

**IN THE HIGH COURT OF ZANZIBAR
HELD AT VUGA
CIVIL CASE NO. 77 OF 2020**

KASSIM BAKARI ALI **PLAINTIFF**
VS
STRATEGIES INSURANCE (T) LTD **DEFENDANT**

JUDGEMENT

04/11/2021 & 10/02/2022

Kazi, J.,

The Plaintiff sued the Defendant on an insurance policy. The Plaintiff alleges that on 17th December 2019 he insured his vessel known as Mv. Allah Karim Transport II (a dhow made in wood), under the hull and machinery policy (the policy) issued by the defendant for a period of one year beginning 17th December 2019. It is also alleged in the plaint that the said policy was subscribed in the sum of USD 100,000 and it is covered all loss.

It was pleaded that on 18th January 2020 at around 10:30 at Nungwi area, Zanzibar, Mv. Allah Karim Transport II (the Vessel) while insured by the defendant, capsized due to strong wind to ocean, as the result the propeller protector was detached from the Vessel, and the Vessel

severely damaged as she stayed in the sea water for a period of seven days.

It is pleaded further that, Plaintiff informed the defendant about the accident and claimed for loss of the damage of the Vessel as per the policy, but the defendant denied plaintiff's claim. It is the plaintiff contention that the defendant refusal or failure to pay the plaintiff amount to breach of the policy entered between them.

The plaintiff therefore sought the following orders: -

- a) An order that the defendant should pay the plaintiff the sum of money to the tune of Tanzania Shillings Tsh. 129,236,700/- being the amount useful for the repair of Mv. Allah Karim Transport II following the accident which led to her severe damage.

- b) An order that the defendant should pay the plaintiff the sum of money to the tune of Tanzania Shillings One Hundred Million (Tsh. 100,000,000/-) being the general damages resulted from the defendant's anti-customer behavior of refusing or failure to pay the plaintiff her insured amount.

c) An order that cost of the suit be met by the defendant.

d) Any other order which this honorable Court deems just and reasonable to the plaintiff.

In her defence, the Defendant pleads inter alia that the Plaintiff is not entitled for the indemnification as a result of the purported damage to the Vessel which never ensured. In the alternative, it is pleaded by the defendant that even if the plaintiff could have been entitled to any compensation which is however disputed, the amount claimed is an estimate of his own (plaintiff) and without doubt is beyond reality and far exaggerated.

From the above facts six issues framed for determination: -

1. Whether Mv. Allah Karim Transport II with registration number Z 1710 was insured by the defendant.
2. Whether the ship was capsized on 18/01/2020 and stayed on the water for seven days.

3. Whether the damage to the ship was due to strong wind or solely due to mechanical defects and wear and tear of the ship.
4. Whether the reason for the loss under paragraph 3 above, falls within the ambit of insurance policy.
5. If the answer in 4 is in affirmative. Whether the plaintiff suffered a loss to the tune of Tsh. 129,236,700/=.
6. To what reliefs are the parties entitled to.

At the hearing, Mr. Rajab Abdalla, learned advocate appeared for the plaintiff, while learned advocate Oscar Msechu appeared for the defendant.

In establishing their respective positions, each sides brought two witnesses. Plaintiff, Kasim Bakari Ali, testified as PW1 and Halfan Mohamed Juma, plaintiff's employee testified as PW2, whereas defendant brought her employee, a claim officer, Esther Kilembe as

DW1, and Haji Vuai Ussi, a marine engineer and ship surveyor consultant testified as DW2.

I must also point out that on 04th November 2021, Mr. Msechu, learned advocate for the defendant, after closing his case, informed the court that he preferred to make final written submission, Mr. Abdalla, learned advocate for the plaintiff on the other hands told the court that he was not intending to file final written submission. I blessed the wishes of both learned counsels and proceeded to schedule submission date for the defendant's final written submission. The final written submission was then filed in compliance with the court order, I am sincerely grateful to the learned advocate for the lucid submission.

In disposing this suit, I will begin with the first issue, that is, whether Mv. Allah Karim Transport II with registration number Z 1710 was insured by the defendant. According to his testimony, PW1 stated that he is the owner of the ship, which is known as Allah Karim Transport II, he added that, on 31st October 2019 he insured the vessel, and it was the defendant who issued the policy. PW1 stated further that estimation for the cover for the vessel was made by the strategies insurance

(defendant), and that the cost of his insured vessel is around 130 million shillings.

When responding to the question asked by Mr. Msechu during cross examination, PW1 stated that he has insurance agreement deed with the CRDB Bank.

On re-examination, PW1 told the court that strategies (defendant) never claimed that he doesn't have a contract with them, he added that, when he was paying premium, he was never asked about service of the ship.

PW2, who is the employee and PW1's errand boy, supported the testimony of PW1 that the vessel was insured by the defendant and that is why he claim against them.

On the other hand, DW1 testified that they have never insured the vessel, and as Strategies they did not recognize the vessel. DW1 told the court further that, for insurance company to compensate complainant there must exist insurance policy, she added that, their company Strategies did not insure the vessel claimed to be capsized.

