THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA AT DAR ES SALAAM

CIVIL CASE NO. 000026033 OF 2024

LISA STEVEN SEMGALAWE ..... COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF

VERSUS

VODACOM TANZANIA PUBLIC LIMITED COMPANY ..... RESPONDENT / DEFENDANT

AGGREY & CLIFFORD LIMITED ..... RESPONDENT / DEFENDANT

TSERE'S CO. LTD ..... RESPONDENT / DEFENDANT

JUDGMENT

MBAGWA, J

A.A. MBAGWA, J.

In this case, the plaintiff, a voice-over artist, is suing the defendants for infringement of her copyrights in the Interactive Voice Response (IVRs). It was contended that sometime in February 2016, the 2nd defendant approached the 3rd defendant, a recording studio, through its director, Luciano Tsere, and

requested that it produce the voice recordings (IVRs) required by the 1st defendant. In pursuit of the deal, the 3rd defendant sourced the plaintiff and requested her to record the voice-over that the 1st defendant would use. Thus, on 16th February 2016, the plaintiff went to the 3rd defendant's studio and recorded twelve (12) IVRs in Kiswahili and another twelve (12) IVRs in English. The said recordings were handed to the 2nd defendant, who subsequently submitted them to the 1st defendant for approval.

The 1st defendant went through the recordings and proposed some improvements. The 2nd defendant communicated the suggested ameliorations to the 3rd defendant. As such, on 22nd February 2016, the plaintiff was called back to the studio and perfected the adjustments. It is not in dispute that the plaintiff's final work, which was in both Kiswahili and English versions, was accepted by the 1st defendant. According to the plaintiff, she was also given a copy of the final version.

It is the plaintiff's evidence that, upon completion of the recording session, the plaintiff was paid Tanzania shillings one million eight hundred thousand (TZS 1,800,000.00), allegedly being a fee for the basic session (recording). The plaintiff further contends that after production of the final version, the plaintiff and the 1st defendant were supposed to sign the Model Release Agreement to authorise the use of her copyrighted work (IVRs), but this was not done. Moreover, the plaintiff contended that, notwithstanding, the 1st defendant has

been using her artistic work from 2016 until the time of instituting this suit without her authorisation. The plaintiff's efforts to resolve the dispute out of Court proved futile, and for that reason she preferred the present suit, praying for the following reliefs:

(i) That this Honourable Court be pleased to declare that the Defendants infringed the Plaintiff's copyright and have unjustly enriched themselves by the unlawful utilization of the Plaintiff's voice over/voice recording via the said IVRs *for* commercial gain without being equitably remunerated and without authorization and/or consent, resulting in loss of earnings and goodwill.

(ii) An order for payment of a sum of Tanzanian Shillings Two Hundred Sixty-Three Billion, Five Hundred Forty Million, Nine Hundred Eighteen Thousand, Six Hundred and Twenty-Three (TZS 263,540,918,623/=) being damages for the unauthorized use of her distinctive voice-over/voice recording on the 1st Defendant's network responses as IVRs resulting in the infringement of the Plaintiff's copyright.

(iii) An order for the defendants to pay 50% royalties arising from the benefits gained as a result of interfering with the plaintiff's copyright over her voice-over recording, without lawful compensation, without authority and/or consent *for* commercial gain, with interest of 20% per annum from the date of the cause of action to the date of full payment;

(iv) An order for payment of interest on the decretal amount mentioned under paragraph (ii) hereinabove at the Court's rate of 18% per annum from the date of judgment to the date of payment in full.

(v) Punitive Damages to the tune of Tanzanian Shillings Two Hundred Million (TZS 200,000,000/=)

(vi) Costs of the suit; and

(vii) Any other reliefs this Honourable Court deems fit and just to grant.

Conversely, the defendants replied by filing their respective written statements of defence. The 1st defendant disputed the plaintiff's claims. It was the 1st defendant's averment that she is the owner of the IVRs in dispute. She stated that according to the Master Procurement Agreement which she entered into with the 2nd defendant, whatever is developed by the 2nd defendant is the property of the 1st defendant. The 1st defendant stressed that the IVRs she used were authored by her and are therefore her property. In addition, the 1st defendant filed a third-party notice, in terms of Order 1 rule 23 (a) and (b) of the Civil Procedure Code, to the effect that should the Court find the 1st defendant liable, the Court should order the 2nd defendant to indemnify the 1st defendant pursuant to the Master Procurement Agreement.

