IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NUMBER 110 of 2009

(Originating from Resident Magistrate's Court, Kisutu- Civil Case No. 124 of 2005- H.J. Mwankenja-RM)

SECURICOR GRAY TANZANIA LTD..... APPELLANT

VS

DICKSON GOBLES MWAIKUJU..... RESPONDENT

JUDGMENT

Date of last Order: 20-08-2010
Date of Judgment: 20-08-2010

JUMA, J.:

This is an appeal from the decision of H.J. Mwankenja-RM in Civil Case Number 124 of 2005 in the Resident Magistrate's Court of Dar es Salaam at Kisutu dated 2nd February 2009. In a two-page judgment, the learned trial magistrate found the appellant and Tanzania Breweries Limited (TBL) liable to pay respondent herein compensation of Tshs. 90,000,000/= for brutal assault, unlawful confinement and bodily injury inflicted on respondent.

Aggrieved by the judgment and the decree of the trial court, only the appellant lodged this appeal through Kisarika, Malimi & Mlola (Advocates). Appellant set out five grounds in its memorandum of appeal namely,

i) respondent had not on balance of probability proved its claims against the appellant and the TBL;

ii) in arriving at its decision, the trial court failed to consider evidence that was in favour of the appellant and TBL;

iii) the trial magistrate erred in law and fact by concluding that respondent was assaulted by the employees of the appellant;

iv) trial magistrate granted prayers of the respondent without showing the bases for awarding such judgment; and

v) Judgment of the trial court did not comply with the law.

Brief factual background to this appeal show that respondent herein was a driver working for Tanzania Breweries Ltd (TBL) from 01-07-1988 to 06-10-2002. On 06-10-2002 while the respondent was driving his employer's vehicle to return 450 empty crates to the TBL depot. As he was driving through the gate, the vehicle tilted on one side and overturned. Three other drivers who were nearby rushed to respondent's assistance and they switched off the vehicle engine. According to the respondent, security guards who were employees of the appellant apprehended him, handcuffed him and assaulted him causing injuries all over his body. Respondent's attempts to file complaints to the police were rebuffed and he had to seek the intervention of an Advocate (Retired Justice Korosso) and the Commission for Human Rights and Good Governance.

When this appeal came before me for a mention on 14-04-2010, Mr. Koga the learned advocate for the respondent informed the court that both sides had settled for a hearing by way of written submissions. Thus this appeal proceeded by way of written submissions. After the submissions had been filed and before I could dispose of this appeal, I was called upon to deal

with an application by a stranger to this appeal to be joined as a 2nd appellant. The intervening application was filed on 10 May 2010 by Tanzania Breweries Limited under a certificate of urgency seeking to be joined and added as the 2nd appellant in this pending Civil Appeal Number 110 of 2009. To move this court the applicant/intervener relied on sections 68-(e) and 95 and Order 1 Rules 1 and 10-(2) of the **Civil Procedure Code, Cap. 33**. After reviewing the provisions which the intervening applicant had relied upon to move this Court, I rejected the intervener application by reiterating the settled position of law in Tanzania that intervention either in the form of an appeal or in the form of an appeal after seeking an extension of time to appeal, are both governed by specific provisions of statutory law. The law in Tanzania does not recognise a procedure for an intervener/applicant to be joined as an appellant outside the statutory provisions governing appeals to this court.

With the application of an intervener out of my way, I carefully read and considered the written submissions by the opposing Counsels with respect to the above-mentioned five grounds of appeal.

First and third grounds of appeal can conveniently be disposed of together since they relate to the issue whether the respondent herein was brutally assaulted by employees of the appellant and extent of his pain and agony. The learned trial magistrate on first paragraph of page 2 of his judgment found,

> "..that something unusual happened against the plaintiff. PW1, PW2 and PW3 have told this court of injuries and the medical certificate was detained at the Police station"

My re-evaluation of evidence on record shows that testifying as PW2, Cpl Cpl Magreth informed the trial court how on 6th October 2002 she and other police officers were instructed to visit TBL premises were there was a disturbance of the peace. At TBL the police found 10 guards together with a naked person who was suspected to have been the source of disturbance. The naked person, who was handcuffed, had injuries on his head and mouth.

Testimony of Cpl Magreth was supported by D/cpl Meckson who testified as PW3. PW3 confirmed the police found the respondent naked. His clothes were brought later by the guards. PW3 confirmed the injuries of the respondent. PW3 testified that what the guards did to the respondents was not in accord with applicable procedures. PW3 was not sure whether respondent was drunk or not. PW3 insisted that injuries were due to assault but not due to the accident. PW3 was of the view if injuries were due to the accident the victim would still have had his clothes on. On re-evaluation, I agree with the evidence of PW2 and PW3 respondent was brutally assaulted by the employees of the appellant Securicor Gray Tanzania Limited. Even if the respondent was drunk as claimed or was driving dangerously in the TBL yard, these allegations were not proved. Furthermore, the way respondent was treated is not the way a human being is to be treated. In my opinion, the trial magistrate is fully justified in his conclusion that an assault of respondent was proved to the required standard.

On the issue whether the respondent herein suffered the amount as he alleged in his Plaint (i.e. Tshs. 90,000,000/=), the learned trial magistrate had stated on page 2 of his judgment that,

> *"..this Court is entitled and take into consideration the nature of the injury and the circumstances of the assault in awarding compensation and do fix or confirm the quantum claimed as proved by the plaintiff.*
>
> *As such the plaintiff has proved the claim against the defendant on balance of probability and I enter judgment in favour of the plaintiff as prayed with costs..."*

Appellant has submitted that the trial magistrate erred by granting Tshs. 90,000,000/= to the respondent without giving the basis of the award. According to the appellant, the trial magistrate failed to distinguish special and general damages. Appellant refers this court to the decision of Court of Appeal in **Zuberi Augustino vs Anicet Mugabe [1992] TLR 137, 139** wherein the Court of Appeal reiterated that special damages must be specifically pleaded and proved. Respondent in his replying submissions supported the trial court's award of all the Tshs 90,000,000/= he had claimed in his plaint. According to the respondent, the act of forceful undressing of the respondent leaving him naked is very serious and was properly responded to by the compensation the trial court awarded. Respondent submitted that this first appellate court should not interfere with the quantum of general damages fixed by the trial court because the trial court did not act on a wrong principle when it awarded the damage.

As stated by Mushi, J. in the case of **Matiku Bwana v Matiku Kwikubya and Another 1983 TLR 362**, damages must be awarded to adequately cover loss directly arising from the act complained of and reasonably foreseeable. The Court of Appeal in the case of **Cooper Motors Corporation Ltd. versus Moshi Arusha Occupational Health Services (1990) TLR 96** had underscored the following principles of law which will guide my determination of the issue whether the trial magistrate was entitled to award the Tshs. 90,000,000/= he awarded the respondent herein. The first principle is to the effect that an appellate court like this one is hearing appeal from subordinate court is not justified to substitute a figure of its own from that awarded below simply because it would have awarded a different figure if it had tried the case. In the second principle, before an appellate court can properly intervene, it must be satisfied that the trial magistrate 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.

I have considered the guiding principles of law enunciated by the Court of Appeal in **Cooper Motors Corporation Ltd. versus Moshi Arusha Occupational Health Services (1990) (supra)** with respect to this appeal before me. Appeal before me does not fall in the category of cases where an appellate court like this one is, should interfere with the award of damages by the trial court. The way the respondent was assaulted and the

reluctance of the police to accept his complaints makes me hesitant to interfere with the award the learned trial magistrate arrived at. The trial magistrate was in my view fully justified to take into account the nature of the injury and the circumstances of the assault in awarding the Tshs 90,000,000/= compensation to the respondent.

I propose to move on to the fifth ground wherein the appellant contends that judgment of the learned trial court magistrate did not comply with the law. Submitting on behalf of the appellant, Kisarika, Malimi & Mlola Advocates contended that the format used by the trial magistrate to present his judgment does not show how he arrived at his decision. It was further contended on behalf of appellant that the trial magistrate did not relate the evidence on record to answer the points for determination/issues. In replying submissions filed by Koga Advocates, respondent defends the judgment of the trial court to be in total compliance with the provisions of Order XX Rules 4 and 5 of the **Civil Procedure Code, Cap. 33.**

As I observed earlier, the decision of the learned trial magistrate is contained in a two-page Judgment. ORDER XX Rule 4 of the **Civil Procedure Code, Cap. 33** make provisions for the contents of judgments in the following way,

> **Rule 4**. A judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.

From the wording of this provision the law in Tanzania does not prescribe the minimum or maximum number of pages which all judgments must

comprise. All what is mandatory is for a judgment to contain a concise statement of the case, the points for determination of the case, the decision on each point for determination and the reasons for each such decision. Points for determination are invariably presented in the form of issues agreed upon by parties and confirmed by the court. On the first page of his two-page judgment, the learned trial magistrate recorded four issues (points for determination of the case before him) which Counsels for respondent herein, appellant herein and the Tanzania Breweries Limited (intervener) had agreed upon earlier and which the trial court had confirmed. Paraphrased, the four issues cum points for determination were,

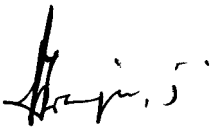
i) whether the respondent herein was brutally assaulted;
ii) if it is proved that the respondent herein was indeed brutally assaulted, whether as a result respondent suffered pain and agony;
iii) whether the respondent herein suffered the amount as he alleged (i.e. Tshs. 90,000,000/=); and
iv) what reliefs parties at the trial court were entitled to.

When a trial court allows parties to address it on any issues, the court must conclusively determine those issues. Court of Appeal in **Agro Industries Ltd v Attorney General 1994 TLR 43** said as much, the trial court which has identified issues or points for determination must conclusively determine those issues. Applying the principle of law laid down by the Court of Appeal, the trial magistrate was duty-bound to conclusively determine the four issues that were raised by the parties and confirmed by the trial court. My re-evaluation of evidence on record clearly bears out the conclusion

reached by the learned trial magistrate with respect to all the issues the trial magistrate confirmed for his determination. I hereby find that the judgment of the trial magistrate though briefly composed, complied with ORDER XX Rule 4 of the **Civil Procedure Code, Cap 33** governing contents of judgments.

I am also satisfied that the trial magistrate evaluated and weighed the evidence that went in favour of both the appellant and respondent.

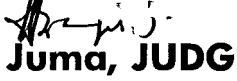
For all the foregoing reasons, this appeal is dismissed and respondent is awarded the costs.



I.H. Juma, JUDGE
20-08-2010

Delivered in presence of:

1. Tarzan, Advocate (For appellant)
2. Tarzan, holding Mr. Kogi's brief (For the respondent)



I.H. Juma, JUDGE
20-08-2010