

IN THE COURT OF APPEAL OF TANZANIA

AT MTWARA

(CORAM: MWARIJA, J.A., KWARIKO, J.A. And MWANDAMBO, J.A.)

CIVIL APPLICATION NO. 410/07 OF 2019

NATIONAL BANK OF COMMERCE.....APPLICANT

VERSUS

MAISHA MUSA ULEDI (LIFE BUSINESS CENTRE).....RESPONDENT

**(Application for leave to appeal from the decision of the High Court of
Tanzania at Mtwara)**

(Twaib, J.)

dated the 24th day of August, 2017

in

Civil Appeal No. 3 of 2017

RULING OF THE COURT

17th & 24th February, 2020

MWARIJA, J.A.:

The applicant, National Bank of Commerce was the defendant in the Resident Magistrate's Court of Mtwara in Civil Case No. 28 of 2016. It was sued in that Court by the respondent, Maisha Mussa Uledi (Life Business Centre). The respondent claimed from the applicant specific damages of TZS 70,000,000.00 arising from its act of allegedly withholding the respondent's certificate of title (the certificate) without justifiable cause. The respondent contended that the applicant continued to withhold the certificate after the former had fully paid the

loan of TZS 30,000,000.00 for which the certificate was deposited as collateral. According to the respondent, the applicant did not release the certificate despite having received a letter of request as well as reminder letters from the respondent. Apart from specific damages, the respondent claimed for general damages, interest at the rate of 30% per annum on the principal sum claimed and costs of the suit.

The claim was denied by the applicant. It contended that it was justified to withhold the certificate because of the respondent's failure to discharge its obligation of paying the discharge fee of TZS 150,000.00, a condition precedent for release of the certificate as stipulated in the loan agreement.

At the conclusion of the trial, the trial court found that the applicant did not have any justifiable cause for withholding the respondent's certificate after the latter had fully paid the loan. It however, found that the respondent had failed to prove that it suffered any specific damages as a result of the applicant's act. With regard to the claim of general damages, the trial court was of the view that the withholding of the certificate denied the respondent the prospects of using it to obtain loans from other financial institutions. It found that for the period within which the applicant retained it, the respondent could

have used it to obtain twice the amount of loan it obtained from the applicant. The trial court thus awarded the respondent general damages of TZS 60,000,000.00.

The applicant was aggrieved by the decision of the trial court and therefore, appealed to the High Court. In its judgment handed down on 24/8/2017, the High Court (Twaib, J.) agreed with the trial court that the applicant unjustifiably withheld the respondent's certificate. The learned first appellate Judge was of the view that from the evidence, after the respondent had requested for return of the certificate, the applicant had the obligation of notifying him to collect it on payment of the discharge fee. He found that, since after the respondent had written a letter requesting for the return of the certificate and after receiving reminder letters from the respondent the applicant remained silent, the latter was, for that reason, at fault. The learned Judge thus agreed with the trial court that even though the respondent did not prove specific damages, he was entitled to general damages. On the quantum of general damages however, the High Court found that the awarded amount was on the high side because the same was based on incorrect reasoning.

The learned first appellate Judge was of the view that the damages should not have been based on the amount which the respondent would have got as loan (the capital) but rather, the earning from that loan. In the circumstances, he reduced the amount of TZS 60,000,000.00 awarded by the trial court to TZS 20,000,000.00.

The applicant was further aggrieved by the decision of the High Court and thus intended to appeal to this Court. Since under s. 5(1) (c) of the Appellate Jurisdiction Act [Cap. 141 R. E. 2002], (the AJA), the applicant could only appeal with the leave of the High Court or this Court, he applied for leave to appeal before the High Court vide Misc. Civil Application No. 10 of 2017. That court (Dyansobera, J.) dismissed the application hence the present application which has been preferred as a second bite under s. 5(1) (c) of the AJA read together with Rule 47 of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules). In dismissing the application, the learned High Court Judge was of the view that the impugned decision does not raise any legal points which are worth consideration by this Court.

In this application, which has been brought by way of a notice of motion supported by an affidavit sworn by Mashaka Fadhili Tuguta, the applicant has raised the following grounds:

- "(i) *The court awarded general damages to the respondent without proof of any loss.*
- (ii) *That the court awarded general damages without explaining the basis and how it arrived at the figures awarded.*
- (iii) *That the subordinate court had no jurisdiction to entertain Civil Case No. 28 o 2016 which later brought into being Civil Appeal No. 03 of 2017 as it is a commercial nature case (sic) with a claim of more than 30 million (sic) which is above the pecuniary jurisdiction of the subordinate court."*

At the hearing of the application, Mr. Denis Maringo, learned counsel appeared for the applicant. On his part, the respondent appeared in person, unrepresented. Both the applicant and the respondent complied with the provisions of Rules 106(1) and 106 (7) of the Rules respectively by filing their respective written submissions. Whereas Mr. Maringo made oral submission clarifying the points raised in the applicant's written submission, the respondent did not have anything useful to add to his reply submission.

