IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWAMBEGELE, J.A., GALEBA, J.A., And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 442 OF 2020

MWEHA HAMIS ..... APPELLANT

VERSUS

THE PERMANENT SECRETARY,
MINISTRY OF INFRASTRUCTURE DEVELOPMENT ..... 1ST RESPONDENT

THE CHIEF EXECUTIVE OFFICER,
TANZANIA BUILDING AGENCY ..... 2ND RESPONDENT

THE ATTORNEY GENERAL ..... 3RD RESPONDENT

[Appeal from the Judgment and Decree of the High Court of Tanzania (Land Division), at Dar es Salaam]

(Mzuna, J.)

dated the 23rd day of February, 2018

in

Land Case No. 34 of 2008

JUDGMENT OF THE COURT

3rd July, 2023 & 29th February, 2024

MWAMBEGELE, J.A.:

At the time of the genesis of this matter, the appellant Mweha Hamis, was an employee of Tanzania Railways Corporation (TRC); a public corporation established under the laws of Tanzania. Given the Government policy at the material time of selling its houses to employees who were in occupation of the same, the appellant was given and accepted an offer to buy a house described as House No. PR 1 located along Shaurimoyo Street in the city of Dar es Salaam. That offer was

accepted through Exh. P2. Consequently, a Sale Agreement (Exh. P3) was executed on 16th December, 2004 and a payment schedule thereof (Exh. P5) prepared. According to Exh. P5, the appellant was to pay the purchase price of Tshs. 2,700,000/= in thirty-one instalments. The appellant commenced payments immediately and exchequer receipts thereof were tendered in evidence and admitted as Exh. P4. At the time of commencement of the suit the subject of this appeal, the purchase price had already been satisfied in full.

The record of appeal bears out that everything went on perfectly well until sometime later when the second respondent wrote the appellant a letter bearing Ref. No. GC: 114/224/02/83 dated 7th September, 2007 (Exh. P6) notifying him that the sale of the house in question was null and void because it had previously been sold to one COMAFRIC way back in 1998. The appellant was asked to vacate the premises with immediate effect to pave way to the said COMAFRIC to develop the area. The appellant did not heed to instructions in Exh. P6 and, alas! on 29th March, 2009 around 0200 - 0300 hours in the morning, he was forced out and the house demolished instantly. Given that bizarre twist of things, the appellant filed the suit from which this appeal stems claiming a number

of reliefs as evident in the amended plaint at pp. 11 - 41 of the record of appeal.

The court annexed mediation was attempted and failed. The High Court thus framed the following three issues for determination:

1. Whether there was a contract of sale between the plaintiff and the first and second defendants;
2. If issue number one is answered in the affirmative, whether there was any breach of the contract between the parties; and
3. To what reliefs are the parties entitled.

After hearing the witnesses for both parties and having received exhibits tendered in evidence, the suit was decided in favour of the appellant. The trial court answered the first two issues in the affirmative to the effect that there was a contract of sale between the appellant on the one hand and the first and second respondents on the other, and that the same was breached by the latter. With regard to the third issue, the High Court held that the appellant was entitled to only general damages of one-thirtieth of Tshs. 1,500,000,000/= which was the amount claimed as compensation for demolition of the house (which was equivalent to Tshs. 49,999,999/=; a round figure of Tshs. 50,000,000/=), plus Tshs.

2,700,000/= which was the amount of the purchase price already paid by instalments. The appellant was also awarded costs of the suit.

The reliefs awarded to the appellant did not make him happy. He thus preferred this appeal. The appeal has been predicated on nine grounds. The kernel of the nine grounds of appeal is the quantum of general damages awarded to the appellant and may conveniently be condensed to only four issues; **one**, whether the trial court erred in not awarding compensation of Tshs. 1.5 billion prayed for as compensation for the demolition of the house; **two**, whether the trial court erred in not awarding preliminary reliefs prayed for in the amended plaint; **three** whether the trial court erred in not rescinding the termination letter; **four**, whether the trial court erred in not awarding damages for the cash and personal effects lost during the demolition; **five**, whether the appellant was entitled to the award of general damages; and, **six**, whether the trial court erred in not awarding interest on the purchase price paid.

