

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 398 OF 2001**

**GERALD JORDAN ..... PLAINTIFF**

**VERSUS**

**E.R.MWAKASSALA ..... DEFENDANT**

**EX PARTE**

**JUDGMENT**

**Shangwa, J.**

This suit was filed in court on 15<sup>th</sup> November, 2001. Since then to the present date it is over 12 years ago. On 15<sup>th</sup> October, 2007, the court ordered the plaintiff Gerald Jordan who is the citizen of South Africa and who was working as Managing Director of NBC Ltd at Dar es Salaam to furnish security for costs but he failed to do so. On 10<sup>th</sup>

April, 2008, his suit was dismissed under OXXV Rule 2 (1) of the Civil Procedure Code Cap. 33 R.E. 2002. It was dismissed by **Mlay, J.** who retired from the Bench a few years ago. The defendant E.R. Mwakassala who is a court broker and Managing Director of Gemaco Auction Mart International Ltd did lodge a counter - claim in his written statement of defence against the suit claiming for a total sum of Tshs. 900,000,000/= as general damages for loss of dignity and reputation as a result of having been abused by the plaintiff and as a result of having been locked up by the plaintiff's watchman in the bank's store following his orders.

On 2<sup>nd</sup> April, 2009, Mlay, J. (rtd) dismissed the counter-claim for non appearance of the defendant. On 17<sup>th</sup> April, 2009, counsel for the defendant, the late Magesa filed an application for setting aside the order in which his client's counter claim was dismissed. On 30<sup>th</sup> August,

2010, I granted the application. Hearing of the counter-claim proceeded ex parte on 5<sup>th</sup> April, 2013. Before hearing, two issues were framed as follows:

1. Whether the plaintiff used abusive and derogatory language to the defendant.
2. Whether the plaintiff locked up the defendant in the store for 45 minutes while the defendant was executing the court order.

The plaintiff in the counter-claim namely E. R. Mwakasala gave his testimony on oath and called one Andrea Shange on his behalf who also gave testimony on oath. The said plaintiff told this court in his testimony that when he went to NBC Headquarters with his team of assistants namely Andrea Shange & Msajigwa to attach the Bank Motor Vehicle with Reg. No. TZQ 829 in execution of the decree of the court of the Resident Magistrate at Kisumu in Civil Case No. 409 of 1999, he met NBC Transport

Officer and told him the purpose of their visit. Thereafter, the Transport Officer called the defendant in the counter-claim, Mr. Gerald Jordan, to come and meet the plaintiff and his team. That when Gerald Jordan came, he suddenly uttered the following words against the plaintiff and his team:

*“You Africans, bastard who has authorized you to take our motor vehicle. You idiot. Your Government is dead. You cannot take our motor vehicle.”*

That after uttering those words, he ordered his watchman to lead them to the store which had no fresh air and that they were detained therein for 45 minutes. That on that day, they were not able to attach the Bank’s vehicle. So, he is claiming for Tshs. 450,000,000/= as general damages for being locked up in the store and Tshs.

450,000,000/= for loss of his reputation as court broker plus interest and costs.

Mr. Andrea Shange who testified on his behalf told the court a similar story that when they went to NBC Headquarters, Dar es Salaam to attach motor vehicle with Reg. No. TZQ 829 in execution of the Kisutu RM'S court's decree, the defendant Gerald Jordan abused them by saying that they are foolish and bastards and ordered his security guard to lead them to the store where they were locked up for 45 minutes and that thereafter the defendant appeared and they were released. He said, upon being released, they felt humiliated and left the Bank's premises without executing the RM'S court decree.

First of all, the court, in this case is called upon to consider as to whether or not the words used by the defendant are defamatory to the plaintiff. These words are bastard; idiot and foolish. The late Magesa quoted the

meaning of those words from **Advanced Learners Dictionary of current English by A. S. Hornby, Fifth Edition** wherein the word "**bastard**" is described to mean an unpleasant or cruel person or a person whose parents are not married to each other or a person who is born out of wed lock. The word "**idiot**" is prescribed to mean a very foolish person or a person with very low intelligence, who cannot think or behave normally. The word "**foolish**" is described to mean lacking good sense or judgment or looking ridiculous.

The late Magesa contended that those words are defamatory because they tend to lower the plaintiff in the estimation of right thinking members of society generally. I entirely agree with him. He said that those words were communicated to others in the sense that they were spoken in the presence of the plaintiff's assistants.

Secondly, the court in this case is called upon to decide as to whether or not the defendant locked up the plaintiff in his office's store. The evidence of P.W. 1 and P.W. 2 shows that both of them were locked up in the store for 45 minutes by the Bank's security guard after having been ordered to do so by the defendant. I do not have any reason to doubt the truthfulness of their testimony. The late Mageza contended that the defendant's act of having the plaintiff locked up in the Bank's store for 45 minutes without lawful justification is a tort. I entirely agree with him.

I hold therefore that the plaintiff is entitled to general damages from the defendant. The plaintiff prayed this court to assess general damages for the wrongs that were done to him at a total sum of Tshs. 900,000,000/=.

In my opinion, although the plaintiff in the counter-claim is entitled to general damages from the defendant,

the sum of Tshs. 900,000,000/= prayed for by him as general damages is too excessive and punitive. In law, punitive damages are only entertained and granted under exceptional circumstances. In this case, no exceptional circumstances that exist so as to grant punitive damages to the plaintiff as claimed. In my judgment, I grant the plaintiff general damages of Tshs. 25,000,000/= Twenty Five Million only. Thus, I enter judgment in favour of the plaintiff in the counter – claim with costs.



  
**A. Shangwa**

**JUDGE**

**23/12/2013**



Delivered in open court this 23<sup>rd</sup> day of December,  
2013 in the presence of the plaintiff in the counter-claim.



  
**A. Shangwa**

**JUDGE**

**23/12/2013**