The 2nd defendant, on her part, stated that she contracted the 3rd defendant through Luciano Tsere to produce the Interactive Voice Responses (IVRs) for Vodacom, the 1st defendant. She explained that it was the 3rd defendant's duty to find and negotiate with the artist, in this case, the plaintiff. She thus prayed the Court to dismiss the plaintiff's claims, saying that the 2nd defendant was not a party to the agreement between the plaintiff and the 3rd defendant. Regarding the third-party notice, the 2nd defendant contended that it is inapplicable in the instant case because the agreement requires the parties to go through arbitration.



The 3rd defendant, in a way, acceded to the plaintiff's claims. She stated that it was the agreement between her and the 2nd defendant that, upon production of the final versions, the 1st defendant would execute the Model Release Agreement with the plaintiff, to allow the 1st defendant to use the IVRs, but that was not done

Upon completion of the pleadings and following the discussion with the counsel for both parties, this Court framed the following issues for determination:

(i) ***Whether the plaintiff is the author/owner of the artistic work, namely, Interactive Voice Response (IVRs).***

(ii) ***If issue No. 1 is answered affirmatively, whether the 1st defendant has infringed the plaintiff's copyrights.***

(iii) ***Whether the defendants have unjustly enriched themselves by the use of the plaintiff's Interactive Voice Response (IVRs).***

(iv) ***Whether the plaintiff is entitled to the reliefs sought.***

(v) ***In the event that the 1st defendant is held liable, whether the 2nd defendant is obliged to indemnify the 1st defendant.***

(vi) ***To what reliefs are the parties entitled?***

Noteworthy that the suit was heard through witness statements pursuant to Order XVIII Rule 2 of the Civil Procedure Code.



During the hearing, the parties were represented as follows: Messrs George Shayo and Sunday Ndamugoba, learned advocates, appeared for the plaintiff, whilst Ms Miliam Bachuba, Mr Deogratias Tesha, and Mr Idrisa Muguha, learned advocates, stood for the 1st defendant. Mr Grayson Laizer and Mr Gerald Riwa, learned counsel, represented the 2nd and 3rd defendants, respectively. I appreciate their professional inputs throughout the conduct of the case and more particularly in their final written submissions.

In the strides to establish her claims, the plaintiff paraded three witnesses: Lisa Steven Semgalawe (PW1), Shabantu Kanowa (PW2), and Samwel Elibariki Kaaya (PW3). She also tendered five exhibits, namely: an agreement for voice-over services between the plaintiff and the 3rd defendant, dated 16th February 2016 (Exhibit P1), the letter to the Forensic Bureau Unit dated 09/07/2024, the payment receipt, the official response letter, and the detailed forensic report dated 17th September 2024, confirming the voice-over/voice recordings belong to the plaintiff (Exhibit P2 collectively), the plaintiff's demand letter dated April 25th, 2024, and the 1st defendant’s reply letter dated May 27th 2024 (Exhibit P3 collectively), two flash disks of 8 GB, red and white, (Exhibit P4 collectively), and a report on Analysis of Compensatory Damages (Exhibit P5).

The 1st defendant called three witnesses, namely Rehema Kipanga (DW1), Nasser Adam (DW2), and Deogratius Hugo Massawe (DW3). In addition, she produced four exhibits, to wit: the Master Procurement Agreement between

Vodacom Tanzania Limited and Aggrey & Clifford Limited, dated 16th July 2014 (Exhibit D1), the Statement of Work to the Master Procurement Agreement between Vodacom Tanzania Limited and Aggrey & Clifford Limited (Exhibit D2), a letter titled 'Your Cease-and- Desist Letter: Notice of Copyright Infringement and Demand for Compensation for the Unauthorised Use of Interactive Voice Responses' dated 27th May 2024 (Exhibit D3), and the Report on the Assessment of the MoneyLab Africa Group Limited Expert Report, together with the cover letter dated 24th April 2025 (Exhibit D4).

