last Order: 10.05.2024

Date of Judgement: 22.05.2024

**JUDGEMENT**

**MAGOIGA, J.**

The plaintiff, **JOEFF GROUP TANZANIA LIMITED** instituted the instant suit against the abovenamed defendant praying for judgement and decree in the following orders, namely: -

- a. Immediate payment of Tshs.30,587,778.28 to the plaintiff;
- b. Payment of Tshs.4,819,743,750/- to the plaintiff being loss stated in paragraph 11.2, 11.3 (i), (ii), (iii);
- c. Payment of USD.100,000/- to the plaintiff being loss as stated in paragraph 3 and 11.4 herein above;
- d. Interest of 23% on (a) and (b), and 10% on (c) above from due date to the date of filing this suit;
- e. Interest of 8% on (a), (b) and (c) above from the date of filing this suit to the date of judgement;



- f. Interest at the court rate of 7% on (a) above from the date of judgement to the date of payment in full;
- g. Payment of Tshs.250,000,000/- being general damages;
- h. Costs of this suit;
- i. Any other relief (s) this honourable court may deem fit.

Upon being served with the plaint, the defendant filed written statement of defence disputing the plaintiff's claims and prayed the dismissal of this suit with costs.

The facts pertaining to this suit as gathered from the pleadings are not complicated. The plaintiff and defendant have customer and banker relationship since 2012 to date, in which the plaintiff operates two accounts with the defendant bank: one, for Tanzania shillings and the second, for United State Dollars.

Facts went on that, in between 2013 to 2016 the plaintiff whose main objective is transportation, had business dealing with STRABAG INTERNATIONAL GMBTT of Dar es Salaam for transportation of its building materials. In the course, the plaintiff would raise invoices for payment for work done. On 02/01/2014, the plaintiff raised and served invoice No.101 for Tshs.30,587,778.28 for payment to STRABAG. STRABAG then instructed its banker, CRDB Bank to pay the amount in the invoice to the plaintiff by swift transfer whose accounts are with defendant



bank. However, the money was as per the instructions credited into the account No. 1352605512 in the name of JEOFF GROUP instead of JEOFF GROUP TANZANIA LIMITED.

Facts went on that in 2016 when parties reconciled their accounts, the plaintiff alleged to have not been paid of the amount in dispute but STRABAG insisted to have paid the money, and it was by then, discovered that the amount was deposited into the account of another company.

Against the above backdrop, the plaintiff initiated a legal wrangle in court with the defendant in 2018 but was met with huddles till when he successfully instituted the instant suit, hence, this judgement after hearing both parties.

At all material time, the plaintiff was enjoying the legal services of Messrs. Nafikile Mwamboma and Michael Mihayo, learned advocates; whereas the defendant was enjoying the legal services of Mr. Alex Mianga, learned advocate.

Before hearing commenced in consultation with parties' learned advocates, the following issues were agreed and recorded for the determination of this suit, namely: -

- 1. Whether the defendant was negligent in handling payment transaction relating to the payment of invoice No. 101 with an amount of Tshs.30,587,778.28?;*



*2. Whether the defendant acted fraudulently in handling the transaction relating to payment of invoice No. 101 with the amount of Tshs.30,587,778.28?*

*3. If issue number 1 or/and 2 are answered in the affirmative, whether the plaintiff suffered loss of business and to what tune?*

*4. To what reliefs are parties entitled?*

The plaintiff paraded three witnesses. The first witness was **Mr. JOSEPH EDWARD MISANA** (to be referred as "**PW1**") and tendered **15 exhibits**. The second witness was **Mr. EDWARD MAGAYANE** (to be referred as "**PW2**") and the third witness was **Ms. NAOMI VICTORIA ZAYUMBA** (to be referred as "**PW3**").

PW1 under oath told the court the he is the director and sole signatory of the accounts of the plaintiff within the defendant's bank. PW1 went on that, the plaintiff transported building materials for STRABAG INTERNATIONAL GMBTT in its Mombo project between 2013 to 2016. It was the testimony of PW1 that, in that project, the agreement was that they transport their building materials from Tanga and raise an invoice for payment for every job done. According to PW1, invoice No.101 dated 02/01/2014 was for Tshs.30,587,778,28 and was received by STRABAG on 03/01/2014.



PW1 went on telling the court that in 2016 after completion of the works, and in the course of reconciling the accounts, PW1 realized that invoice NO.101 was not paid for and contacted STRABAG who resisted that they paid it, among others. In the circumstances, PW1 decided to go to defendant office where he was told that, indeed, invoice No. 101 of that amount was paid into the account of JEOFF GROUP. The invoice No. 101 and the instructions of STRABAG to CRDB Bank to pay were admitted in evidence as **exhibits P14-22** and **P9r** respectively.

