



Bhanji and Associates Limited v Allianz Worldwide Care Limited (Commercial Case E091 of 2022) [2023] KEHC 20268 (KLR) (Commercial and Tax) (17 July 2023) (Judgment)

Neutral citation: [2023] KEHC 20268 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E091 OF 2022**

A MABEYA, J

JULY 17, 2023

BETWEEN

BHANJI AND ASSOCIATES LIMITED PLAINTIFF

AND

ALLIANZ WORLDWIDE CARE LIMITED DEFENDANT

JUDGMENT

1. Vide plaint dated 10//3/2022, the plaintiff sought various prayers against the defendant. These included; a declaration that the termination of the agency agreement by the defendant was unlawful, brokerage commission fees of USD 81,351.80, a commission for the year 2016/2017 of USD 15,536,30, loss of future commission, interest and cost of the suit.
2. The defendant failed to enter appearance or file a defence. Inter-locutory judgment was entered against it and the matter proceeded to formal proof.
3. The plaintiff's case was that the defendant was an international insurance company registered in France. That on 30/4/2007, the parties entered into an Intermediary Appointment Agreement wherein the defendant appointed the plaintiff to sell and promote the defendant's medical insurance products.
4. That the plaintiff would introduce to the defendant individual and group medical insurance business from within East & Central Africa region which the plaintiff would subsequently administer and service on a strictly commission arrangement basis.
5. That among the groups that signed up was a medical scheme known as Nairobi Steam Laundry & Dry Cleaners Ltd (NSLDCL) which signed up in September, 2013 under the terms of the agency agreement. That the defendant over time renewed the group medical scheme for successive annual periods before the illegal and unfair termination of the group scheme by the defendant.



6. That the defendant unlawfully terminated the agency agreement on 31/3/2017 effective 12/5/2017 without citing reasons. That the defendant alleged that the plaintiff failed to disclose to the defendant that NSLDCL had ceased operations in July, 2016 and the failure amounted to professional negligence and the right to offset any losses incurred as per the agency agreement. That the defendant sought indemnification from the plaintiff on the losses incurred for claims paid-out beyond July, 2016.
7. The plaintiff contended that the termination was unilateral and illegal and the plaintiff had legitimate expectation that the agreement would be renewed. That the defendant appointed a 3rd party claims administration agent to investigate the operation status of NSLDCL without just cause and without involving the plaintiff. That the investigations were poorly done without consulting the surviving directors of NSLDCL or their legal representatives to establish the true status of the company which was still in existence and had not been de-registered.
8. That the defendant placed reliance on a poorly done report to pass liability to the plaintiff and cancel the group medical insurance scheme which had been renewed by the defendant and premium paid for the period 1/9/2016 to 31/8/2017 which rendered members uninsured. That the defendant also failed to involve Insurance Regulatory Authority (IRA) which regulates and investigates insurance nor did it inform IRA of the results of its investigations.
9. That despite notification, the defendant declined to process the premium refund to NSLDCL and only refunded on 25/4/2017 by which time the company had incurred financial losses. That the defendant also informed other brokers that the agency agreement had been terminated before the effective date of 12/5/2017 thereby exposing and sabotaging the plaintiff's business. That the defendant intended to poach the plaintiff's clients.
10. During the hearing, the plaintiff called one witness Moyez Sadrudin bhanji who adopted his witness statement dated 10/3/2022 as his evidence. The testimony mirrored the averments in the plaint. The plaintiff closed its case at that juncture and was directed to file and serve written submissions.
11. The plaintiff filed submissions dated 8/3/2023 and they have been duly considered alongside the pleadings and evidence before Court.
12. Since judgment on the liquidated claim had been entered, the only issue for consideration is the declarations sought in the plaint. These are whether the whether the agreement was terminated unlawfully and whether the plaintiff is entitled to future commissions.
13. Although all the allegations by the plaintiff were neither denied nor controverted, nevertheless a court is always called upon to examine a litigant's case on merit and weigh the same on the scales of the law. Therefore, the plaintiff must still prove its case as pleaded.
14. The plaintiff contended that the defendant's decision to terminate the agreement was unlawful and illegal. That the agreement was terminated based on an investigator's report which revealed that NSLDCL ceased operations in July, 2016 and the plaintiff committed professional negligence in failing to notify the defendant of the fact. That the defendant sought to be indemnified by the plaintiff on the losses incurred for claims paid-out beyond July, 2016.
15. I have considered the Intermediary Appointment Agreement between the parties. Clause 25 thereof provided for termination as follows: -

‘Notwithstanding any other provision of these Terms and Conditions, and without prejudice to any other right of termination of Allianz herein set out, this appointment may



be terminated by Allianz or by the intermediary by one month's written notice being served on the other party at any time."

16. As to the reason for, Clause 2 provided as follows: -

"The appointment is held at and during the pleasure of Allianz who, (subject only to giving notice in accordance with Condition 25), may terminate it at any time. The Intermediary may (subject only to giving notice in accordance with Condition 25) terminate this Agreement at any time."

17. From the foregoing, the agreement could be terminated by either of the parties without assigning any reason therefor. All that was required was to give one month notice and the termination would be effective.

18. In the present case, the defendant terminated the agreement vide a letter dated 31/3/2017. The same was to be effective as of 12/5/2017. There was therefore ample notice even beyond the one-month period provided for in the agreement.

19. The defendant having complied with the termination clause, this Court finds that the termination was neither irregular nor unlawful as alleged.

20. In any case, the defendant did give its reasons for the termination. According to the plaintiff, the defendant terminated the agreement on the basis that the plaintiff had failed to disclose to the defendant that NSLDCL had ceased operations in July, 2016 and the failure amounted to professional negligence and the right to offset any losses incurred as per the agreement.

21. Though the plaintiff contended that NSLDCL was still registered, there was no evidence to show that NSLDCL's operations were still ongoing. It is one thing to be registered and another to be in operation.

22. The plaintiff itself admitted to the fact in its email dated 20/4/2017 wherein it pleaded with the defendant to revoke the termination notice. PW1 himself wrote that;

"I do acknowledge and understand that we have had couple of issues with the MHD group scheme currently in the spotlight and very much regret the outcome and assure you my firm was absolutely unaware the company ceased operations on 30th July...and do sincerely apologize for the inconveniences caused to the AWC team..."

23. This admission points to the fact that the defendant was justified in its decision to terminate the agreement. Clause 7 of the agreement provided for disclosure and stated: -

"The Intermediary shall notify Allianz immediately in writing of the following: -

...

g. Any matter arising during the term of this appointment which would or might influence a prudent insurance company in considering the continuance in force of this appointment."

24. The termination cannot therefore be termed to have been unjustified. In this regard, the plaintiff did not satisfactorily prove that the termination was unlawful, irregular or illegal.

25. As regards the claim for future projected commissions, the same is not available having found that the agreement was lawfully and regularly terminated. The plaintiff failed to prove its claim for the declarations sought.



26. Accordingly, judgment is entered for the plaintiff as follows: -

- a. USD 96,888.10 together with interest thereon at court rate from the date of the suit till payment in full.
- b. Claim for declarations is hereby dismissed.
- c. The plaintiff will have the costs of the suit on an undefended basis.

It is so decreed.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF 2023.

A. MABEYA, FCIArb

JUDGE