The 2nd defendant called one witness, Martin Kiragu (DW4), and tendered one exhibit, notably, a letter with Ref. J&J/TCL/333/24/22/2024 dated 27th February 2024 bearing the title 'The Use of Voice Prompts by Vodacom Tanzania Limited Produced by Tsere's Company Limited in the Year 2016' (Exhibit D5).

Similarly, the 3rd defendant brought one witness, Luciano Tsere (DW5), who tendered three exhibits: the Certificate of Registration and Extract from Register in respect of Transformax Records (Exhibit D6 collectively), the printouts of email correspondence between Martin Kiragu and Transformax Records (Exhibit D7 collectively), and the printout of email correspondence between Paul Masele and Transformax Records, together with the printout of the model release agreement (Exhibit D8).

I thoroughly read and analysed the parties' evidence. I also pensively appraised the parties' submissions. It now befits to determine the framed issues.

Whether the plaintiff is the author/owner of the artistic work, namely, Interactive Voice Response (IVR). It was established through Lisa Steven Semgalawe (PW1) that the 3rd defendant engaged her to record a voice-over intended for use by the 1st defendant. To support this fact, PW1 tendered the agreement for voice-over services between the plaintiff and the 3rd defendant, Tsere's Co LTD. Also, there is evidence of printouts of email correspondence between Martin Kiragu (DW4), on behalf of the 2nd defendant, and Luciano Tsere (DW5), on behalf of the 3rd defendant (Exhibit D7). According to Exhibit D7, the 2nd defendant engaged the 3rd defendant to find an artist, preferably a female artist, for recording the voice-over to be used by the 1st defendant for network responses and M-Pesa. Luciano Tsere (DW5) supported the plaintiff's assertion. He stated that after the production of the final versions in both Kiswahili and English Languages, he handed over the recordings to the 2nd defendant, who subsequently submitted the recorded voice-over to the 1st defendant. Vodacom, the 1st defendant was satisfied with the plaintiff's work, and therefore, the 2nd defendant proceeded to effect payment to the 3rd defendant as per the raised invoice. According to the invoice, which is contained in Exhibit D7, the breakdown for payment was as follows: TZS 1,800,000.00 for the voice-over artist and TZS 700,000.00 for IVR recording studio time. Both the 1st and 2nd defendants did not dispute receiving the IVRs from the 3rd defendant. Further, DW5 supported the plaintiff's claims, saying that the payment of TZS 1,800,000.00, which is seen in the invoice, was for the basic session fee, and that it did not extend to authorise the use of the work by



the 1st defendant. The 1st defendant claimed that she is the owner of the IVRs by virtue of the Master Procurement Agreement which was executed between the 1st and 2nd defendants.

I keenly analysed the evidence and the submissions made by the parties. From the evidence, it is common cause that the IVRs in dispute are the plaintiff's vocal works. It is the plaintiff who recorded the disputed voice-over in the 3rd defendant's studio, and therefore she is the author and owner of the work, in terms of Section 17 of the Copyright and Neighbouring Rights Act [Cap 218 R.E. 2023] (the CNRA). The said provision recognises the author as the primary owner of the artistic work. Moreover, the IVRs, being the plaintiff's vocal expression, are protected under Section 5(1)(d) of the CNRA. Indeed, the defendant could not produce any palpable evidence to prove the transfer of ownership or authorisation of usage from the plaintiff to either the 1st or 2nd defendants. Even DW1, Rehema Kipanga, during cross-examination, admitted that Aggrey & Clifford Limited, the 2nd defendant would first need to have the plaintiff's rights before assigning them to Vodacom. The 2nd defendant relied heavily on the payment of TZS 1,800,000.00 and contended that she obtained ownership through this payment. In contrast, the plaintiff forcefully stated that the payment was for basic session services (recording) and did not extend to authorisation for using her work. Further, PW1 explained that the terms and conditions regarding the use of her voice-over would be in the contract known as a model release agreement, which, however, was not executed in this case. It should be noted that intellectual property is an asset like any tangible



property and therefore matters pertaining to the transfer of ownership and authorisation must be sufficiently evidenced. This is the import of Section 18 of the CNRA, which provides:

18. A person who intends to use any right protected pursuant to the provisions of this Act, shall be obliged to seek authorisation from the copyright's holder.