Submitting in support of the application, Mr. Maringo argued that the decision of the High Court raises legal points which are worth

consideration by the Court. On ground (i), he argued that since the respondent did not prove its claim on specific damages, the High Court acted on a wrong principle in awarding general damages. To bolster his argument, the learned counsel cited the case of **Anthony Ngoo & Another v. Kitinda Kimaro**, Civil Appeal No. 25 of 2014 (unreported) in which, the Court stated that:

" Although the law presumes general damages to follow from the wrong complained of, general damages are not damages at large."

Mr. Maringo stressed that damages are only awarded upon proof that the same were suffered. In this case, he argued, the respondent failed to prove that it suffered loss as a result of the applicant's act of withholding the certificate and as such, he could not have been awarded general damages.

On ground (ii), the learned counsel contended that the High Court did not explain the basis and the criteria used to arrive at the amount of the general damages awarded to the respondent. He relied further on the case of **Anthony Ngoo** (supra) in which, the Court stated the principle governing award of general damages in the following words:

" The law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence on record able to justify the award. The judge has discretion in the award of general damages. However the judge must assign reasons."

With regard to ground (iii), the applicant's counsel contended that, from the fact that the amount of TZS 70,000,000.00 claimed by the respondent as specific damages has its genesis in a commercial transaction, that is; a loan agreement, the trial court did not have jurisdiction to entertain the suit. Relying on the provisions of sections 2 and 40 (3) of the Magistrates' Courts Act [Cap. 11 R.E. 2002] as amended by Act No. 4 of 2004 (the MCA), Mr. Maringo argued that the suit was wrongly instituted in the court which did not have pecuniary jurisdiction. Under s. 40(3) (b) of the MCA the jurisdiction of a Resident /District Court in relation to a commercial case involving the proceedings where, like in this case, the subject matter is capable of being estimated at a money value, does not exceed TZS 30,000,000.00. The applicant's counsel argued therefore, that since in its decision, the High Court did not consider that point of law, the decision raises contentious issue and

for that reason, in terms of the decision of the Court in the case of **Nurbhai N. Rattansi v. Ministry of Water Construction Energy Land and Environment and Hussein Rajabali Hirji** [2005] TLR 220, the application should be granted.

In his reply submission, the respondent countered the arguments made in the applicant's written submission. Replying to grounds (i) and (ii) together, he argued that, from the impugned decision, the contention that general damages were wrongly awarded without proof that the respondent had suffered loss is incorrect. He referred to the part of the High Court judgment where, in reducing the amount of damages awarded by the trial court, the learned Judge observed, **first**, that the respondent incurred loss of earning expected from a loan which would have been obtained from use of the certificate and **secondly**, that the awarded amount should not have been based on the expected loan amount but rather, on the earning from that loan. In another vein, the respondent argued that the learned High Court Judge properly exercised his discretion in awarding general damages.

On ground (iii), it was the respondent's reply that since the suit was not filed as a commercial case but an ordinary civil suit and because under s. 40(2) (b) of the MCA, pecuniary jurisdiction of the trial court in

a claim whose subject matter is capable of being estimated in money value is an amount not exceeding TZS 100,000,000.00, the trial court had jurisdiction to entertain the suit.

On those arguments, the respondent contended that the decision of the High Court does not raise any legal points worth consideration by the Court.

In an application for leave to appeal, what is required of the court hearing such an application is to determine whether or not the decision sought to be appealed against raises legal points which are worth consideration by the Court of Appeal. From the impugned decision and the parties' submissions, the following issues arise. **First**, is whether in a claim for damages based on loss of use of property, general damages may be awarded notwithstanding the plaintiff's failure to prove his claim for specific damages. **Secondly**, although the question of jurisdiction was not raised in the High Court, being a point of law, after having considered the parties' submissions we find that the following issue arises; whether in a case of commercial nature filed in the District Court as an ordinary suit, such a case is subject to the pecuniary jurisdiction of that court under s. 40 (3)(b) of the MCA.

In our considered view these issues are worth consideration by the Court of Appeal. In the circumstances, we find merit in the application and hereby grant it. The applicant is accordingly granted leave to appeal to the Court of Appeal under s. 5(1) (c) of the AJA.

DATED at **MTWARA** this 22nd day of February, 2020.

A. G. MWARIJA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

The Ruling delivered this 24th day of February, 2020 in the presence of Ms. Teckla Kimati, learned counsel for the applicant and respondent in person is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL