

TANZANIA / JUDGMENT

RATCO Civil Case No

COURT
TANZLII

DECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB-REGISTRY AT DAR ES SALAAM. CIVIL CASE NO. 5094 OF 2024 RATCO LIMITED..... PLAINTIFF VERSUS ZANZIBAR INSURANCE CORPORATION..... 1ST DEFENDANT CRDB BANK PLC.....2ND DEFENDANT TAHMEED COACH TZ LIMITED.....3RD DEFENDANT (AS A NECESSARY PARTY) C. STEINWEG BRIDGE (PTY) LTD.....4TH DEFENDANT (AS A NECESSARY PARTY) CONSENT JUDGMENT Date of last order: 22/10/2024 Date of judgment: 12/11/2024 A.A. MBAGWA, J. This judgment stems from a deed of settlement duly signed and filed by the parties before the Mediator Judge at the Mediation Centre in Mediation No. 224 of 2024 on the 30th day of September, 2024. 1 The plaintiff herein, RATCO Limited instituted the present suit against the defendants praying for judgment and decree jointly and severally as follows;

1. A declaration that the 1st and 2nd defendants herein jointly and severally breached the terms of the insurance contract of indemnifying the plaintiff.
2. That the 1st and 2nd defendants jointly and severally be ordered to pay the plaintiff a total amount of 115,000 US Dollars or its equivalence of TZS 292,100,000/= as a specific amount for indemnifying the plaintiff on the total losses she got after the accident.
3. A declaration that the 3rd defendant illegally deducted the amount of 112,000 US dollars from the plaintiff after the accident without being legally mandated to do so.
4. An order that the 3rd defendant be forced to remit the 112,000 US dollars that she deducted from the plaintiff to the owner of the goods (Mextral Chemical)
5. The 3rd and 4th defendants be jointly and severally liable for all requirements of importation and exportation of chemicals, registration 2 of transporters of chemicals, and all transfer permits in respect of transit chemicals.
6. That the 1st, 2nd, and 3rd defendants jointly and severally be ordered to pay General Damages as it shall be assessed by the court.
7. Interest on the decretal sum to be indemnified as mentioned above at the court rate of 20% per annum from the date of loss to the date of

judgment.

8. Interest of the decretal sum to be indemnified as mentioned above at the court rate of 12% per annum from the date of judgment till final payment.
9. Costs of the suit be provided for.
10. Any other or further relief this Honourable Court deems fit and just to grant. In brief, the factual background of the matter goes as follows; The 4th defendant received twenty-nine (29) gallons of Chemical namely MEXTRAL (the goods) worth 282,129.11 US Dollars in good condition at Dar es Salaam Port from the foreign company based in Hong Kong China namely, Brillian 3 Legend Int. Ltd as the owner of the said goods and for the purposes of transporting the same to the final destination at Tenke Fungurume Mining S.A, Democratic Republic of Congo (the destination). The 4th defendant contracted the 3rd defendant and issued her a goods dispatch note together with a customs road freight manifest on 3rd June 2023 and 5th June 2023 respectively. The plaintiff is a transportation company licensed to take or carry goods from different clients/customers and transport such goods to different places inside Tanzania and outside of the country. The plaintiff was subcontracted by the 3rd defendant and accepted to carry the goods to the destination. The plaintiff immediately entered into a valid insurance cover note for goods in transit insurance from 24th April 2023 to 24th April 2024 with the 1st defendant vide her Intermediary Bank, the 2nd defendant herein for covering loss to her trucks in case of accident while in transit. The insurance policy covered all kinds of goods in transit including chemicals. Among the trucks that were insured by the 1st defendant was a truck with registration No. T773 ECF which carried the goods and was driven by the driver namely, Omary Bakari Msuka aged 34 years to the destination. 4 On 23rd June 2023 at around 18:00hours in the evening, the driver got into an accident after encountering a large pit-hole which caused the truck to flip and fall down on the left side of the road, at Chokama Village, along the Great North Road, Mununga, Luvushimanda in Zambia. Of all 29 gallons of chemical, it was only 18 gallons that remained safe after the accident and another 11 gallons were destroyed and damaged thereby resulting in loss of such goods. The plaintiff notified the 3rd defendant of the occurrence of the accident and reported to the 2nd defendant as the agent and intermediary Bank of the 1st defendant. The plaintiff spent almost 3000 US Dollars to repair the said truck, however, the 1st defendant never indemnified the same hence the 1st defendant owes 3000 US Dollars to make it good to the plaintiff. Moreso, the 1st defendant issued a discharge form to the plaintiff with a notification that she acknowledged the accident and the claim of 107,000 US Dollars only as loss occasioned by the road accident which was alleged to be less than the loss incurred by the plaintiff. Nevertheless, the 1st defendant notified the plaintiff that she was ready to pay Tshs 150,000,000/= only as an indemnity to cover the total loss incurred by the plaintiff in respect of the 5 loss to the transit goods (11 gallons of mextral chemical) instead of the assessed amount to wit, 107,000 US Dollars. The plaintiff rejected to be paid TZS 150,000,000/= on the reasons that it was unfair compensation for the entire loss and damages occasioned by accident. Despite repeated demand notices and an expression of

