

TANZANIA / JUDGMENT

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB - REGISTRY AT MBEYA CIVIL APPEAL NO 18064 OF 2024 (Originating from Civil Case No. 07
of 2023) RELIANCE INSURANCE COMPANY TANZANIA LIMITED.....APPELLANT VERSUS
BERNARD MICHAEL HAULE.....RESPONDENT

JUDGMENT

Date: 30 September 2024 & 13 December 2024 SINDA, J.: The appellant is aggrieved with the decision in Civil Case No. 07 of 2023 at the Resident Magistrate Court of Mbeya at Mbeya (the Trial Court), hence this appeal. The brief facts of the case are that the respondent herein entered into a contract with the appellant, an insurance company for insurance service. Whereby the vehicle in question, make Scania with Registration Number T 882 BHC (the Vehicle), would be the subject matter of the said contract for one year. That the contract started on 28 March 2022 up to 17 March 1 2023 at the value of Fifty Million Tanzania Shillings (TZS 50,000,000/=). It was agreed that the appellant would ensure the plaintiff's vehicle upon payment of a premium of TZS 2,950,000/= which was effectively paid by the respondent. The appellant herein after receiving the premium, issued the cover note with tax invoice No. RICL42471 and debit note No. 163527 for the said vehicle. On 11 June 2022, the respondent's vehicle was involved in an accident at Tazama – Pipeline in Mbeya Region and he communicated the same to the appellant. However, the appellant refused to compensate him on the basis that there is variation of chassis number. Due to the confrontation, the respondent successfully sued the appellant at the Trial Court. The appellant, being aggrieved with the decision of the Trial Court, made this appeal on the following grounds:

1. That the trial court erred in law and fact by holding that there was a valid insurance contract between the parties.
2. That, the trial court erred in law and fact in holding that the vehicle which got an accident with chassis no 04343345 was insured by the Defendant disregarding Exhibit PE1, PE4 and DE1. 2
3. That, the trial court erred in law and fact in holding that the Appellant breached the insurance policy without considering that at the time of the occurrence of accident there was no insurance contract with the owner of the vehicle with chassis no 04343345. Hearing

of the appeal was by way of written submissions. The appellant was represented by Mr. Timoth Mwamakimbula, learned counsel. The respondent was represented by Mr. Lucky Mgimba, learned counsel. Submitting on the first ground of appeal, Mr. Mwamakimbula argued that the burden of proof in civil cases lies on the party who alleges anything in his favor. A principle which was laid down in the case of Raphael Enea Mngazija (Administrator of the Estate of the Late Enea Mngazija) vs Abdalllah Kalonjo, Civil Appeal No. 240 of 2018. He continued that the Vehicle had insurance cover of one year, from 28 March 2022 to 17 March 2023 at the value of Tshs. 50,000,000/= and the premium of Tshs. 2,950,000/= was paid. That, on 11 June 2022 the Vehicle got into an accident at Tazama pipeline in Mbeya region. The appellant was informed of the accident and appointed Eagle Surveyors and Loss Assessors Limited who reported there was a variation of chassis number on the actual vehicle and the vehicle registration card. Although other details appear to be 3 correct, to wit, Registration Number T. 882 BHC make Scania, Model 113 body type Truck, multi-color. Thus, there was no valid insurance contract between the appellant and the respondent. Moving to the second ground, the counsel argued that taking into account the Registration Card of the motor vehicle (Exhibit PE1), motor vehicle note (Exhibit PE4) and Exhibit DE1 which is the investigation report, it is undisputed that there was variation in chassis number of the insured vehicle compared to the one of the Vehicle. That the chassis number of the vehicle insured was 04333019 and that of the Vehicle involved in the accident was 04343345. He added that this fact was agreed upon by both parties. He continued that the appellant refused to acknowledge the respondent's claims due to such variation. Mr. Mwamakimbula continued, that the respondent did not bring any evidence to address such variation. Thus it becomes difficult to determine whether the Vehicle involved in the accident is the one insured. On the last ground, the counsel mainly reiterated what he submitted on the previous grounds. However, he added that it might be due to clerical error but the variation is quite obvious. The counsel insisted that it was the duty of the respondent to prove the insurance contract existed between the parties. In his reply submission, on the first ground Mr. Mgimba argued that the appellant contends there was no valid insurance contract between the appellant and the respondent. On a single reason that at the time of the accident there was variation of chassis number on the actual Vehicle and the vehicle registration card. On this point, the counsel was of the view that a motor vehicle insurance can only be valid if full premium is paid. As established in the case of Niko Insurance (T) Limited vs Hussein Athuman Mwaifyusi & Another, Civil Appeal No. 168 of 2017 CAT at Dar es Salaam. That, in the case at hand, upon payment of premium of TZS 2,950,000/=-, a cover note with tax invoice No. RICL42471 and debit note No. 163527 was issued to the respondent by the appellant. That on 11 June 2022 when the Vehicle got an accident the insurance contract was still valid. The counsel added, that the insurer before insurance policy ought to have settled all the queries in respect of the motor vehicle to be insured. In support, the counsel cited the case of Dr. Loy Job Mbwiolo (As 5 Administratrix of the Late Amin Aman Mbala) vs Richard Mwera Matiku & Another, Civil Appeal No. 07 of 2018 HCT at Mbeya. He continued, that the appellant did not take pictures of the insured vehicle or verify the chassis number found in the Vehicle and in the registration card before issuing insurance