The appeal was argued before us on 3rd July, 2023. At the hearing, the appellant was represented by Mr. Deogratius Mwarabu, learned advocate who was also in the team of advocates who rendered the same services for the appellant at the trial. Ms. Lucy Kimaryo and Mr. Victor

Joseph Mhana, learned State Attorneys, appeared for and on behalf of the respondents. Both parties had, ahead of the hearing, filed written submissions for or against the appeal, as the case may be, which they stood by with adding a few oral arguments at the hearing.

Before we go into the determination of the appeal in earnest, we feel pressed to say a word or two on the memorandum of appeal. As already alluded to above, the court framed three issues for determination. The appellant was dissatisfied with the reliefs awarded to him, subject of the third issue. Out of that dissatisfaction, the appellant filed nine grounds of appeal. The grounds are not only repetitive but also verbose. This is a blatant disregard of the provisions of rule 93 (1) of the Tanzania Court of Appeal Rules, 2009 which, *inter alia*, requires a memorandum of appeal to be concise, without argument or narrative, specifying the points which are alleged to have been wrongly decided and the nature of the order which it is proposed to ask the Court to make. With unfeigned respect to the appellant's counsel, the memorandum of appeal in the matter before us is deficient of these necessary aspects.

The above aside, to make matters worse, the pleadings in the amended plaint, more especially the reliefs part, were inelegant. We may demonstrate for clarity. The learned counsel prayed in the amended

plaint for what he called preliminary reliefs ranging from general and special damages to compensation and subsistence allowance. We did not stop to wonder how would these reliefs be granted ahead of the finalization of the suit without offending the ends of justice in that process.

At this juncture, we find ourselves unable to resist the urge of associating ourselves, as we did in the recent past in a decision we rendered on 5th April, 2023 in **Heritage Insurance Company Tanzania Limited v. First Assurance Company Limited** (Civil Appeal 165 of 2020) [2023] TZCA 175 (5th April, 2023) TanzLII, with a warning sounded to legal practitioners by Lord Templeman in an English case of **Ashmore v. Corp of Lloyd's** [1992] 2 All ER 486 on the duty of legal practitioners:

> *"The parties and particularly their legal advisers in any litigation are under a duty to co-operate with the court by chronological, brief and consistent pleadings which define the issues and leave the judge to draw his own conclusions about the merits when he hears the case. It is the duty of counsel to assist the judge by simplification and concentration and not to advance a multitude of ingenious arguments in the hope that out of ten bad points the judge will be capable of fashioning a winner."*

We subscribe to the above holding by Lord Templeman in **Ashmore v. Corp of Lloyd's**. In the matter under discussion, the learned counsel for the appellant was under legal duty to cooperate with the court by ensuring that he presented his case to the court with focused, chronological and brief pleadings defining issues in an elegant manner that simplified matters; not raising a multitude of ingenious arguments as he did, hoping that the judge will fashion a winner.

Having sounded the warning, we now go back to business hoping that the message has sailed through. In determining this appeal, we shall answer the grounds of appeal as summarized above.

Arguing in support of the first issue, Mr. Mwarabu submitted that the High Court, having found that the appellant legally purchased the disputed property, ought to have awarded Tshs. 1,500,000,000/= pleaded as specific damages in the amended plaint. He submitted that the appellant pleaded this figure based on the fact that the suit area had a total area of 5000 square metres and the trial court wrongly held that the value of the house and plot had never been proved thereby arriving at an erroneous conclusion that the appellant was entitled to one-thirtieth of the amount claimed. He added that the location of the suit property is prime; along Shaurimoyo Business District in the vicinity of Msimbazi

Street and Nyerere Road in the famous Kariakoo Area. The learned counsel argued that it was an error for the trial court to blame the appellant for not proving the estimated value of the said property and tendering receipts on his personal effects other than the evidence on record. Mr. Mwarabu beseeched us to follow our decision in **Rev. Christopher Mtikila v. Attorney General** [2004] T.L.R. 172 wherein we cited with approval the case of **Rookes v. Barnand** [1964] AC 1129 as good law as was quoted in **Winfield and Jolowicz on Tort** (11th Edition) by WVH Rogers, Sweet and Maxwell at p. 593 which limits the award of exemplary damages to only two cases:

> *"(a) oppressive, arbitrary or unconstitutional action by servants of the Government ...*
>
> *(b) cases where the defendant's acts have been calculated by him to make profit for himself."*

Elaborating, the learned counsel submitted that the respondents were guilty in both cases (a) and (b) above by not only being oppressive, arbitrary and against the Constitution but also by depriving the appellant of his property by selling it to another person to his detriment. He added that it was not controverted at the trial that the value of the property had tremendously appreciated and the appellant pegged it at Tshs.