Responding to the question posed by Mr. Abdalla during cross examination, after being shown a report (document No. 3 on the list of defendant documents) DW1 told the court that the report addressed to Strategies titled Breakdown of propelling System and Drifting of Marine Vessel (Dhow) Faiza-Rabani under Marine Hull and Machinery Policy No. P/102/3004/2019/00006, claim No. C/102/3004/2019/00061 insured Allah Karim Transport 2. DW1 further responded to the question that when you read the report, it shows that, it concerns Allah Karim Transport 2, she responded further that if the property is not insured by their company, they don't need such a report but if it is insured, they need such assessment report before they make compensation.

On re-examination, DW1 told this court that insurance policy is the document which establish the existence of valid insurance.

In his closing submission Mr. Msechu submitted that from the testimonies of witnesses, there were no single evidence tendered in court to substantiate the fact that the plaintiff's vessel was insured by the defendant apart from plaintiff witnesses oral testimonies. He maintained, the plaintiff has failed to show or tender to this court any document such as insurance cover or even a receipt for the premium he claimed to pay for such insurance cover for the year 2019/2020. He

submitted further that this aspect was dealt with by the defence testimonies when DW1 categorically denied the existence of the policy.

It was submitted further by the learned advocate for the defendant that the requirement to establish the existence of the insurance relationship between the parties is of the paramount importance in consonant with the provision of Section 117 of **the Evidence Act** No. 9 of 2016. He added that, the plaintiff has an obligation on balance of probability to substantiate the facts by exhibiting in court relevant insurance cover and attendant policy indicating commencement date of the cover, and the premium plan in consideration of the policy.

In addition, Mr. Msechu submitted that although insurance legislation, to wit Act No. 10 of 2009 does not state clearly what an insurance contract is but various Courts decisions have drawn insurance principles from the **Marine Insurance Act** 1906 which defined marine insurance. He submitted further that a useful working definition can be found from the case of **Prudential Insurance Company vs Inland Revenue Commissioners** [1904] Z K.B. 658, that for the contract of insurance to exist there must be an agreement between two parties.

From the above submission, Mr. Msechu submitted that the main question in this matter is whether there was an agreement between the plaintiff and the defendant. It is his opinion, according to the submission, that in the absence of the valid contract to substantiate the same there was no such relationship and that there is no insurance policy in place.

After having heard the testimonies of the witnesses from both sides regarding the first issue and after going through the final written submission made by Mr. Msechu, I must state from the outset that I am all fours with the learned advocate submission, this issue needs to be answered in the negative for the reasons that I will explain hereunder.

It was pleaded by the plaintiff that the vessel was insured by the defendant on 17th December 2019 and that the policy covered the Hull and Machinery. And as defendant denied the existence of the policy, it is important under the circumstances, as correctly submitted by Mr. Msechu to determine whether there was an agreement to insure the vessel between the parties.

The insurance policy generally is a standard form contract between the insurer and the insured, the policy therefore is normally in written form and contains among other things, coverage provisions, exclusion, limitations, terms and conditions. Thus, in the instant claim it was important for the plaintiff to prove that the policy exist, hence I concur with Mr. Msechu that in order for the plaintiff to substantiate the existence of the policy he had a duty to tender in court all relevant insurance documents.

From the material evidence as adduced by PW1 and PW2 as I see it, I should say, nothing was produced to prove that there was an agreement between the parties for the insurance of the vessel. This court cannot rely on the merely oral account of the plaintiff witness that the vessel was insured by the defendant taking into consideration that even at their testimonies both plaintiff's witnesses failed to mention some important things such as policy number, the sum paid for the premium for the policy and even the commencement date of the cover.

From the above analysis I hold that there is no any valid contract or agreement between plaintiff and defendant for the insurance of the

vessel, hence M/V Allah Karim Transport II with registration number Z 1710 was not insured by the defendant company.

Having answered the first issue not in affirmative, it is obvious that the remaining issues become redundant. Based therefore upon the foregoing, I find no merit in this suit and I dismiss it with costs.

Dated at Zanzibar this 10th day of February 2022.

**G. J. KAZI
JUDGE
10/02/2022**

Date : 10/02/2022

Coram : George J. Kazi – J

For the Plaintiff : Ms. Mwanaidi Abdalla, learned Advocate.

For the Defendant : Mr. Gido Simfukwe, Advocate holding brief for Mr. Oscar Msechu, learned Advocate.

C/Clerk : Abdillah.

Court : Judgement is delivered in the presence of Ms. Abdalla, learned Advocate for the plaintiff, and in the presence of Mr. Simfukwe, learned Advocate who is holding brief for Mr. Msechu, learned Advocate for the defendant. Right of appeal is explained.

**G. J. KAZI
JUDGE
10/02/2022**

I certified that this is a true copy of the original.

Sabum H. Babaa

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/ REGISTRAR
HIGH COURT
ZANZIBAR