When the evidence of both sides is critically analysed, it follows that the plaintiff's version weighs heavily regarding the absence of ownership transfer. That explains that the ownership of her artistic work (IVRs) remained with her. In view thereof, the Master Procurement Agreement (Exhibit D1) cannot bestow ownership of the work on the 1st defendant in the absence of ownership transfer from the plaintiff to the 2nd defendant. For that reason, I answer the first issue in the affirmative.

The second issue is whether, if issue No. 1 is answered affirmatively, the 1st defendant has infringed the plaintiff's copyrights. It is undisputed that the IVRs recorded by the plaintiff ultimately landed in the hands of the 1st defendant. This is also admitted by the 1st defendant's witness, Rehema Kipanga (DW1), and the 2nd defendant's witness, Martin Kiragu (DW4). Further, PW1 testified that she had been hearing her IVRs on the 1st defendant's network. On the other hand, the 1st defendant does not deny using IVRs in its provision of services. The 1st defendant's evidence suggests that the IVRs used are not the plaintiff's. However, the 1st defendant did not adduce cogent evidence to controvert the plaintiff's allegations on the use of her voice-over. In the circumstances, the 1st defendant was expected to tell the court or call the

alleged author of the IVRs that she has been using for network responses and M-Pesa, but failed to do so. This lead the Court to draw a negative inference against the 1st defendant.

Moreover, there is constructive admission of using the plaintiff's IVRs by the 1st defendant. This is clearly discerned from the 1st defendant's reply to the plaintiff's demand notice (Exhibit D3). For completeness, I reproduce the relevant paragraph. Paragraph 3 reads:

'3. While our Client cannot establish the veracity of your claims, it suffices to inform you that the IVRs currently in use by our Client are products which our Client duly and lawfully acquired from its service provider, namely, Aggrey & Clifford Limited. As such, the continued use of the IVRs in question is well within its contractual and other legal rights pursuant to its contract with Aggrey & Clifford Limited. Accordingly, our Client did not, at any point in time, use your Client's alleged voice-over prompts without authority or in breach of the Copyright and Neighbouring Rights Act or any Other intellectual property right as alleged in your Demand.'

The above excerpt tells it all that the 1st defendant admits using the IVRs in question, only that she claims to have acquired them lawfully from the 2nd defendant. Thus, even without the forensic evidence, that is, PW3 and the forensic report, Exhibit P2 collectively, the remaining evidence suffices to prove that the IVRs used by the 1st defendant in its networks are the plaintiff's.

As hinted earlier, Section 18 of the CNRA imposes an obligation on the user of the copyrighted work to seek authorisation first.

This duty is statutory and crafted in imperative terms. It was thus incumbent upon the 1st defendant to obtain the authorisation, which, in this case failed to establish. As pointed above, the 1st defendant did not bring evidence to prove that she sought and obtained the requisite authorisation from the plaintiff. It is therefore my finding that by using the plaintiff's IVRs without authorisation, the 1st defendant infringed the plaintiff's protected rights, in terms of Sections 5, 9 and 18 of the CNRA.

Whether the defendants have unjustly enriched themselves by the use of the plaintiff's Interactive Voice Response (IVR). The plaintiff contended that the defendants, specifically the 1st defendant, unjustly enriched themselves through the use of her voice-over recordings. On the contrary, the 1st defendant, through Rehema Kipanga (DW1), stated that the IVRs are not income-generating because Vodacom does not get direct revenue from network prompts. Be it as it may, it is common cause that the IVRs are used by the 1st defendant in the provision of its services, which are commercial in nature. This implicitly explains that the IVRs in dispute, though indirectly, contribute to generating income for the 1st defendant. Given the novelty of the issue in the country, I was constrained to seek the best experience from foreign jurisdictions. Luckily, I came across a more or less similar case from South Africa. This is the case of **Vodacom (Pty) Ltd v Makate and Another (CCT 51/24) [2025] ZACC 13; 2025 (10) BCLR 1174 (CC); [2025] 11 BLLR 1105 (CC); 2025 (6) SA 352 (CC) (31 July 2025).** In this case, the Interactive Voice Responses, famously known as 'Please Call Me ', also referred to as '