PW1 further testimony was that while in the bank, no cooperation was given to him and eventually decided to open a case against the defendant at Dar es Salaam Resident Magistrates' Courts. PW1 told the court that he won the case but her victory was turned down by the High Court for want of jurisdiction.

PW1 went on telling the court that, in the course trial of the case at the Resident Magistrates' court of Dar es Salaam, when the defendant was defending herself tendered in evidence documents which showed that, the defendant negligently and without proper verification from BRELA opened the account within her bank in the name of JEOFF GROUP-company on its face value is fake but has a name resembling to that of his. PW1 also realized that it was that account which the money in dispute was credited into out of negligence of the defendant. In this, PW1



tendered in evidence **exhibit P9** which in essence PW1, pointed that the account holder used certificate of incorporation number of another company, fake TIN number, expired business licence, fake office agreement, some important information not filed in the Business Banking Accounting Application form. In the totality of the pointed defects in the information, PW1 told the court that still the defendant opened the account on the same day (i.e., 13/01/2013) an exhibition of negligent of the highest order.

PW1 told the court that as result of these, other jobs that were given by STRABAG were terminated and as result suffered loss of business to the tune of TShs.4,819,743,750. PW1 tendered in evidence letter of termination of services as **exhibit P10a**.

In the circumstances, PW1 claimed the amount as in the plaint with interests and costs of this suit.

Next witness for plaintiff was **Mr. EDWARD MAGAYANE**. PW2 under oath told the court that he works with BRELA and when shown **exhibit P7a and P9k** told the court that all are fake because every company must end with the word '**LIMITED**'. PW2 also recognizes **exhibit P8** which was request by the plaintiff of the status of JEOFF GROUP and their reply which was that in their company register no such company exists.



Next and last witness for the plaintiff was **Ms. NAOMI VICTORIA ZAYUMBA**. Under oath PW3 told the court she works with NSSF and that have both individual tenants and business tenants. PW3 when shown **exhibit P9e**- a contract that was used to open account of JEOFF GROUP denied to recognize it as of NSSF because all their tenants' contracts are in template and are signed by Director General. This marked the end of the plaintiff's case.

On the other side, **Mr. AMBROCE MWOLO** (to be referred as ("**DW1**") was a sole witness for the defence case. Under oath, DW1 told the court that he works with the defendant bank as Assistant Manager-operations, among others, with duties to make sure all payments are done according to instructions. DW1 told the court that JEOFF GROUP was their client and she opened the account in 2013. The process of opening account, DW1 told the court that were followed and identified **exhibit P9** as the documents used to open the account and prayed that the same form part and parcel of the defence case. As to verification, DW1 told the court that by then verification was to done manually at BRELA, which procedure could take a month or more. As to JEOFF GROUP, DW1 told the court that they applied for verification but no response from BRELA were received back to date.



As to the transaction in dispute, DW1 told the court that they paid the same in accordance to the instructions given by CRDB Bank to pay JEOFF GROUP as exhibited in **exhibit P9r**.

DW1 totally denied any negligence on the part of the defendant but admitted that, there were typing errors in the documents which were overlooked but with no bad motive/intention. DW1 threw the problem to STRABAG and CRDB Bank for the defendant acted in accordance to their instructions and no more. Eventually, DW1 prayed that this suit be dismissed with costs.

At the end of hearing of this suit, the learned advocates for parties prayed to file their respective closing submissions. I granted the prayer. I have had an opportunity to read their submissions and commend them for their input on this suit. In the course of answering the framed issues, I will here and there refer to them, but where I will not, it suffices to say here that, are well noted and considered.

At this point, therefore, I find it pertinent to discuss the framed issues against the evidence on record. While doing this taking noble job, it should be noted that I will be guided by the cardinal principal that, **'he who alleges must prove'**, and in this civil suit, the proof is on balance of probability. This is in line with the Court of Appeal guidance in the case of **Paulina Samson Ndawavya vs Theresia Thomasi Madaha (Civil**





**Appeal 45 of 2017) [2019] TZCA 453 (11 December 2019),** the Court of Appeal of Tanzania at Mwanza held at page 14 that; -

*"It is trite law and indeed elementary that he who alleges has a burden of proof as per **section 110 of the Evidence Act, Cap. 6 [R.E 2002].** It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved".*

Having heard evidence of both sides, I have as well noted that there are some facts which are not at issue between parties and will assist this court to arrive at just decision. These are; **One**, there is no dispute that within the defendant bank, there were two distinct legal persons with names JEOFF GROUP TANZANIA LIMITED and JEOFF GROUP operating two accounts within the defendant's bank. **Two**, there is no dispute that the amount in dispute was credited into the account No.1352605512 in the name of JEOFF GROUP. **Three**, there is no dispute that invoice No.101 was raised by the plaintiff and served on 03 Jan, 2014 to STRABAG for payment.