1,500,000,000/= and also, equally uncontroverted was the testimony of DW1 that the same disputed land was resold at USD 750,000.00. Given this argument, the appellant's counsel submitted that the trial court should have awarded the appellant the amount of Tshs. 1,500,000,000/= pleaded which was commensurate with the prices of similar properties in the vicinity. He thus implored us to do what the trial court did not do by awarding the Tshs. 1,500,000,000/= prayed for in the amended plaint in place of Tshs. 50,000,000/= awarded by the trial court.

In response to this issue, in both; the reply written submissions and oral submissions at the hearing, the learned State Attorney vehemently opposed the appellant's arguments. She argued that the trial Judge could not have awarded Tshs. 1,500,000,000/= without being moved. She contended that the appellant did not plead specific damages and thus the trial court could not have granted it, more especially that it is settled that parties are bound by their pleadings. She added that, at para 2 (b) of the prayers in the amended plaint, the appellant did not plead specific damages but compensation to a tune of Tshs. 1.5 billion which, according to him, was the current market value of the property at the time of demolition. The learned State Attorney referred us to our decision in **Melchiades John Mwenda v. Gizelle Mbaga (Administratrix of the**

Estate of John Japhet Mbaga - deceased) & 2 Others [2020] 1 T.L.R. 467 to buttress the point that the court will grant only a relief that has been prayed for.

The learned State Attorney added that even if the amount was pleaded as specific damages, it ought to have been specifically proved considering that it is the law that specific damages must be specifically pleaded and strictly proved. She referred us to the case of **Anthony Ngoo and Another v. Kitinda Kimaro** [2015] T.L.R. 54 for the proposition that specific damages must be specifically pleaded and proved. This was not the case in present case, she argued. She thus implored us to dismiss the first ground of appeal.

Prompted, the appellant's counsel submitted in rejoinder that the amount of Tshs. 50,000,000/= was for breach of contract and not as compensation in place of Tshs. 1,500,000,000/=.

We have considered the contending arguments by the parties. Indeed, the kernel of their arguments is on the quantum of the amount awarded and whether Tshs. 1,500,000,000/= prayed as compensation fall under the realm of specific damages. An answer to this will entail a brief appreciation of the law of damages. It is indeed elementary that damages are categorized as general or specific. This categorization of damages has

long been in existence ever since we imported common law to our jurisdiction. Professor Andrew Tettenborn and David Wilby QC, the authors of **The Law of Damages** (second Ed.) put thus at p. 27:

> *"Under the system of pleadings which grew up in the nineteenth century, a distinction arose between matters of loss which had to be specifically pleaded (special damages) and others (general damages) which were presumed to have been suffered in any case. This distinction, however, has ceased to have any real significance and now may safely be abandoned."*

With regard to breach of contract, which is probably the case in the matter under our discussion, the learned authors write at p. 28:

> *"In breach of contract ... a distinction is drawn between:*
>
> *(a) Damage occurring in the normal course of things, which is normally recoverable in so far as it results from the breach; and*
> *(b) Other loss which is recoverable only if contemplated by both parties at the time of contracting.*
>
> *This distinction has at times been re-phrased as one between 'general' and 'special' damage"*

While still on the same subject, we need to emphasize here that the jurisprudence in this jurisdiction has it that the categorization of damages as general or specific has never ceased to be significant and thus has never been abandoned as would seem to be the case in England as quoted above and as referred to in the holding of Lord Donovan in the cited case of **Perestrello v. United Paint Co Ltd** [1969] 3 All ER 479. Thus, in our jurisdiction, it is settled law that, as distinct from general damages, special damages must be specially pleaded and strictly proved – see: **Zuberi Augustino v. Anicet Mugabe** [1992] T.L.R. 137, **Stanbic Bank Tanzania Limited v. Abercrombie & Kent (T) Limited** (Civil Appeal 21 of 2001) [2006] TZCA 7 (3 August 2006) TanzLII and **Nyakato Soap Industries Ltd v. Consolidated Holding Corporation,** Civil Appeal No. 54 of 2009 (unreported).