intention to sue, the 1st defendant has denied in total to reimburse or indemnify the plaintiff. Consequently, the plaintiff resolved to institute the present suit claiming the reliefs from the defendants jointly and severally as indicated hereinabove. After the first pre-trial conference, this matter was referred to the Mediation Centre. Luckily, on 30th September 2024 before Hon. Maruma J, the parties successfully mediated the matter. The parties signed a deed of settlement which was filed in Court to form part and parcel of the consent judgment and decree of the Court. As the High Court Mediation Centre is not enjoined with powers to execute decrees, the parties were referred back to this Court for the recording of the deed of settlement and issuance of consent judgment and decree of the Court. The law is very clear on the disposal of cases by settlement where parties mutually agree to settle their dispute through amicable means. Order XXIII rule 3 of the Civil Procedure Code under which this settlement deed /was filed provides as follows; "Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit". Again, in the case of Motor Vessel Sepideh and Another vs. Yusuph Mohamed Yusuph and two Others, Civil Application No.237 of 2013, CAT at Dar es Salaam, the Court clearly underscored the need for the courts to encourage and record a deed of settlement once it is arrived at by the parties. Besides, in the case of Jaffrey Indi. Sian Ltd vs M/s Beijing Construction Engineering Group Limited, Commercial Case No. 38 of 2021, the court remarked that the parties' mutual settlement of cases is a route encouraged all over the world. In the premises and without further ado, the deed of settlement reached by parties through mediation is hereby recorded and adopted to form part and parcel of the consent judgment. The matter is therefore marked settled with the following terms;

1. That the 1st defendant shall pay the plaintiff a total sum of US Dollars 74,806 within 2 months from the date of signing the deed of settlement, in equal two installments.
2. That, the agreed amount shall be deposited in the bank account with the following details;
BANK NAME: CRDB BANK ACCOUNT NAME: RATCO LIMITED ACCOUNT NUMBER:
02J1044919700
3. That, the 3rd defendant shall refund the plaintiff with total of USD.5631 immediately upon signing the deed of settlement.
4. That, upon the signing and fulfillment of the terms herein there would be no further claim or any legal action against the plaintiff and all defendants herein regarding the same subject at issue in this case at any court.
5. That parties hereto acknowledge and agree that this settlement is voluntarily entered by all the parties as a result of arm's length negotiations, and that upon recording it shall mark the claims in this suit wholly settled. It is so ordered. Dated at Dar es Salaam on this 12th day of November 2024. A.A. Mbagwa JUDGE 12/11/2024 9

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Prepared on 13 October 2026 · Esheria