Now back to the instant suit, the first issue was couched that "**whether the defendant was negligent in handling payment transaction relating to payment of invoice No. 101 with an amount of**



**Tshs.30,587,778,778.28?"** Having dispassionately considered this issue alongside the evidence on record, in particular, the contents of **exhibit P9r**, I find this issue must be answered in the negative. I will explain. **One**, upon reading the contents of **exhibit P9r** which is the source of all this dispute, I noted that the amount in dispute was not only directed to be paid to JEOFF GROUP but even the account number of the beneficiary was written account No. 1352605512 which number is not the account number of JEOFF GROUP TANZANIA LIMITED. **Two**, where did STRABAG got the account number of JEOFF GROUP as initiator of payments and inserted exactly the number of the account and name different from that of the plaintiff, this court was not told and it remains unanswered. **Three**, it is unfortunate that, in this case without STRABAG who is necessary party which was issuer of instructions to CRDB Bank to pay to the account indicated in exhibit P9r, no way one can say safely that the plaintiff was negligent in handling the transaction because the defendant was obliged to pay in accordance to the instructions of the message input in the swift transfer. **Four**, PW1 testimony involved much on opening of the account in dispute but forgotten to remember that no evidence was led to establish that this account was solely opened to achieve this transaction. In the absence of such evidence, I am constrained to find and hold that despite the defects noted but are far

remote to the way the transaction was handled by the defendant. **Five**, the contents of exhibit P9r indicated that STRABAG with all intents intended to pay JEOFF GROUP in account No.1352605512 and STRABAG as such was necessary party in this suit. Why was she not joined this suit the court was not told. **Six**, the argument by the plaintiff that the plaintiff was negligent in handling the transaction, in my considered opinion, sound good but do not connect the defendant in anyway in handling the instructions because the defendant paid as instructed by the other CRDB Bank after getting swift message which was created by STRABAG.

In the foregoing, issue number one must be and is hereby answered in the negative that the plaintiff was not negligent in handling the transaction in dispute.

This takes me to the second issue which was couched that "*whether the defendant acted fraudulently in handling the transaction relating to payment of invoice No.101 with the amount of Tshs.30,587,778.28?*" This issue will no detain this court much because no fraudulent evidence was tendered and for the reasons stated in answering issue number one, this issue has to be equally answered in the negative.

Much as the third issue depended much on answering the first or/and second issue in the affirmative, which is not the case here, I hereby find it being redundant in the circumstances of this case.

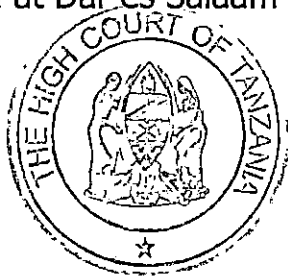


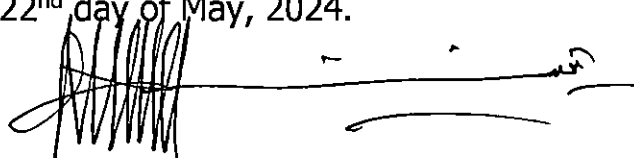
The last issue was couched that "*what reliefs are parties entitled?*" Given my finding in issue number two above, the plaintiff claims stand to fail. In the circumstances, I hereby proceed to dismiss this suit with costs.

The plaintiff, if wishes, can pursue his rights against the STRABAG.

It is so ordered.

Dated at Dar es Salaam this 22<sup>nd</sup> day of May, 2024.

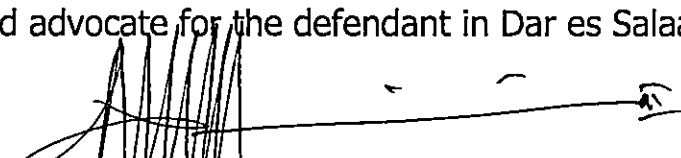


  
**S.M. MAGOIGA**  
**JUDGE**  
**22/05/2024**

**Court:** Judgement delivered today in chambers in the presence of Mr.

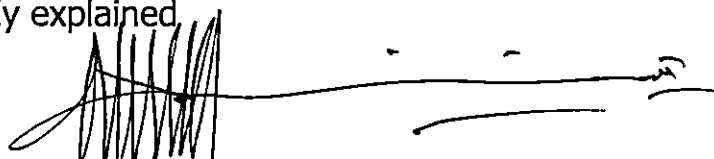
MR. NAKHE TWAMBOMA learned advocate for the plaintiff and Mr. MR. Alex MUGA learned advocate for the defendant in Dar es Salaam.



  
**S.M. MAGOIGA**  
**JUDGE**  
**22/05/2024**

**Court:** Right of Appeal fully explained



  
**S.M. MAGOIGA**  
**JUDGE**  
**22/05/2024**