The appellant claims to have pleaded and prayed for special damages in paragraph 2(b) of the amended plaint. To appreciate the discussion we are going to make, we find it apposite to reproduce hereunder the relevant paragraph:

> *"2 (a) the 1st and 2nd Defendant rescind their notice to repudiate the sale contract, and or;*

(b) pay the Plaintiff compensation to the tune of Tshs. 1.5 billion being current market value price of the property ...."

Thus, what the appellant pleaded and prayed under this head was compensation at a quantified sum of Tshs. 1.5 billion representing current market value for the demolished the property. That, in our view, falls under the realm of special damages. It thus ought to have been specially pleaded and strictly proved. The case would have been different if the prayer was for damages for breach of contract. That would have fallen under the head of general damages.

The High Court, in our considered view, correctly held that special damages were not proved. We shall demonstrate. The appellant relied on the testimony of Corman Ernest Kisima (PW4) who, according to him, testified on the value of the property. With respect, we are unable to agree with him. The testimony of PW4 is found at p. 140 of the record of appeal. His evidence in chief comprises just a paragraph which did not refer to the value of the property under discussion. He was recorded by the High Court as saying:

"Normally, before demolition there must be valuation based on market value. If it is land it is valued based on its location, its land use and its

size. We value based on the acre or square metre. At Kariakoo the value of square metre varies but is very high. It depends on the location. At KAMATA near KD at the junction of Nyerere Road and Msimbazi, I cannot know because it is owned by Government Institutions. However, for Msimbazi it is estimated at Tshs. 380,000/= per one square metre before 2015 rates."

What we discern from the above testimony is the general nature of the evidence on what was supposed to be specific proof. It did not particularly refer to the property under discussion. What went on in cross-examination will paint the picture of our worries and confirm them. When cross-examined by the State Attorney, the witness testified:

"The area where there were houses owned by TRC, I cannot know exactly the rates as of now."

His re-examination did not rescue the otherwise sinking boat. The witness is recorded as saying:

"The demolition done to pave way for DART was done based on the Block, not each individual plot. I remember the money paid to TBA and each individual owning a house was paid Tshs. 70,000,000/= so as to find another plot."

We have reproduced a big chunk of PW4's testimony with a view to seeing if the same vindicates the argument by the appellant's advocate to the effect that the value of the disputed land was Tshs. 380,000/= per square metre or that its market value was Tshs. 1.5 billion. In view of PW4's testimony above, we may safely find and hold that the witness did not testify on the value of the property under discussion. His was a general account in respect of the areas he described. Whether the areas referred to include the area under discussion is anybody's guess. If anything, he testified that he did not know exactly the rates in respect of the houses owned by TRC. And to make matters worse, no valuation report was tendered to prove its market value. That is the reason why we agree with the High Court that the value of the disputed property was not proved. There was thus no basis for the High Court to award the compensation of Tshs. 1.5 billion prayed for in paragraph 2(b) of the amended plaint.

As an extension to the above discussion and finding, we find appropriate to answer the issue whether the High Court was correct to award one-thirtieth of the amount claimed as compensation. With profound respect to the learned trial judge, we are unable to agree with him on the basis for the award. Pegging the award on the amount prayed

under the head of compensation or specific damages, would connote that the appellant strictly proved only one-thirtieth of the amount claimed while in fact the amount awarded was for breach of contract. That would fall under the realm of general damages which are awarded at the discretion of the court. The High Court thus used a wrong formula to award the general damages. For completeness, we shall revert to this point later in this judgment when discussing the issue whether the appellant was entitled to general damages after the trial court had found that there was breach of contract.

We now turn to determine the issue whether the trial court should have considered the preliminary reliefs prayed for by the appellant in the amended plaint. In this issue, the appellant seeks to fault the trial court for not considering reliefs sought by the appellant against the respondents in paragraph number 1 of the amended plaint. Addressing the Court in support of this issue, the learned advocate submitted that the trial court paraphrased the appellant's reliefs at p. 174 of the record of appeal but ignored the reliefs prayed for in paragraph number 1 of the amended plaint. Admitting on some inelegancy in drafting his amended plaint, as the same was not brief, precise and to the point, the High Court, he

submitted, should not have totally ignored some of his prayers by picking and choosing what it thought was the appellant's reliefs.

Responding, the learned State Attorney did not agree with the appellant's counsel. She submitted that the trial judge's decision was based on the issues framed. That, she argued, did not mean that he ignored the reliefs prayed for by the appellant. The cardinal principle is, the learned State Attorney argued, the one who alleges should prove his allegations. She added that all the reliefs prayed for by the appellant were addressed by the trial Judge. The learned State Attorney thus submitted that the ground of appeal was baseless, ambiguous and lacked legal substance and implored us to dismiss it.

In the paragraph under reference, the appellant prayed for "Preliminary Judgment and Decree as per paragraph 19 above". In paragraph 19, the appellant prayed for reliefs before the main suit is heard and determined. We shall let paragraph 19 of the amended plaint speak for itself:

> *"19. That in respect of the wanton and illegal demolition of the plaintiff's matrimonial home, the Plaintiff claims for a Preliminary Judgment and Decree of granting the following prayers before the main suit is heard:*

(i) *general damages for destruction of matrimonial house, invasion of privacy of Plaintiff's family at Tshs. 500,000,000/= ....*

(ii) *Compensation for destruction of Plaintiff's household goods.*

(iii) *Loss of cash stored in the house Tshs. 4,500,000/= ...*

(iv) *Damages for shock, humiliation and suffering Tshs. 200,000,000/= ....*

(v) *The 1st and 2nd Defendants pay the Plaintiff emergence reliefs and subsistence allowance worth Tshs. 500,000,000/="*

We have already stated above that we were surprised by the reliefs prayed for by the appellant under this head and are still surprised at this stage. We do not see any legal justification of having the reliefs considered and perhaps granted ahead of the hearing of the suit. It cannot be overemphasized that consideration and perhaps granting of the reliefs prayed for as preliminary reliefs depended on the hearing of the suit to its finality. They could not be legally granted ahead of the hearing. That is perhaps the reason why, and to our mind rightly so, the trial Judge

ignored them. The complaint in this ground is without any legal justification, it is dismissed.

The third issue seeks to challenge the High Court for its failure to order repudiation of the "second sale agreement" as well as its failure to cancel the notice that rescinded the contract between the parties to this appeal. Mr. Mwarabu argued that having found that the respondents breached the contract, the High Court should have held that the appellant was entitled to the suit property. Anything short of that, he argued, was tantamount to blessing the appellant's wrong doing. He added that the provisions of section 73 (1), (2) and (3) of the Land Act, Cap. 113 of the Laws of Tanzania, do not allow any person to take the law regarding eviction into his own hands.

The learned counsel argued further that the unilateral impossibility of performance of a contract or mistake of fact cannot come to the aid of a wrong doer. He cited to us our decision in **A. S. Sajan v. Cooperative and Rural Development Bank** [1991] T.L.R. 44 to buttress the proposition that damages should be awarded on the strength of the cardinal principle of *restitutio in integrum*, that is, the law will endeavour, so far as money can do it, to place the injured person in the same situation as if the contract had been performed. The learned counsel thus implored

us to cancel the notice repudiating the contract and declare the disputed land as belonging to the appellant.

In response, the learned State Attorney argued that the appellant wants the Court to rescind a contract entered by the respondents with a third party which cannot be allowed as the High Court had dealt with the matter adequately as appearing at p. 467 of the record of appeal. She argued that the terms of contract between the parties to this appeal gave option for indemnification of the purchaser when there is breach of the terms of the contract.

We will not be detained by this issue. We should state at the outset that we think reference to the agreement between the respondents and a third party as a "second sale agreement" may not be correct. We say so because the letter rescinding the contract between the parties to this appeal (Exh. P6) had it that the reason for the termination of the contract was that the property had previously been sold to another person. That was also the testimony of Hassan Mvano (DW1) who worked with the second respondent as an estate officer. As per Exh. P6 and DW1, what should be called a second sale agreement should therefore be the sale between the parties to this suit. After all, the trial court would not have legally given an order to rescind a contract involving someone who was

not a party to the suit without offending the law. If anything, that course would have offended the fundamental principle of the right to be heard.

Indeed, the trial Judge discussed the Sale Agreement (Exh. P3) between the parties at p. 467 of the record of appeal in which the seller undertook to indemnify the appellant (the buyer) in case of any breach by the seller. The trial court rightly held that the appellant was entitled to indemnification. Given the appellant's submissions, he does not seem to dispute this. The only problem seems to be the quantum of indemnification which, as already indicated, we shall deal with at a later stage of this judgment. We are therefore satisfied that the trial court rightly held the way it did.

We now turn to consider the question of damages in respect of the items and cash lost during the demolition of the house, the subject of the fourth issue. The appellant assails the trial court for not awarding any reliefs in respect of the household items, materials which were in the disputed house and cash lost during demolition of the appellant's house. The appellant's counsel admitted that the house was demolished before any valuation was carried out in respect of those personal effects. He submitted that, that fell under special damages and that PW1, PW2 and PW3 proved that there were household items and equipment worth Tshs.

21,910,000/= as well as cash in the sum of Tshs. 4,500,000/= which were lost during demolition and the trial court ought to have granted that relief. In response, the learned State Attorney submitted that the trial Judge could not have granted the prayer for destruction of household items, materials and equipment as well as lost cash because of lack of proof. No documentary evidence was brought to back up the claim, she contended, and therefore the trial court rightly rejected the claim.

We agree with the finding of the trial court that this claim was not proved. The trial court stated categorically at p. 468 that it was unable to grant the prayer for want of proof. What the appellant did was to list a number of household items, building materials and equipment as well as cash said to have been in the house before demolition and that they were lost during the exercise. The appellant pleaded that they were constructing a house in Morogoro and were running a shop and a poultry farm and thus "it is natural to have Tshs. 4,500,000/=" in the house. No documentary evidence other than the appellant's word was brought to prove the allegation. The claim falls under special damages and therefore it ought to have been specially pleaded and strictly proved by bringing some tangible evidence to prove that the same really existed and were destroyed or lost during the demolition. Short of that, which is what

happened, the claim remained unproved. The trial court therefore was correct for not awarding damages in respect of this claim. We dismiss this complaint as well.

The fifth issue is on the complaint by the appellant seeking to challenge the trial court for not awarding general damages pleaded in the amended plaint. The appellant's counsel submitted that it was pleaded in the amended plaint what the appellant and his family suffered; invaded privacy in a midnight ambush, threats and excessive force, shock to occupants including an expectant mother. He added that the appellant had proved that he had no shelter, clothes, food for himself and family and thus claimed Tshs. 500,000,000/= as emergence relief and subsistence allowance as pleaded. The appellant, it was argued, having proved the damages he had suffered, the trial court ought to have taken into account all pertinent and relevant questions in determining general damages as was the case in **Tanganyika Standard (N) Ltd v. Rugarabamu Archard Mwombeki** [1987] T.L.R. 40. The learned counsel implored us to enhance the quantum of general damages awarded by the trial court. He contended that, that was within our mandate in line with the principle expressed in **The Cooper Motor**

Corporation Ltd v. Moshi/Arusha Occupational Health Services [1993] T.L.R. 96 in which we held:

> *"Before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as taking into account some irrelevant factor or leaving out of account some relevant one); or short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage".*

The appellant's counsel thus beseeched us to intervene and enhance the amount of general damages awarded by the trial court.

On her part, Ms. Kimaryo submitted that since the trial court awarded the appellant for the breach of contract, he needed not award general damages as well. After all, she argued, general damages are awarded at the discretion of the court. Buttressing this proposition, she referred us to **Anthony Ngoo** (supra) in which we held:

> *"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."*

The learned State Attorney thus implored us to dismiss the seventh ground of appeal.

We have considered the rival arguments by the learned counsel for the parties. Indeed, the trial court, as already indicated when discussing ground one of the appeal, awarded Tshs. 50,000,000/= as approximately one-thirtieth of the amount pleaded and prayed as special damages. We have already said above that by pegging the amount awarded on the amount of special damages pleaded and prayed, the appellant meant the special damages were proved to that extent only while it did not and the court held so; that special damages were pleaded but not proved. On the authority of **The Cooper Motor Corporation** (supra), we find justification to interfere with the award as it was based on a wrong principle. In our view, the trial court should have considered the circumstances of the case and awarded general damages as well. Invasion of the disputed property deep in the night and demolishing the same while it was in occupation of the appellant and his family thereby causing humiliation, shock and a series of suffering on the part of the appellant and his family, are some of the pertinent circumstances which should have been taken into consideration. All considered, we quash the award of Tshs. 50,000,000/= as approximately one-thirtieth of the

amount pleaded and prayed as special damages and set it aside. In its stead, we take the view that, given the circumstances of the case explained above, the appellant was entitled to general damages at a tune of Tshs. 150,000,000/=. This complaint succeeds.

The complaint in the last issue is on interest. The kernel of the complaint here is on the purchase price having been paid in full but the trial court did not order any interest upon refund. The appellant argues that the respondents kept all along the money paid as purchase price and pocketed USD 750,000.00 proceeds from "the second sale". He added that the transaction was commercial in nature and between two willing parties. As the appellant pleaded and prayed for interest from the date of accrual of the cause of action until payment in full, the trial court, having found that there was breach of contract and that the purchase price had been paid in full, it ought to have granted the prayer.

The response of the learned State Attorney was simply that the trial court was justified to decide as it did.

We must state at the outset that reference to the transaction by the parties to this appeal who entered in the contract on their own free will as one falling within the scope and purview of commercial transactions is but correct. We say so despite being alive to the fact that from the

genesis of the transaction and the purchase price offered and paid, the transaction was not, *stricto sensu,* commercial. As already said at the beginning of this judgment, the genesis of the transaction is the Government policy at the material time to sell houses to the occupants of the same. The consideration offered and paid was a throw-away price. However, the transaction had all the hallmarks of a commercial transaction whose breach must have legal consequences. Having found and held that the transaction would have attracted interest, we would have stopped there and granted the prayer by the appellant. However, there are principles upon which such interest is granted. Interest prayed by the appellant in as much as it is pegged from the date of the cause of action, is one before the judgment. From a plethora of authorities of the Court, such interest is paid upon being pleaded as arising out of a statutory provision, contract or trade usage. It is not a matter falling within the discretion of the court. On this stance, we find solace in **National Insurance Corporation (T) Limited & Another v. China Civil Engineering Construction Corporation,** Civil Appeal No. 119 of 2004 (unreported) in which we reproduced the following excerpt from the decision of the Privy Council in **Bengal Railway Co. v. Ruttanji Singh** AIR 1938, 67, 70:

The crucial question, however, is whether the Court has authority to allow interest for the period prior to the institution of the suit; and the solution to the question depends, not upon the Civil Procedure Code, but upon substantive law. Now, interest for the period to the date of the suit may be awarded, if there is agreement for the payment of interest at a fixed rate, or it is payable by the usage of trade having the force of law, or under the provisions of any substantive law entitling the plaint to recover interest .... "(See also, The Union of India v W. P. Factories, A.I.R. 1966 S.C.395).

The Court then held:

"Learned authorities are consistent and explicit that as a matter of substantive law, interest for the period prior to the date of the suit may be awarded if there is agreement, express or implied for payment of such interest, or it is payable by the usage of trade (see for e.g. ***Harilal & Co. and Another v The Standard Bank Ltd.*** *[1967] E.A. 512, 516-517) or provided for under a statutory provision of the law entitling the plaintiff to recover interest, or arises out of a rule of equity (see,* ***Mulla, The Code of Civil Procedure****, Vol. I pp 312-313;* ***Sarkar, Code of Civil Procedure****, 11th Ed, pp. 282, 293;* ***P.K. Majumdar,***

Commentary on the Code of Civil Procedure, *Vol. I, 5th Ed. p. 690). With no foundation or material facts having been laid by the respondent in the pleadings to establish the existence of any of the above state of circumstances which would have attracted a relief in the award of interest for the period up to the date of the suit, with respect, we do not see how the same could have been awarded by the High Court."*

[see also: **Heritage Insurance Company Tanzania Limited** (supra)].

