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## **AZANIA BANK LIMITED VERSUS PROFESSIONAL PAINT CENTRE LIMITED (CIVIL APPEAL NO. 554 OF 2022) [2025] TZCA 394, DECIDED ON MAY 7, 2025**

The case addresses a unique legal issue within our legal system. It outlines a framework for enforcing two orders stemming from both a criminal case and a civil lawsuit concerning the same matter.

The background reveals that the Respondent maintained an account with the Appellant Bank, which incurred a significant loss of TZS 2,395,518,977.38 due to forged cheques that were allegedly processed by the Appellant. An investigation led to the arrest of the Respondent's Accountant, Stanley Murithi Mwaura, who faced multiple charges including money laundering and forgery. The Court of Resident Magistrate ultimately convicted him, sentencing him to seven years in prison and ordering restitution of TZS 911,382,335.50 to the Respondent, a ruling that was later upheld by the High Court. The Court of Appeal confirmed this decision but adjusted the refund amount to TZS 824,308,843.50. Despite the order for Mwaura to refund TZS 911,382,335.50 to the Respondent, the latter sought reimbursement from the Appellant, arguing that had they exercised due diligence, the loss could have been prevented. The Appellant's refusal to comply with this demand prompted the Respondent to file a civil suit in the High Court Commercial Division, seeking TZS 2,395,518,977.38 in special damages, TZS 200,000,000.00 in general damages for breach of contract, and costs. In its defense, the Appellant contended that it had fulfilled its responsibilities regarding the management of the Respondent's account and asserted that the cheques presented by the Respondent's Accountant were legitimate.

After considering the arguments presented by both parties, the High Court issued a ruling in favor of the Respondent, including an order for costs. The Court awarded the Respondent a total of TZS 911,382,335.50 as special damages and TZS 150,000,000.00 as general damages.

Dissatisfied with the High Court's ruling, the Appellant sought recourse from the Court of Appeal. In support of the appeal, the Appellant contended that there was a lack of evidence substantiating the High Court's conclusion that the Appellant had committed fraud negligently. Additionally, the Appellant maintained that since Stanley Murithi Mwaura had been convicted and sentenced to imprisonment, and

Should you require any assistance please contact our Partner, Daudi Ramadhani, via:  
email: [d.ramadhani@rexattorneys.co.tz](mailto:d.ramadhani@rexattorneys.co.tz)  
web: [www.rexattorneys.co.tz](http://www.rexattorneys.co.tz)

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REX House,  
344 Ghuba Road | Toure Drive,  
Oysterba  
Dar es Salaam  
Tanzania.  
Tel. No.: +255 22 221 1180-8  
Email: [info@rexattorneys.co.tz](mailto:info@rexattorneys.co.tz)

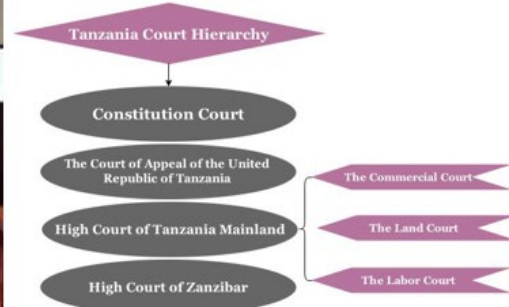
### **Zanzibar**

Mbweni,  
Zanzibar, Tanzania.  
Tel. No.: +255 22 221 1180-8  
Email: [info@rexattorneys.co.tz](mailto:info@rexattorneys.co.tz)

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was also ordered to reimburse the Respondent for the stolen funds, it was inappropriate for the Respondent to file a civil suit seeking the same amount from the Appellant that had already been addressed in the criminal proceedings. The Appellant asserted that the Respondent should have pursued the execution of the refund order as stipulated in section 349 of the Criminal Procedure Act [Cap. 20] (the CPA), thereby rendering the commercial case initiated in the High Court Commercial Division incompetent.

In contesting the appeal, the Respondent argued that the order issued against Stanley Murithi Mwaura was based on section 348 of the CPA, which constitutes a type of penalty that can be enforced through a warrant of levy of fine (distress) as outlined in sections 328 and 349 of the CPA. The Respondent further clarified that, as they were not a party to the criminal proceedings, the enforcement of the order should be pursued by the Republic. Additionally, the Respondent maintained that criminal and commercial cases are distinct, each governed by courts with separate jurisdictions and differing standards of proof.

The Court of Appeal, after considering the arguments presented by both parties, acknowledged the Respondent's assertion that the standards of proof differ between civil and criminal cases. However, it recognized the unique circumstances surrounding the appeal, noting the absence of precedent addressing a scenario involving two orders arising from both a criminal case and a civil suit concerning the same subject matter. To address this issue, the Court referenced the Indian case of *D. Purushotama Reddy & Another v. K. Sateesh*, Civil Appeal No. 4751 of 2008, and concluded that the existence of a pending criminal matter does not preclude the initiation of a civil suit. Furthermore, it stated that the criminal court possesses the authority to mandate that any amount recovered from an accused as a fine or compensation may be allocated to cover losses or injuries resulting from the offense, as stipulated in the criminal case order. Consequently, the High Court Commercial Division had the jurisdiction to hear the commercial case, despite the fact that there was already a determined criminal case.

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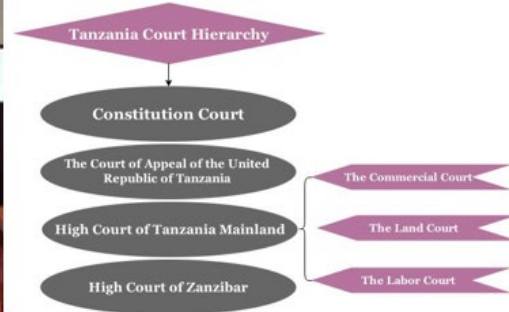
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Regarding the Respondent's argument that it was not a party to the criminal case, which may complicate the enforcement of the order, the Court determined that since the Complainant in the criminal case was a Director of the Respondent's company, he could pursue recovery on its behalf. Furthermore, the enforcement of the refund order can be executed based on an order issued in the criminal case through distress, in accordance with sections 328 and 349 of the CPA. Additionally, section 348(1) of the CPA stipulates a remedy for compensation to the victim of a crime when the offense has resulted in material loss or personal injury, regardless of the possibility of recovering compensation through a civil suit, and such compensation may be awarded in addition to other lawful penalties.

In conclusion, the Court determined that the amount of TZS 824,308,843.50, as established in the second appeal, is to be recovered in the criminal case. Regarding the amounts of TZS 911,382,335.50 and TZS 150,000,000.00 awarded by the High Court Commercial Division in a commercial case, the Respondent will not receive the full amount since she has already been compensated in the criminal case. Consequently, she is entitled to the difference between the TZS 911,382,335.50 awarded in the Commercial Case and the TZS 824,308,843.50 awarded in the criminal case, which amounts to TZS 87,073,492.00. Nevertheless, the aforementioned orders will not impact the decisions concerning general damages, interest, and costs.

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