IN THE FAIR COMPETITION TRIBUNAL OF TANZANIA

AT DAR ES SALAAM

TRIBUNAL APPEAL NO. 5 OF 2015

ANDREW MASAGA.....APPLICANT

VERSUS

VODACOM (T) LIMITED..... .....1ST RESPONDENT

TANZANIA COMMUNICATIONS REGULATORY AUTHORITY.....2ND RESPONDENT

JUDGMENT

Mr. Andrew Masaga is a Vodacom Tanzania Limited Customer and register user of no. 0752 099990. Respondent is a licencee of the 2nd respondent, licensed to provide for among other things Mobile Communication Services in the United Republic of Tanzania. The appellant alleged at Committee of Authority that he was denied accesses to M-pesa services from 12 to 28 January, 2015 thus incurring loss. He referred the complaint to 2nd respondent where he claimed damages to the tune of 30

million from Vodacom Tanzania Limited 1st respondent, who refused the same. The 2nd Respondent's authority dismissed the complain for lack of merits. Being dissatisfied, Appellant has preferred present appeal raising 3 grounds of appeal namely:

1. The Committee failed to analyze the evidence tendered to justify blockage of the account.
2. That the Committee erred in failing to interpret the word "declined".
3. That the Committee erred in failing to award compensation for declined M-Pesa transactions.

Respondent filed reply to the memorandum of appeal, refuting grounds of appeal in total.

Having gone through grounds of appeal, reply thereto, and skeleton arguments, by both parties, the main issue to be determined by the Tribunal is whether the 2nd respondent's decision was just and lawful. In deciding this issue, the Tribunal will go through the decision and revisit the evidence. Appellant complaint at Committee of the respondent is blockage of his M-Pesa account on 12 January, 2015 without prior notice. The appellant demanded compensation of Tshs. 30 million from the respondent being compensation for losses caused by the service blockage. The appellant called customer service number 100 to request the account to be re-opened.

Appellant further complained that 1st respondent did not reply his letter, the fact that made him to refer the matter to the Authority. Mr. Andrew Masaga alleged at the committee that he used to make 13 transactions in a day, so, blockage of his M-Pesa account had prevented from carrying out 100 transactions. He, thus, requested the committee to order 1st respondent to pay him Tshs. 30,000,000, basing on the following breakdown:

(i) Tshs. 2,500,000 for inconveniences
(ii) Tshs. 25,000,000 for delays in lodging his claim in court.
(iii) Tshs. 2,000,000 for legal fees
(iv) Tshs. 500,000 for food and transport while following his case.

Respondent through their witness Mr. Lucas Kanga denied applicant's claim, he said they received complains, they lodged into the system and found out that the account was not blocked, respondent's witness further tendered exhibit 'A' to prove the appellant letter was respondent to. On further account, Mr. Lucas Kanga tendered letter exhibit 'B' a letter replying GF Law Chambers to the effect that appellant account was not blocked. On further account the 1st respondent witness tendered exhibit C

to prove that, they reported to the Committee of the 2nd respondent appellant complain.

The issue to be determined is whether the appellant proved his claim before 2nd respondent Committee.

Tribunal, being appellant body we are guided by the records that shows what transpired on the hearing at 1st instance. In another words it is whether, there was material evidence for the Committee of Authority to act on in support of the appellant claim. The Tribunal is minded of a principle of law that he who alleges has to prove. And in controversies of this nature reasons should be given for arriving at a certain decision and conversely, it should be stated why a certain piece of evidence is rejected.

It is on record that 2nd respondent heard both parties (appellant and 1st respondent) and at the end made following findings we hereby quote:

> "A revision of the submission by the complaint does not appear to present a thorough evidence that there was blockage of M-pesa account as alleged by the complainant. There was no evidence tendered to the effect that the complainant could not access the said M-pesa account on

the ground that such account was blocked by the respondent".