Adverting to the matter at hand, the appellant did not plead refund of the purchase price paid to the respondents. What the appellant pleaded and prayed was, *inter alia*, compensation for the demolished house at the then current market value of 1.5 billion shillings. Even on that amount, the appellant prayed for "interest at court rate from the date of accrual of cause of action until payment in full". It is elementary law that interest at court's rate is reckoned from the date of judgment, not from the date of accrual of cause of action. Be it as it may, the complaint in respect of interest on the consideration paid, surfaced in the written submissions in support of this appeal. In the circumstances where no foundation or material facts was laid by the appellant in the pleadings to

establish the existence of any of the above ingredients set out in **National Insurance Corporation (T) Limited** on which the trial Judge could have based the award of interest for the period up to the date of the suit, we do not see how the trial Judge could have granted the prayer. We find this complaint unfounded.

As regards scooping USD 750,000.00 in what the appellant calls the second sale agreement, we have already made ourselves clear above that the letter rescinding the contract (Exh. P6) and the testimony of DW1, did not say it was a second agreement. That evidence is to the effect that the area had been sold to COMAFRIC way back in 1998. In the premises, we increasingly find no reason to fault the trial court for not awarding interest on the purchase price paid.

For the avoidance of doubt, we are alive to the fact that the appellant complained on the trial court for not considering the reliefs sought in the plaint instead of the amended plaint. Mr. Mwarabu submitted that the trial court lost track of the reliefs sought in the amended plaint and, in its stead, relied on the reliefs in the Plaint which was no longer part of the record. He added that, that course of action by the trial court occasioned injustice to the appellant as the reliefs in the amended plaint were not considered.

Ms. Kimaryo submitted in response that the complaint is baseless because it is clear from the amended plaint at p. 16 of the record of appeal and the judgment at p. 455 of the same record, that the trial court referred to the amended plaint.

We agree with the appellant's counsel that once an amended pleading is filed, that which existed before the amendment is no longer material to the Court. That is the standpoint we took in **Tanga Hardware & Autoparts Ltd & 6 Others v. CRDB Bank**, Civil Application No. 144 of 2005 (unreported) in which we subscribed to the holding in an English case of **Warner v. Sampson & Another** [1959] 1 QB 297 for the proposition that once pleadings are amended, that which stood before the amendment is no longer material to the court. However, given the decision we have made above as well as the conclusion we are going to make below, this ground is no longer relevant for our determination.

The upshot of the above is that we allow the appeal to the extent stated. The award of the trial court of Tshs. 50,000,000/= pegged on the special damages pleaded in the amended plaint is quashed and set aside. The appellant is awarded Tshs. 150,000,000/= as general damages for the injury suffered as a result of the breach of contract and demolition of the suit property. The purchase price of Tshs. 2,700,000/= shall be

refunded to the appellant as ordered by the trial court. For the avoidance of doubt, the decretal sum attracts 7% interest at the court's rate from the date of pronouncement of the judgment of the trial court until its satisfaction in full. The appellant shall have his costs in this Court and the court below. This appeal succeeds to the extent stated.

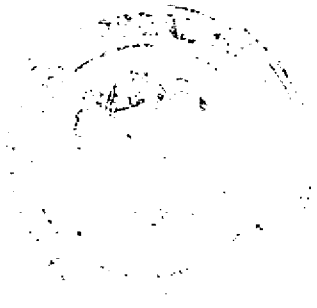
DATED at **DAR ES SALAAM** this 27th day of February, 2024.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Judgment delivered this 29th day of February, 2024 in the presence of Ms. Scholastica Mapunda holdings brief for Mr. Deogratius Mwarabu, learned counsel for the appellant and Mr. Urso Luoga, learned State Attorney for the respondents is hereby certified as a true copy of the original.



D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL