

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO.75 OF 2008

ST. BERNARD'S HOSPITAL CO. LTD.....PLAINTIFF

VERSUS

CRDB BANK LTD.....DEFENDANT

Date of last order: 11/10/2010

Date of final submissions: 29/10/2010

Date of judgment: 20/12/2010

JUDGMENT

MAKARAMBA, J.:

The Plaintiff filed the suit in this Court on the 25th day of November 2008 claiming against the Defendant for damages arising out of breach of contract of banking and specific performance by the Defendant to further the already existing banker-customer relationship.

The Plaintiff claim that as a customer of the Defendant's Bank, opened and maintained three bank accounts at Vijana Branch, namely, Account Numbers **0IJ1005020000**, **0IJ1004992700** and **0IJ1005130200**. The Plaintiff claim further that in the year 2004 the Plaintiff did issue instructions to the Defendant to remove one signatory and replace another signatory by way of company resolution. The Plaintiff claims further that the Defendant after receiving the instructions replied

that the removed signatory was not the signatory in terms of the decision of the Board Resolution of the Plaintiff's company. Thereafter, the Plaintiff further claims, the Defendant did institute an interpleader suit **Commercial Case No.101 of 2005** to determine who was the right person to operate the accounts which suit however, was dismissed with costs.

The Plaintiff claims further that the Defendant at all material time from the year 2004, has refused to allow operation of the said accounts by way of deposits and withdrawals, and has refused to issue cheque books as a result of which the accounts have remained dormant.

The Plaintiff claims further that the Plaintiff did obtain a loan from the Defendant which was secured by a debenture instrument and a title deed of a mortgaged property, which loan has been fully repaid by the year 2005 before the changes of signatories were made. The Plaintiff claims that till the filing of this suit, the Defendant has refused to discharge the debenture together with the title deed of a mortgaged property. The Plaintiff claims that the Defendant's refusal to discharge the mortgaged property and the debenture in question has created hardship on the Plaintiff's company which has failed to apply loans without securities from other financial institutions. The Plaintiff claims that the act of the Defendant to freeze the said accounts has caused untold consequences since the Plaintiff's Company cannot get access to make deposits and withdrawals in the said accounts.

In this suit, the Plaintiff has prayed for judgment and decree against the Defendant for the following:-

- 1. Payment of general damages to be assessed by this court arising out of contract of banking resulting into loss suffered by the Plaintiff as prayed for in the plaint.*
- 2. An order compelling the Defendants to discharge and hand over certificate of title No.43577 of Plot. No.34, Block 68-UDOE Street Kariakoo which was mortgaged to the bank and discharge the debenture instrument thereof.*
- 3. An order for specific performance by the Defendant to maintain contract of banking with the Plaintiff under normal circumstances applied and applicable to all bank customers.*
- 4. An order for payment of costs of the suit by the Defendant.*
- 5. Any other relief this Honourable Court may deem fit and equitable to grant.*

The Defendant denied causing any breach of contract with the Plaintiff. The Defendant also denied that there was no any valid resolution by the Plaintiff in accordance with the Plaintiff's Articles of Association capable of being complained with by the Defendant.

In this suit the Plaintiff was represented by Mr. Ngudungi, learned Counsel. The Defendant was represented by Mr. Mwandambo learned Counsel.

On the date the matter came for first hearing the parties framed the following issues which were accordingly recorded by this Court for resolving the suit, namely:

- i. Whether the resolution to change signatories to the Plaintiff's bank accounts/constituted a valid and/or proper mandate to the Defendant.*

- ii. If the answer to the first issue is in negative whether the said resolution/mandate was capable of being acted upon by the Defendant.*
- iii. Whether the refusal by the Defendant to act on the disputed Board Resolution constituted a breach of banker-customer relationship.*
- iv. Whether the Defendant has withheld any security after the liquidation of a loan by the Plaintiff and if so, whether the Plaintiff's business has been thereby subjected to any hardships.*
- v. Whether the Plaintiff has suffered any loss and damages if so whether the Defendant is liable for damages.*
- vi. To what reliefs are the parties entitled to.*

The Plaintiff brought **MR. SAMA AUGUSTINE MSOKA**, Secretary of the Plaintiff's Company who testified as **PW1** to support their case. The Defendant produced **M/s ADELAIDA BISHAGAZE** an employee of CRDB, Water Front Branch, Dar es Salaam who testified as **DW1**, to defend their case.

Testifying as **PW1**, Mr. SAMA AUGUSTINE MSOKA stated that he knew that ST. BERNAD'S HOSPITAL was formed as MEDHAB-SAWIA MEDHAB services and that in 1989 it was changed into S.P. Dispensary before changing into a full fledged hospital in 1993 under the ownership of three groups. PW1 testifying mentioned the groups as the first group which comprised of those who were responsible for the registration, the Apostolic Life Community of Price with its headquarters at Sabuka Sanya Juu. Further, that the second group was that of Doctors by the name of LINUS

MAEMBA CHUWA and PROF. LEMA RICHARD. Lastly, the group of businessman who were DAMAS STAHILI DANDI being the Chairman, PROF. TUMSIFU JONAS NKYA, PETER GALUBA NCHAU and SAMA AUGUSTINE MSOKA, all of them being directors. It was the further testimony of PW1 that on the 20th of August 1997, that is when it was converted into St. BERNAD'S HOSPITAL COMPANY LIMITED with seven shareholders holding equal share of ten shares (10) each. PW1 testified further that all of them therefore went in to the Limited Company and took over all the assets and liabilities of APOSTOLIC LIFE COMMUNITY OF PRICE (ALCP) and they appointed a Board of Directors which was a sole and final authority for everything related to the running of the business of the Company which was located at UDOE STREET KARIAKOO area providing medical health services as a fully registered hospital.

It was the further of PW1, that he also knew the CRDB Bank where they took loans from in two different batches, the first loan was of Tshs.120,000,000/= (One Hundred and twenty Millions) which they used to purchase the hospital premises, and the second loan was of Tshs.100,000,000/= (One Hundred Millions) which they used to finalize a six floors project. PW1 testified further that to secure the loan, they mortgaged the Plaintiff's property to the Bank and therefore the Certificate of Title of St. Bernad's Hospital was lodged to the Bank as collateral. PW1 testified further that the Plaintiff's company maintained three accounts, the first one **ALCP 049937**, the second **50200** and the third **51302**. PW1 testified further that the Board of Directors made changes on the signatories on 6th September 2004 and put the new one, whereby Dr.

LINUS CHUWA was removed while TUMSIFU NKYA, PETER MCHAU and DAMAS DANDI were brought in as new signatories. PW1 testified further that after those changes, the Bank refused to honour the Plaintiff's cheques.

In the course of his testimony, PW1 tendered in this Court the letter and the Board Resolution dated 6th September 2004 addressed to CRDB Bank at Vijana Branch from St. Bernard's Hospital showing new names of signatories which this Court admitted and marked collectively as **Exhibit P1A** (reflecting the Board Resolution) and **Exhibit P1B** (reflecting the signatory's changes.)

It was the further testimony of PW1 that the loan was already repaid in full to the Bank by the Plaintiff. PW1 testified further that according to the contractual terms and conditions of the contract, the loan was supposed to be liquidated by the Defendant on July 2007 but for other reasons actually not clearly stated to the Plaintiff, the loan was liquidated in May 2005. PW1 testified further that after the loan had been liquidated, he (PW1) did not have any access to the account and that for some unknown reasons all the three accounts have been frozen and also cheques were dishonored by the Bank without any explanation.

In the course of his testimony, PW1 tendered a set of two minutes held at Swiss Garden Hotel on 4th September 2004 which were admitted and marked collectively as **Exhibit P2A** (the Annual General Meeting of St. Bernard's Hospital Company Limited) and **Exhibit P2B** (the folio resolved in a meeting of the Directors.) PW1 testified further that the original copies of the minutes were also given to CRDB Bank and the

Registrar of Companies. PW1 testified that the minutes mainly talk about changes of signatories to be carried out by CRDB bank. PW1 testified further that after the Bank had been instructed on the changes of the signatories, the Bank decided to open a case against the Plaintiff to substantiate who exactly is the owner of the accounts, after the completion of which the ownership of the accounts was proved to be of the St. Bernad's Hospital Company Limited and there was no appeal filed. PW1 tendered in evidence a copy of the Judgment in ***Commercial Case No. 101 of 2005*** which was admitted as **Exhibit P3**.

It was the testimony of PW1 that the Company therefore dropped in level of excellence from being the top ten in Dar es Salaam and even lost all the Clients they had. PW1 testified further that Members of the company cannot make a living or even pay for the education of their children and have failed to effect further developments. PW1 testified further that the Company was not eligible for any loan due to the absence of the certificate of title and that the Company has also failed to get collaterals from other Banks and hence it has suspended plans for other facilities. It was the further testimony of PW1 that the loan was liquidated earlier than agreed without authority from the Board to do so.

In cross examination PW1 stated that he was the Secretary of the Plaintiff's Company and that the company was incorporated in 1997. PW1 testified in cross-examination that on 4th September 2004 they had two meetings, and in the first meeting the Directors met and discussed some issues and thereafter they gave the Secretary enough time to work on it. PW1 stated further that they convened the second Annual General Meeting

which resolved on getting the approval of people who had the power to carry out what was recommended at that meeting. PW1 stated further that therefore the second meeting had the powers to approve or not to approve what actually was discussed in the first meeting. PW1 stated further that they issued a 21-days notice for the meeting to the directors including Dr. Chuwa, which notice was duly delivered to Dr. Chuwa by signing on the dispatch book. PW1 testified further that he did not see the reason behind the Bank's refusal to hand back the collaterals. PW1 further stated that it is not the duty of the Bank to enquire into matters pertaining to how the Board's Resolution was reached. PW1 finally stated in cross-examination that the company operated illegally by not filling or rather producing annual accounts and filling annual return from the list of the companies.

In defending their case, the Defendant summoned M/s Adelaida Bishagaze who testified as DW1. Testifying, DW1 stated that she was working at CRDB, Water Front Branch since 2006 and that previously she was working at CRDB, Vijana Branch since 2004 as Acting Branch Manager till 2006. DW1 testified further that she knew St. Bernad's Hospital which had an account and also requested and advanced the loan from their branch. It was the further testimony of DW1 that there was a problem in running the accounts of the Plaintiff's company. DW1 testified that in 1995, 1997 and 1997 the Plaintiff opened several accounts in their branch but in 2004 the Plaintiff changed the management and the way to run the accounts. DW1 testified that the Plaintiff lodged at the branch several documents instructing the Bank to change the signatories. DW1 testified that however, one of the shareholders of the Plaintiff's company

complained over those changes that he was not told if he was no longer one of the signatories. DW1 testified that the letter for the changes of signatories was signed and addressed to CRDB on 6th September 2004. DW1 testified further that investigations were carried out by the Bank and discovered that there was no Board of Directors Resolutions which was produced to the Bank to change the signatories and that that was a mistake because instructions should be remitted by Directors instead of shareholders. DW1 testified further that Clause 31 of the Memorandum and Articles of Association provides about the powers and duties of the Directors. The Memorandum and Articles of Association of St. Bernad's Hospital Company Limited was tendered and marked as **Exhibit D1**.

DW1 testified further a dispute arose as to who was to operate the accounts. It was the further testimony of DW1 that under normal circumstances when they (Bank) make payments, they (Bank) look on the signatories as instructed by the Company and not otherwise. DW1 stated further that if they (Bank) could have been instructed by the Directors of the Company, they (Bank) could have acted upon it positively. The letter from St. Bernad's Hospital dated 14th September 2004 to CRDB Branch Manager Vijana was tendered and admitted as **Exhibit D2**.

DW1 testified further that after receiving the letter and discovering that there was no agreement among the Plaintiffs as to who should become the real signatory, the Bank decided to stop withdraws of cash until they (Bank) get mandate permitting them (Bank) to do so but they (Plaintiffs) were not stopped to deposit cash in the Bank. DW1 testified further that

the Defendant's bank was not informed if Dr. Chuwa had been removed from the Company.

In her testimony, DW1 conceded that St. Bernard's Hospital borrowed **Tshs.120,000,000/=** from the CRDB Bank and that the loan was already repaid in full through deposits and that the loan was secured by depositing the title deed and the debenture in the Bank. DW1 stated that after the loan had been repaid, the title deed was handed back to the Plaintiff. DW1 further testified that the title deed lodged by the Plaintiff was handed over to the Plaintiff in writing but she has forgotten to bring it to court as evidence. In her testimony DW1 denied that the Bank was in breach of the contract. DW1 conceded that the loan was liquidated nine months before the deadline by deducting on every deposits made by the Plaintiff as it was agreed. Further, that the loan can be paid even before the elapse of time depending on the arrangements made by the Bank and the client. DW1 stated that the said account is still with money till the filing of this suit.

DW1 testified that the Board resolution was signed by the Chairman and the Board Secretary of St. Bernard's Hospital Company Limited. DW1 stated that the one who signed the Board Resolution was the Directors but the letter attached to it was signed by shareholders and therefore it was contradictory to the Bank. DW1 stated further that the Directors of St. Bernad's Company Ltd. were DANDI, NKYA, MCHAU, MSOKA, LEMA, CHUWA and Representative of ALCP OSS. DW1 stated further that, he did not have any record in writing questioning about the discrepancy appearing in the letter from the Plaintiff. It was the further testimony of DW1 that primarily there were three signatories of the Plaintiff namely, DR. LEMA,

MR. MSOKA and MR. CHUWA. DW1 stated further that they (Bank) were informed by the Plaintiff that there was rearrangement that Dr. R.S.M. LEMA will no longer be a signatory of St. Bernard's Hospital's accounts instead there will be the signatory for M.H.S. GENERAL AND MATERNITY HOSPITAL and that DR. CHUA and MSOKA will be the only signatory of the hospital accounts. DW1 stated that formerly CRDB employees were being treated at St. Bernad's Hospital but later on they stopped for reasons which were beyond her control.

Both Counsel for the Plaintiff and Defendant by consent filed their final submissions on 29th October 2010.

I shall now turn to consider the issues as framed and recorded for resolving this suit.

The first issue is *whether the resolution to change signatories to the Plaintiff's bank accounts/constituted a valid and/or proper mandate to the Defendant.*

In his closing submissions the Plaintiff's Counsel submitted that **Exhibit P1B** which was tendered by PW1 being the Company's Board Resolution duly signed by the Board of Directors is a pre-requisite and important document for opening the accounts and effecting any changes to the operations of the said accounts. **Exhibit P1B** is the Plaintiff's Board Resolution instructing the Defendant's Bank over the changes of bank signatories regarding the Plaintiffs accounts with the Defendant. It was the further argument by the Plaintiff's Counsel that under **Exhibit P1A** the authorization by shareholders in lieu of directors does not hold water at all for the sole reason that the only authoritative document for a corporate

body was a Board Resolution and not a letter. The Plaintiff's Counsel argued further that had the Defendant doubted the genuineness of **Exhibit P1A** the Defendant was at liberty to ask for clarifications from the Plaintiff and not by way of freezing all the accounts and denying the Plaintiff's Company the right to make any withdrawals from the said accounts. The duty of the bank under banker-customer relationship is to honor and implement customer instructions like the one in **Exh.P1B**, the Plaintiff's Counsel further argued. It was the further submissions of the Plaintiff's Counsel that the names appearing in Section 29(b) of **Exhibit D1** as founder Directors are the same persons who are the only shareholders of the company having equal shares. The Defendant's argument that **Exhibit P1A** is a letter authorized by shareholders and not directors does not hold water since **Exhibit P2B** was also sent to the Defendant, the Plaintiff's Counsel further submitted.

In his final submissions the Defendant's Counsel submitted that the general rule is that it is the duty of a banker to act in accordance with the lawful requests or instructions of his customer's account and cited the case of **BANAX LTD VS. GOLD TRUST BANK LTD (1994)1 E.A 37** and Section 181 of the Companies Act, [Cap 212 R.E. 2002] to support his contention. The Defendant's Counsel submitted further that according to **Exhibit D1**, it is the Directors of the Company who had the power and capacity to communicate instructions to the Defendant in relation with the opened accounts. The Defendant's Counsel submitted further that although the Defendant received both **Exhibit P1A** and **Exhibit P1B** but the decision to suspend withdrawals from those accounts was necessitated by

a complaint from one of the Directors of the Company who was also a Hospital Director General. It is **Exhibit D2** which caused DW1 to change its position, the Defendant's Counsel further submitted. The Defendant after revisiting **Exhibit P1A**, **Exhibit P1B** and **Exhibit D1** discovered that there were irregularities on instructions which were contrary to the Memorandum of Association, the Defendant's Counsel further submitted and surmised that it could not therefore be safely said that there was a valid resolution for the change of signatories capable of being acted by the Defendant.

The evidence on record and the Counsel submissions point to the fact that the Defendant received **Exhibit P1A**, the letter, **Exhibit P1B**, the Board Resolution and is also aware of **Exhibit D1**, the Memorandum and Articles of Associations of the Plaintiff's Company from the Plaintiff. **Exhibit P1A** was signed by six shareholders namely, Mr. **DAMAS SITAILI DANDI**, Prof. **RICHARD SETHI MASANA LEMA**, Dr. **TUMSIFU JONAS NKYA**, Mr. **PETER LERUBA MCHAU**, Mr. **SAMMA AUGUSTINE MSOKA** and Rev. Fr. **GASPRE MTENGESSE**, the ALCP OSS representative who were also Directors as per Article 29(b) of the Articles of Association of the Plaintiff's company. Both **Exhibit P1A** and **Exhibit P12** were signed by the Chairman and Secretary of the Board of Directors. According to section 191(1) of the **Companies Act, [Cap.212 R.E. 2002]**, shareholders can also be the Directors of the Company. Thus as the Board Resolution was entered by the Board duly constituted by the Directors who are also shareholders of the Plaintiff's Company, then the

Board Resolution constituted a valid mandate to the Defendant to act upon the instructions.

The first issue whether the resolution to change signatories to the Plaintiff's bank accounts/constituted a valid and/or proper mandate to the Defendant is to be resolved in the affirmative.

I shall turn now to consider the second and third issues jointly. The second issue if the answer to the first issue is in negative whether the said resolution/mandate was capable of being acted upon by the Defendant. However, considering the determination by this Court of the first issue affirmatively, I shall go to consider the third issue whether the refusal by the Defendant to act on the disputed Board Resolution constituted a breach of banker-customer relationship.

In the course of the trial, DW1 testified that when the Bank makes payments, they (Bank) look at the signatories as instructed by the Company and not otherwise. DW1 stated also that if they (Bank) could have been instructed by the Directors of the Company, they (Bank) could have acted upon it positively. The testimony of DW1 is to the effect that the Bank decided to stop withdraws of cash until they get mandate permitting them to do so but they were not stopped to deposit cash in the bank. We gather from the testimony of DW1 that the Board's Resolution was signed by the Chairman and the Secretary of the Board of St. Bernard Hospital Company Limited. The one who signed the Board Resolution was the Director but the letter attached to the Resolution was signed by the shareholders and therefore according to DW1, it was contradictory to the Bank. We have heard DW1 telling this Court that the Directors of St.

Bernad's Hospital Company Ltd. were DAMAS DANDI, TUMSIFU NKYA, PETER MCHAU, SAMMA MSOKA, LEMA, LINUS CHUWA and ALCP OSS. In my view, St. Bernad's Hospital Company Limited was established by seven shareholders who were also its Directors. It is on record that the Board's Resolution was made by the Directors who were also the shareholders of the Plaintiff's Company. In terms of section 181 of the **Companies Act, [Cap.212 R.E. 2002]** among other things the directors of a company have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of a company.

As the shareholders mentioned in the letter, **Exhibit P1A**, who were also known by the Defendant as Directors, and even if that is not enough, then that letter was signed by the Chairman and Secretary of the Board of Directors of the Plaintiff's Company. In my considered view, the Defendant was capable of acting upon it and therefore the refusal by the Defendant's Bank to act on the disputed Board's Resolution constituted a breach of banker and customer relationship.

The third issue *whether the refusal by the Defendant to act on the disputed Board Resolution constituted a breach of banker-customer relationship is to be resolved affirmatively.*

The fourth issue is whether the Defendant has withheld any security after the liquidation of a loan by the Plaintiff and if so, whether the Plaintiff's business has been thereby subjected to any hardships.

In his final submissions the Plaintiff's Counsel submitted that PW1 testified that a Certificate of Title was pledged as security which fact also was admitted by DW1 but that the loan Certificate of Title was returned to

the Plaintiff's Company without any record and that the Defendant never pleaded that the Certificate of Title in question was returned to the Plaintiff's company.

The Defendant's Counsel in his final submissions submitted that there is no proof that the Plaintiff ever demanded the security after liquidating the loan. The Defendant's Counsel submitted further that DW1 testified that the Defendant prepared and executed the discharge and delivered the title deed to the Plaintiff's office through Dr. LINUS CHUA. The Defendant's Counsel submitted further that there is no evidence to prove that the mere withholding of the security subjected the Plaintiff's business to any hardship. Also it was not shown that the title deed was a core business of the Plaintiff that its absence could affected its business, the Defendant's Counsel further contended and that it was also not shown by evidence or otherwise that the Plaintiff ever approached the Defendant for a loan and refused for lack of security, the Defendant's Counsel surmised.

In light of the evidence on record and from the Counsel submissions, the Defendant did not bring any evidence to prove that the Certificate of Title was returned to the Plaintiff. It was the testimony of DW1 that the title deed lodged by the Plaintiff was handed back to the Plaintiff in writing but she forgot to bring it to Court as evidence. This Court finds therefore that the Certificate of Title is still in the possession of the Defendant Bank. However, the mere fact that the Certificate of Title is still in the possession of the Defendant Bank, it could not be said that the Plaintiff's business thereby has been subjected to hardship since the Plaintiff's business was not dependent on the Certificate of title. The Plaintiff did not bring any

evidence to prove any business transactions involving directly the Certificate of Title. Furthermore, there is no any demand notice sent by the Plaintiff's Company to the Defendant Bank demanding back the Certificate of Title. Finally, the Plaintiff did not prove on a balance of probabilities that the Plaintiff's Company was in a hardship situation caused by the Defendant Bank.

The fourth issue *whether the Defendant has withheld any security after the liquidation of a loan by the Plaintiff is to be resolved in the affirmative and the issue if so whether the Plaintiff's business has been thereby been subjected to any hardships is to be resolved negatively.*

I shall turn now to consider the fifth issue which is whether the Plaintiff has suffered any loss and damages if so whether the Defendant is liable for damages.

Making his final submissions on the fifth issue the Plaintiff's Counsel submitted that the Plaintiff has suffered loss by failure to use and operate the frozen accounts plus the monies currently present in the accounts. The Plaintiff's Counsel submitted further that the Plaintiff has further proved that the Certificate of Title No.43577 Plot.No.34 Block 68 Udoe Street-Kariakoo is still withheld by the Defendant Bank for unknown reasons. Thus by withholding of the said Certificate of Title for almost six years has directly hindered the economic progress of the Plaintiff's Company, the Plaintiff's Counsel surmised. It was the further submissions by the Plaintiff's Counsel that the Plaintiff has made instructions to the Bank to effect change of the bank signatories, which instructions the Defendant has

disregarded and frozen the accounts by not allowing the Plaintiff's Company not to make withdrawals from the said accounts.

The Defendant's Counsel in his final submissions averred that the Defendant Bank did not breach any contract and thus the Plaintiff cannot be said to have suffered any damage to which the Defendant is liable. Also the Plaintiff has not led any evidence to prove damages, the Defendant's Counsel further argued. According to the Defendant's Counsel, the damages claimed do not meet the test laid down in **HADLEY V. BAXENDALE (1854) Exh.341** and under section 73 of the ***Law of Contract Act***, [Cap.345 R.E 2002]. The Plaintiff ought to have led evidence showing the trading pattern of the Company prior to and after the alleged breach which could assist the court in making a fair assessment of damages, the Defendant's Counsel surmised. The Plaintiff had not prepared financial statements which then had audited from which the Court could determine whether indeed the Plaintiff had suffered loss and damage as claimed, the Defendant's Counsel insisted.

On the evidence on record and from the Counsel submissions, I am at one with the submissions by the Defendant's Counsel that the Plaintiff was required to tender evidence to prove damages. Furthermore, as the Defendant's Counsel correctly submitted, the Plaintiff was required to adduce evidence in court to show the trading pattern and financial statements of the Plaintiff's Company to assist this Court in making assessment of damages as was held in the case of **RUGARABAMU ARCHARD MWOMBEKI V. CHARLES KIZIGHA AND THREE OTHERS [1984] T.L.R. 350 (HC)** that since the Plaintiff has not told the court how

much he has been earning in his business, assessment of damages cannot be based on his unsubstantiated figures. In my view, even if the principle is that general damages is a matter of prayer and need not be specifically proved, but it is also difficult to the court, in the absence of any evidence to show the trading pattern and financial statements of the Plaintiff's Company, to assess whether the Plaintiff did suffer any loss from the breach of the relationship, and if suffered any loss then how much, otherwise this court will be assessing general damages from vacuum.

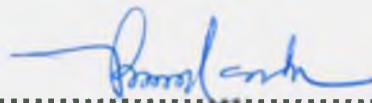
The fifth issue whether the Plaintiff has suffered any loss and damages and if so whether the Defendant is liable for damages is to be resolved negatively.

The last issue is what reliefs the parties are entitled to. The Plaintiff's Counsel submitted that the Plaintiff has claimed for payment of general damages to be assessed by this court basing on the evidence on record and extent of damages and loss and for breach of banker-customer relationship. It is the opinion of the Plaintiff's Counsel that an award of Tshs.300,000,000/= will remedy the situation. Considering what I have determined with respect to the fifth issue and on the basis of the persuasive statement of principle in the case of **RUGARABAMU ARCHARD MWOMBEKI V. CHARLES KIZIGHA AND THREE OTHERS** (supra) which I do not find any cogent reasons to differ with, this Court does not find any justification for awarding damages to the tune of Tshs.300,000,000/= as claimed by the Plaintiff.

In the upshot and for the foregoing reasons it is hereby ordered that the Defendant shall hand over to the Plaintiff the Certificate of Title No.43577 of Plot. No.34, Block 68, Udoe Street Kariakoo.

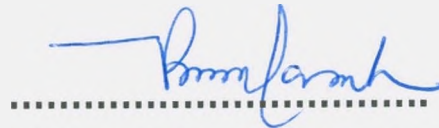
It is further ordered that the Defendant shall maintain the contract of banking with the Plaintiff under normal circumstances like any other customers.

Further, it is ordered that the signatories shall be all persons as resolved by the Board of the Plaintiff's Company. Costs shall follow the event. It is accordingly ordered.



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R.V. MAKARAMBA
JUDGE
20/12/2010

Judgment delivered this 20th day of December 2010 in the presence of Mr. Sinare for Ngudungi, Advocate for the Plaintiff and Mr. Sinare, Advocate for the Defendant.



R. V. MAKARAMBA

JUDGE

20/12/2010.

Words count: 5,187