

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM SUB-REGISTRY)  
AT DAR ES SALAAM  
CIVIL APPEAL NO. 48 OF 2023**

*(Appeal originating from the decision of District Court of Kinondini, Civil Case No. 143 of  
2021 delivered on 16<sup>th</sup> January 2023 by E. Rwehumbiza-PRM)*

**JEFFERSON PHILIBERT BAYEKELA** (Administrator of Estate of the late  
**PHILBERT SWEETBERT BAYEKELA**)..... **APPELLANT**

**VERSUS**

**HALIFAN MUSSA KAYUMBO** ..... **1<sup>ST</sup> RESPONDENT**

**TEMBO SIGN LIMITED** ..... **2<sup>nd</sup> RESPONDENT**

**ICEA LION GENERAL INSURANCE CO (T) LTD** ..... **3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

*7<sup>th</sup> December, 2023 & 29<sup>th</sup> February, 2024*

**MWANGA, J.**

The appellant, **JEFFERSON PHILBERT BAYEKELA**, Administrator of the Estate of the late **FILBERT SWEETBAERT BAYAEKELA** invited this court to be heard on one ground of appeal. That, the trial magistrate erred in law

to hold that a district court has no pecuniary jurisdiction to entertain the case on that the amount claimed is below TZS 40,000,000/=.

The appeal draws its source from the ruling of the District Court of Kinondoni dated 16<sup>th</sup> January, 2023 where the court upheld the preliminary objection and consequently dismissed the suit with costs against the respondents stating that the court has no jurisdiction to hear and determine the matter and should be referred to the ombudsman because the claimed amount is below forty million Tanzanian shillings (TZS 40,000,000/=). The trial court relied on the provision of Section 123 of the Insurance Act, Cap. 10 read together with Regulation 6 (a-c) and 6(2) of the Insurance Ombudsman Regulations G.N No. 411 of 2013. The trial court also relied on several decisions of this court **in Farida Saggin Lukoma Vs Fadhili Kalemba & Another**, Civil Appeal No. 146 of 2017; **Tambueni Abdallah & 89 Others Vs National Social Security Fund**, Civil Appeal No. 33 of 2000, **Edna Williams Sitta Vs Erling Ericksen & 2 others**, Civil Appeal No. 114 of 2008 and **Ally Hamisi Hatibu Vs Premier Betting Entertainment Africa Ltd**, Civil Case No. 201 Of 2017, to mention the few.

During the hearing, the appellant was represented by Mr. Benedict Bahati Bagiliye and the respondent enjoyed the service of Julius Manjeka. The appeal was argued by way of written submissions.

In his submission, the counsel for the appellant raised four points. **One** is that the establishment of the Ombudsman was never meant to exclude the court of law from hearing and determination of the insurance dispute claims but rather established to work concurrently. **Two**, the ombudsman does not allow the parties to be represented by the learned counsel. **Three**, the ombudsman has no mandate to deal with human injuries and death-funeral expenses as they are not specific damages. **Fourth**, the case of **Farida Saggin Lukoma Vs Fadhili Kalemba & Another(supra)**, is distinguishable in the sense that the suit was not about insurance claims but rather a tort, and it was decided erroneously.

Mr. Manjeka, on the other hand, arguably raised several concerns. **One** is that this court's legal position has always been that the insurance ombudsman must first be exhausted before recourse is had to the judicial process. He supported his argument with the case of **Parin A.A. Jaffer and Another Versus Abdulrasul Ahmed Jaffer and two others** [1996] TLR110. **Two**, that, the use of the word "may" in the provision of

section 123 of the Insurance Act, does not necessarily mean that the provision is not couched in mandatory terms. This argument is also supported by the counsel in the case of **Heritage Insurance Company Limited Vs Abihood Michael Mjokawa(supra)**. **Three**, that, the non-involvement of the advocate in the ombudsman is designed merely to reduce the cost of the proceedings and ensure adequate compensation to the injured party but does not by any stretch of the imagination vitiate its exclusive jurisdiction in insurance claims for the value of Tshs. 40,000,000/=. **Fourth**, the claim of the appellant that the ombudsman does not remedy death injuries is misconceived. To add to this, the counsel referred to Guidelines on Minimum Benefit Structure For motor third party bodily injury and death claims Version No. 1.0 of May, 2022 on which pages 10, 11, and 12 outlined the benefits provided for death claims.

In rejoinder, Mr. Benedict argued that regulation 16(4) of the Insurance Ombudsman Regulations, 2003 GN 411 of 2013 speaks of instituting the legal proceedings and not filing a reference in the High Court. He added that the reference made to the guidelines by the fellow counsel is not correct because the parent Act and regulations have pointed out that the ombudsman has no mandate to determine issues on human

injuries and death. Hence guidelines can't supersede the laws, and if it is so enacted it is a nullity.

I have gone through the submissions of the learned counsels at length and found out that; as rightly submitted by the counsel Mr. Manjeka, the appeal is not meritorious. Persistently, the justices of the High Court have held that insurance claims below forty million Tanzanian shillings shall be filed to the Insurance Ombudsman. See the authorities in; **Heritage Insurance Company Limited Vs Abihood Michael Mnjokava**, Civil Appeal No. 146 of 2017 **Multichoice Tanzania Limited Vs Maimuna K. Kiganza**, Civil Appeal No. 166 of 2020, and **Ministry of Health, Community Development Gender Elderly and Children and Another Vs Elirehema Elias Munuo & 2 Others**, Civil Case No. 113 of 2021. The purview of such decisions was reached in the course of interpreting Section 123 of the Insurance Act, Cap. 10 read together with Regulation 6 (a-c) and 6(2) of the Insurance Ombudsman Regulations G.N No. 411 of 2013. It was reiterated that in the context in which the word "may" is used in Section 123 of the said Act as opposed to the word "Shall" has the meaning ascribed to it as mandatory as opposed to discretionary; as the use of the word "Shall" in some instances, may not necessarily

mean that the provision in question is mandatory. See, **Goodluck Kyando Vs Republic [2006] TLR 363.**

In the present appeal, the undisputed specific insurance claim against the appellant is Tanzania Shillings of Nine million shillings only (Tshs. 9,000,000/=) which is below the pecuniary bar of Tanzanian shillings of forty million. As rightly submitted by Mr. Manjeka learned counsel the legal position has always been that where there is an extrajudicial forum for resolving particular disputes, reference of disputes to such forums is mandatory even when the respective law employs the use of the word "may" as opposed to "shall". See the case of **Parin A.A. Jaffer and Another Versus Abdulrasul Ahmed Jaffer and two others [1996] TLR110** and **Ministry of Health, Community Development Gender, Elderly and Children and Another Vs Elirehema Elias Munuo & 2 Others** (supra).

Because of the above, Mr, Benedict learned counsel has not made his case based on the position of the law. Indeed, the establishment of the Ombudsman was never meant to exclude the court of law from hearing and determination of the insurance dispute claims. However, the Ombudsman was not meant to work concurrently with the courts of law in

insurance claims with a pecuniary value of 40,000,000/=. Again, an ombudsman is a form of quasi-judicial body. It does not involve lengthy and complex procedures, and it is free from technicalities. Most importantly, it is aimed at reducing the mass workload of the judiciary and it is low costs. In view of that, the involvement of the advocate in the proceedings defeats the purpose of establishing such a tribunal. Moreover, **the argument that** the ombudsman has no mandate to deal with human injuries and death-funeral expenses as they are not specific damages does not hold water. For the avoidance of doubt, the Guidelines on Insurance Claims Management Version No. 1.0 September, 2022 provides for the remedies for bodily injuries and death. The argument that, the guidelines conflict with the Insurance Act and Regulations is without any merits. Therefore, it remains the fact and legal position that, with the appellant's claimed amount, the Ombudsman was the proper forum before approaching the judicial process. Last but not least, the argument that the decision in the case of **Farida Saggin Lukoma Vs Fadhili Kalemba & Another(supra)** was reached erroneously is implausible. No decision of the apex court that was submitted to substantiate such claims, hence it is unworthy calling it erroneously made.

It is, therefore, clear and apparent that, the appeal is liable to be dismissed with costs, as I hereby do. I further add that if the appellant still finds it appetizing to pursue his claims, he can still refer it to the Ombudsman tribunal according to law.

Order accordingly.



**H. R. MWANGA**

**JUDGE**

**29/02/2024**