AMANA BANK LTD *v.* AUWSA AND 2 OTHERS

COURT OF APPEAL OF TANZANIA

AT ARUSHA

(NDIKA. J.A, FIKIRINI. J.A, AND MGEYEKWA. J.A.)

CIVIL APPEAL NO. 140 OF 2024

(Appeal from the judgement and decree of the High Court of Tanzania at Arusha, Bukuku. J dated 25th October, 2016 in Civil Appeal No. 140 of 2024)

Commercial Law – Bank Guarantees – Advance Payment Guarantee – whether demand satisfied conditions – applicability of ICC Uniform Rules for Demand Guarantees (URDG 758).

This was an appeal against the judgment of the High Court of Tanzania at Arusha in Civil Case No. 13 of 2021. The dispute arose from a construction contract between AUWSA and Tanchi Brothers Construction Company Ltd, under which the Appellant issued an Advance Payment Guarantee and a Performance Guarantee. Following alleged breach by the contractor due to poor mobilization and failure to extend guarantees, AUWSA demanded payment. The Appellant honoured the Performance Guarantee but refused to pay under the Advance Payment Guarantee, leading to litigation. The High Court held in favour of AUWSA, prompting this appeal.

It was the Appellant's argument that the Advance Payment Guarantee was conditional and that the demand letter did not meet the specific conditions required for payment, particularly due to lack of exact wording. The Appellant further contended that the trial court erred in applying the ICC Uniform Rules for Demand Guarantees (URDG 758), arguing that the rules were neither properly pleaded nor proved. It also challenged reliance on prior proceedings and maintained that partial mobilization by the contractor made full payment unjustified.

In response, the Respondents argued that the contractor had breached the contract and failed to properly utilize the advance payment. They contended that the demand letter sufficiently conveyed the substance of the breach and satisfied the conditions of the guarantee. They further maintained that the ICC Rules were expressly incorporated into the guarantee instrument and were therefore binding on the Appellant. It was also submitted that the Appellant failed to comply with the procedural requirements for rejecting the demand under those rules, thereby incurring liability.

Held

(i) The Court held that exact wording in a demand guarantee is not necessary so long as the demand conveys the substantive meaning required under the guarantee.
(ii) The ICC Uniform Rules for Demand Guarantees (URDG 758) were validly incorporated into the guarantee and were binding on the Appellant.
(iii) The Appellant, having acknowledged the applicability of the ICC Rules, was estopped from denying them.
(iv) Failure by the Appellant to comply with the procedural requirements for rejecting the demand rendered it liable to honour the guarantee.
(v) In the absence of proof of proper utilization of the advance payment or quantification of partial mobilization, the Respondent was entitled to the full guaranteed sum.

Appeal dismissed with costs

Statutory provisions referred to;
Evidence Act, Cap. 6 (R.E. 2023)

Case Laws
Augustine Ayishashe vs Sabiha Omar Juma (Land Case 279 of 2015)
Precision Air Services PLC vs Masoko Agencies T. Limited (Civil Appeal No. 60 of 2021) [2024]
Patrick Edward Moshi vs Commercial Bank of Africa T. Ltd (Civil Appeal 376 of 2019) [2023]
Ephraim Joram vs Director Tanga Cement Company Limited (Civil Appeal No. 235 of 2020) [2024]
Paulina Samson Ndawavya vs Theresia Thomasi Madaha (Civil Appeal No. 45 of 2017) [2019]

Paskali Nina vs Andrea Karera (Civil Appeal No. 325 of 2020)

Counsel

Mr. Denis Msafiri, learned counsel for the Appellant

Mr. Masunga Kamihanda, learned Senior State Attorney, assisted by Mr. Kepha and Mr. Hance Mmbando, for the 1st and 2nd Respondents

Mr. Kapimpiti Mgalula, learned counsel for the 3rd Respondent