policy or cover not. Thus failure of the appellant to indemnify the respondent amounts to breach of insurance contract. With regards to the second ground, Mr. Mgimba submitted that it has been admitted by the appellant's counsel, details of the insured Vehicle and the vehicle which got an accident are the same. The only detail which is different is the chassis number. On the third ground, Mr. Mgimba argued that at the time of the accident all details of the insured motor vehicle were the same except the chassis number. That, denial of the appellant to indemnify the respondent due to variation in chassis number amounts to breach of insurance contract because it was the duty of the appellant to verify the details of the Vehicle before issuing the insurance policy. 6 The counsel opined that in civil matters the one whose evidence is heavier than the other must win the case, where he cited the case of Hemedi Said vs Mohamed Mbilu [1984] T.L.R 113. That based on the Trial Court's proceedings (the Proceedings), the respondent's evidence was heavier than that of the appellant. The appellant did not file any rejoinder. I have gone through the lower court records and the submissions from both parties. I will discuss the appeal as a whole, seeing the grounds raised are closely related to each other. In a nutshell, the respondent after his vehicle got into an accident on 11 June 2022, claimed indemnification from the appellant since they allegedly had an insurance contract that started from 28 March 2022 up to 17 March

2023. It was the appellant's submission that the insured Vehicle was not the same as the one involved in the accident. Mainly because there is a variation in the chassis number. He explained the Vehicle they insured had chassis number 04333019, while the vehicle that had an accident has chassis number 04343345. That being the case, the appellant could not compensate the respondent. Nonetheless, he agreed that the remaining specifications concerning the Vehicle were the same and accurate, make 7 Scania Registration Number T. 882 BHC, Model 113 body type truck, multi colored. Upon perusal of the Trial Court records, particular when DW1, one Emmanuel Stephen Haule was being cross examined, he stated that, the vehicle is the same, only the chassis number is different. He went further to state that they did not check the chassis number alongside other defects the Vehicle might have, presumably while entering the insurance contract. It is my humble belief that in this matter, the most important aspect to be proved is whether the vehicle involved in the accident was the same as the one insured by the appellant. In doing so, aside from the chassis number, I took liberty to check what other vehicle specification is unique and precise to each vehicle. For me that would be the registration number. Each vehicle is assigned a unique registration number to identify it. This ensures that each vehicle can be distinctly recognized for legal, administrative, and safety purposes. In this case the appellant did not dispute entering into a contract with the respondent nor did he deny insuring the motor vehicle with registration number T. 882 BHC. 8 Be that as it may, I beg to differ with the Trial Court that the difference in chassis number is not too trivial of a matter as to bring about this dispute, as it was stated in the Trial Court's judgment (the Judgment). A chassis number is one of the specifications that distinguish one vehicle from another. However, I do agree that the appellant should have conducted a thorough inquiry and due diligence on the Vehicle and all its related specifications before entering the

insurance contract. And maybe such defects would have stopped him from concluding the contract. The essence of due diligence was discussed in the case of Bakari Mhando Swanga vs Mzee Mohamed Bakari Shelukindo & 3 Others, Civil Appeal No. 389 of 2019, that states inter alia: “The observation we make here is that there was no due diligence on the part of the appellant in the whole process of executing the purported deed of sale. In our view, he ought to have consulted the village council before embarking on the transaction. Had he done so, obviously, he would not have purchased the suit land from Shernbilu who was not the lawful owner.” I also succumb to the principle that one cannot benefit from his own wrong, as it was discussed in the famous case of Bi Hawa Mohamed vs Ally Sefu [1983] T.L.R. 32. 9 From the foregoing, the appellant cannot at this stage use the difference in chassis number as a reason for not insuring the respondent’s vehicle because it’s a fact he should have been aware of from the very beginning. Considering the respondent had already paid premium amount of TZS 2,950,000/=, which the appellant did not object to receiving. With that, I join hands with the Trial Court’s magistrate, that there was indeed an existing insurance contract between the appellant and respondent. Seeing the Vehicle got into an accident during the life of the contract, the appellant was obligated to compensate the respondent. Failure of which leads to a breach of contract as explained in the case of Simon Kichele Chacha vs Aveline M. Kilawe (Supra). In consequence thereof, I find no need to depart from the findings of the Trial Court. The appeal is hereby dismissed with costs. It is so ordered. Right of appeal explained. DATED at MBEYA on this 13 Day December 2024. 10 A. A. SINDA JUDGE 11

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