On further perusal of the finding of the Committee of Authority, at page 8 to page 9 shows that, there was evidence that the appellant transacted through the same account in one of the days he alleges that the account was blocked. The wordings of the Committee decision are hereby reproduced:

> "The Complainant's M-pesa transaction records submitted by the respondent show that at 14.37 hours on 12/1/2015, the M-pesa account had a balance of Tshs. 228,020. On 27/1/2015 a day before the account was opened, it was credited with Tshs. 500,000, received from CRDB Bank while complainant alleged that his account was blocked".

The above finding has not been contravened by appellant, at all in all his pleadings. There is no evidence attached inthe memorandum of appeal or skeleton arguments for the Tribunal to act and see it that 2nd respondent did not consider.

From the above finding of the Committee of Authority, it is clear to this Tribunal that, appellant did not prove his case before committee of the 2nd respondent. As noted earlier, an appeal Tribunal would rarely interfere with the findings of Committee of

Authority on finding of facts. This is because Committee of Authority had opportunity to face and examine witnesses at hand and see their demeanor and credibility.

As correctly submitted by 1st respondent's counsel, this Tribunal cannot interfere on the finding of the committee of Authority.

We find it necessary to adopt the reasoning of the Court of Appeal in **Japan Cooperation Agency (JICA) V. Khaki Complex Limited [2006] TLR 343**, in which the Court of Appeal of Tanzania cited with approval the case of **Peters V. Sunday Post Limited (1958) EA 424** after considering **Watt v. Thomas (1947) AC 484** held-

> "It is a strong thing for an appellate court to differ from the finding on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution: it is not enough that the appellant court itself have come to a different conclusion".

We find the case of Materu Leison & Foya V R, (1988) TLR 103 to be relevant. In that case court was confronted with the same issue. In determine, Court of Appeal held that:

> "Appellant court may in rare circumstances interfere with trial court findings on fact, it may do so in interferes of evidence or has acted on a wrong principal or had erred in its approach to evaluate evidence".

Also in the case of Bushangilang'oga v. Manyanda Maige 2002 TLR 335 on the same issue it was held that:

> "It is settled that in the absence of misdirected on or misapprehension of evidence, as appellate court should not interfere with concurrent findings of fact of the two lower courts".

In the end, having found no reason to interfere with the committee finding, grounds 1 & 2 lacks merits. It is accordingly dismissed. Now, having found that grounds 1 & 2 of appeal lack merit, the question is, is the appellant entitled to any compensation? We find the answer to be in the negative. We are mindful of the legal principles that **damages are the pecuniary compensation, obtainable by success in an action, for a**

wrong, which is either a tort or a breach of contract, the compensation being in the form of a lump sum, which is awarded unconditionally. The object of an award of damages is to give the plaintiff or injured party compensation for the damage, loss or injury he has suffered so as to put him in position he would have been in had the tort not been committed or had the contract been performed.

The same principle was applied in the decision of this Tribunal in **Juma Mpuya V. Celtel Tanzania Limited, Appeal No. 1/2007.**

In the case of **Tanzania Saruji Corporation V. African Marble Company Limited [2004] TLR 155**, the Court of Appeal stated at page 157:

> "The position is that general damages are such as the law will presume to be the direct, natural and probable consequence of the act complained of, ... **the defendant's wrong doing must, therefore, have been the cause, if not the sole, or a particularly significant, cause of the damage.**" (Emphasis by the Tribunal)

In the event, and for the reasons stated above, we accordingly dismiss 3rd ground of Appeal. Thus, the entire appeal is dismissed for being devoid of merit.

Costs are within the Tribunal's discretion, though they follow the event, in the circumstances of this particular case, we would refrain from making any order as to costs.

Judge Z.G. Muruke – Chairman

Hon. Salma Maghimbi - Member

Mr. Onesmo M. Kyauke – Member

5/2/2016

Judgment delivered this 5th day of February, 2016 in the presence of Walter Massawe for the 1st respondent and in the absence of appellant and 2nd respondent.

Judge Z.G. Muruke – Chairman

Hon. Salma Maghimbi - Member

Mr. Onesmo M. Kyauke – Member

5/2/2016