PCM ', which were used by Vodacom, were found to have commercial value as they contributed to revenue generation, and therefore the author was compensated for the use of her voice-over. A similar position was stated by the U.S. Court of Appeals for the Ninth Circuit in the case of **Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988)**. In Midler's case, it was held that where a company used someone's voice to sell its products without her authorisation, that company committed a tort. Based on the foregoing discussion, I part company with the 1st defendant, and instead I hold that by unlawfully using the plaintiff's IVRs, the 1st defendant has unjustly enriched herself.

Whether the plaintiff is entitled to the reliefs sought. Section 39 (1)(b) of the CNRA entitles a person whose rights have been infringed to payment of damages, among others. The plaintiff sought several remedies as indicated above, including payment of a sum of Tanzania Shillings Two Hundred Sixty-Three Billion, Five Hundred Forty Million, Nine Hundred Eighteen Thousand, Six Hundred and Twenty-Three (TZS 263,540,918,623/=) being damages for the unauthorised use of her distinctive voice-over/voice. To justify this claim, the plaintiff called Shabantu Kanowa (PW2), a Certified Public Accountant, who tendered a report on the analysis of compensatory damages (Exhibit P5). According to the report (Exhibit P5), the computations were based on periodicity, subscriber base, number of IVRs, IVRs usage frequency, and usage fee. However, neither the report nor Mr Shabantu Kanowa (PW2) was able to establish the reliable source of information on which the findings were

based. To cap it all, during cross-examination, PW2 admitted that the amount indicated in the report was based on an assumption. Undeniably, PW2 had no authentic sources to back up his findings in the report (Exhibit P5). PW2 also admitted that he did not request the data from the 1st defendant to accurately assess the extent of the usage of IVRs in the 1st defendant's network. Considering that the sum of TZS 263,540,918,623.00 was claimed as specific damages, the plaintiff was duty-bound to strictly prove it, which she failed to discharge. Such a colossal sum cannot be awarded based on guesswork. Having scanned the report (Exhibit P5), I am constrained to hold that the findings were based on trivial factors, which cannot be relied on by the Court. I therefore hold that the plaintiff failed to strictly prove the specific damages of TZS 263,540,918,623.00. The other reliefs will be discussed in the last issue.

The 5th issue is: In the event that the 1st defendant is held liable, whether the 2nd defendant is obliged to indemnify the 1st defendant. The 1st defendant significantly relied on the Master Procurement Agreement (Exhibit D1) and the Statement of Work to the Master Procurement Agreement (Exhibit D2), and stated that the 2nd defendant is liable to indemnify her in the event that she is held responsible. I have carefully read and scrutinized the two documents. To start with Exhibit D1, indeed, clause 21 requires the provider (the 2nd defendant) to indemnify the 1st defendant against any liability. However, according to Clause 30, the indemnification order can only be issued by the arbitrator. Clause 30.2 provides:

'Any disputes arising from or in connection with this Agreement which the parties have failed to resolve themselves within fourteen days from a complaint from either party, shall be finally resolved by arbitration through a single arbitrator appointed by a mutual consent of the parties within thirty days from the first time either party request for arbitration. Where within thirty days the parties cannot agree to a single arbitrator, the dispute shall be referred to a panel of three where each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint a chairperson. Where parties fails to appoint a panel of three arbitrators within thirty days, then either party request the High Court of Tanzania to appoint one arbitrator for the arbitration'

The above provision is loud and clear, and it is couched in mandatory terms that any complaint between the parties which arises out of the agreement must be resolved amicably or through arbitration. It is a settled position of law that where an agreement contains an arbitration clause, parties are bound to refer to arbitration, and failure to do so would render the court proceedings a nullity. Stressing compliance with the mandatory arbitration clause, the Court of Appeal, in the case of **Serengeti Breweries vs Monaban Trading Farming Co Limited (Civil Appeal No 52 of 2023) 2025 TZCA 1149 (17 October 2025),** on page 9, had this to say:

It is evident and the learned counsel of the parties are concurrent, that the parties entered into a binding contract of cereal management and dispute as to the quantity taken to the respondent for storage and that taken away by the appellant. The dispute, therefore arose under the contract. They are in agreement, too, that the appellant instituted a suit (Civil Case No. 1 of 2020) against the respondent before the High Court of Arusha instead of invoking the arbitration clause. That amounted to circumvention of the modality of dispute settlement the parties, on

their own, had chosen. Consistent with our holding in our earlier decision in Construction and Builders vs Sugar Development Corporation (supra), failure by the appellant to bring into play the arbitration clause stipulated in the contract was a serious error rendering the proceedings and judgment of the High Court a nullity.

For the foregoing reason, it is the considered view of this Court that the third-party notice was wrongly raised by the 1st defendant as the parties did not go through the arbitration. This Court, therefore, pursuant to Clause 30.2, and in line with the above authority, is incompetent to determine the third-party notice. To sum up, I hold that the 2nd defendant is not obliged to indemnify the 1st defendant in this case.

The last issue is to what reliefs are the parties entitled? In the preceding issues, this Court has found that the plaintiff has successfully proved on a balance of probabilities that she is the owner of the Interactive Voice Responses (IVRs) and that the 1st defendant has been using her artistic work unlawfully. Also, it is the holding of this Court that the 1st defendant has unjustly enriched herself. Although the plaintiff failed to prove the specific damages of TZS 263,540,918,623.00, she is still entitled to some remedies. It is a principle of law that where there is a wrong, there is a remedy (*ub jus ibi remedium*). See the case of **Benitho Thadei Chengula vs Abdulahi Mohamed Ismail** (Civil Appeal No. 183 of 2020) 2023 TZCA 17519 (23 August 2023). Since the plaintiff proved that the 1st defendant infringed her rights and consequently gained financial benefits, the 1st defendant must compensate the plaintiff. The author is entitled to the economic benefits of her

work by virtue of Sections 8 and 9 of the CNRA. As the 1st defendant wronged the plaintiff, I am satisfied that the plaintiff is entitled to general damages of Tanzania Shillings One Hundred Million (TZS 100,000,000.00). In arriving at this amount, I took into account the fact that the 1st defendant has been using the plaintiff's IVRs since 2016, coupled with the wide coverage of the 1st defendant's service across the country. Additionally, I find it apt to order the 1st defendant to pay punitive damages in the region of Tanzania shillings twenty million (TZS 20,000,000.00) for deliberate infringement of the plaintiff's copyrights.

All the above considered, it is the unfeigned finding of this Court that the plaintiff has proved her case against the 1st defendant. I have held the 1st defendant liable severally because, as per the evidence, it is the 1st defendant who used the plaintiff's artistic work without authorisation, contrary to Section 18 of the CNRA. In fine, I hereby enter judgment and decree against the 1st defendant and order as follows:

(i) The 1st defendant infringed the plaintiff's copyrights and unjustly enriched herself by the unlawful utilisation of the plaintiff's voice-over (IVRs).

(ii) The 1st defendant should pay the plaintiff general damages to the tune of Tanzania shillings one hundred million (TZS 100,000,000.00).

(iii) The 1st defendant should pay court interest at the rate of 7% of the decretal amount under (ii) from the date of judgment to the date of full payment.

(iv) Punitive Damages to the tune of Tanzanian shillings twenty million (20,000,000.00).

(v) Costs of the case be borne by the 1st defendant.

It is so ordered.

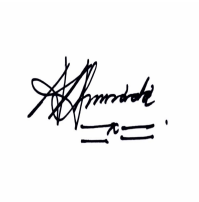
Dated at Dar es Salaam on this 4th day of September 2026.

A.A. Mbagwa

JUDGE

04/09/2026

Dated at DAR ES SALAAM this 4th of September 2026 .



A. A MBAGWA

JUDGE OF THE HIGH COURT