

IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT IRINGA

LAND APPEAL NO. 1 OF 2014

(From the decision of the District Land and Housing

Tribunal of Iringa District at Iringa in Land

Case Appeal No. 7 of 2012)

HENDRY JOSEPH LYIMO ----- APPELLANT

VERSUS

GEORGE C. MHEMA & ANOTHER ----- RESPONDENTS

22/05/2015 & 29/05/2015

**JUDGEMENT**

KIHWELO, J.

This is an appeal against the decision of the District Land and Housing Tribunal in which Hon. A. Mapunda awarded the appellant TShs. 3,920,000/- being special damages and TShs. 850,000/- as general damages as well as declaring the appellant the lawful owner of the remaining trees.

A brief background to this appeal show that in November, 2007 the appellant and the 1<sup>st</sup> Respondent entered into a sale agreement whereby the appellant purchased 590 pine trees from the 1<sup>st</sup> respondent. The trees were in the 1<sup>st</sup> respondent's farm located at Fyoge Area in Igoda Village, Mufindi District. At the time of purchase the trees were only three (3) years old. Later on the 1<sup>st</sup> respondent sold 140 trees in 2011 to the 2<sup>nd</sup> respondent as a result of which the appellant filed an application before the District Land and Housing Tribunal claiming TShs. 14,700,000/- as damages for his trees wrongly sold by the 1<sup>st</sup> respondent to the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent while admitting to have sold the trees to the 2<sup>nd</sup> respondent disputed the amount awarded as special damages.

Dissatisfied with the decision of the District Land and Housing Tribunal the appellant filed this present appeal with five grounds Memorandum of Appeal which can be crystallized as follows:-

- (1) The trial Chairman erred in finding that one tree will produce seven (7) timbers only and not thirty (30) pieces of timber.*
- (2) The trial Chairman erred for his failure to find out that the appellant was entitled to be paid TShs. 14,700,000/- as prayed for the 140 trees harvested.*
- (3) The trial Chairman erred in finding that the 2<sup>nd</sup> respondent was an innocent purchaser.*
- (4) The trial Chairman erred in finding that the appellant was entitled to only TShs. 850,000/- as general damages.*

*(5) The trial Chairman erred in not finding that the sale agreement between the 1<sup>st</sup> and the 2<sup>nd</sup> respondent was illegal.*

The appeal proceeded *exparte* following the failure by the respondents to appear despite the fact that the summons was publicized in Uhuru Newspaper of 18<sup>th</sup> November, 2014 and upon the request by the appellant this appeal was argued through written submission.

Amplifying on the first and the second grounds of appeal the appellant argued that the trial chairman failed to appreciate the fact that the appellant adduced sufficient evidence to prove that the value of 140 pine trees which were illegally sold were TShs. 14,700,000/-. The appellant contended that he based his calculation on the research conducted and information received from the Sao Hill Assistant Manger. The appellant argued that upon maturity each pine tree would have produced a minimum of 30 pieces of timber each selling at TShs. 3,500/-.

Arguing briefly in support of the third ground of appeal the appellant contended that the 2<sup>nd</sup> respondent can not be said to be an innocent purchaser since he alleged to have bought the said trees since they were still small but surprisingly the 2<sup>nd</sup> respondent never attended the trees for three years as such the 2<sup>nd</sup> respondent



aware that the trees belonged to the appellant can not be said to be an innocent purchaser.

On the fourth ground of appeal the appellant submitted that the appellant has been injured by the conduct of the respondents as such deserves an adequate compensation in the form of general damages and since the award of general damages is the discretion of the court and that a modest sum of TShs. 10,000,000/- will be just to the appellant.

Finally the appellant argued briefly on the fifth ground of appeal that on the totality of the evidence on record and the submissions it is evidently clear that the 1<sup>st</sup> respondent had no legitimate right over the 140 pine trees he sold to the 2<sup>nd</sup> respondent and therefore the appellant prayed that the appeal be allowed.

On a careful scrutiny of the record and the submissions by the appellant I am confronted with one main issue and that is whether or not the trial tribunal erred in awarding both specific and general damages to the appellant.

I would commence with the award of specific damages. The appellant argued that he was entitled to TShs. 14,700,000/- for the

140 pine trees harvested and he based his calculation upon a research done and information from the Assistant Manager of Sao Hill. Unfortunately the said Manager did not testify before the tribunal nor was any document tendered to substantiate the said claim.

The law is very settled and clear when it comes to special damages. Special damages must be proved specifically and strictly. In **Stanbic Bank Tanzania Limited V Abercrombie & Kent T. Limited**, Civil Appeal No. 21 of 2001, Court of Appeal of Tanzania (unreported). It was stated as under:-

*“The Law is that special damages must be proved specifically and strictly.”*

The Court of Appeal of Tanzania in the **Stanbic** case (supra) made reference to **Storm V Hurchison** (1905) AC 515 at page 525 Lord Macnaughten stated thus:-

*“-- such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and therefore they must be claimed specifically and proved strictly.”*

Further the Court of Appeal of Tanzania in **Anthony Ngoo and Another V Kitinda Kimaro**, Civil Appeal No. 25 of 2014 made reference to **Zuberi Augustino V Anicet Mugabe** (1992) TLR 137 at page 139 where it was stated by the court that:-

*"It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved."*

In the present case the appellant merely claimed TShs. 14,700,000/- in the form of special damages without even producing any documentary evidence to prove the same. It must be pointed out that documentary evidence is vital in such claims as demonstrated by the Court of Appeal in **Masolete General Supplies V African Inland Church** (1994) TLR 192.

I am therefore satisfied that the appellant failed to prove the claim for TShs. 14,700,000/-. No document or realistic base was given to backup those figures, which appear to have been plucked from the air as such I will not interfere with the award of special damages made by the trial tribunal.

Turning to the award of general damages the appellant contended that the award of TShs. 850,000/- was in the low side and that TShs. 10,00,000/- will be just.



The position of the law is very clear when it comes to general damages in that award for general damages is the discretion of the court. Lord Dunedin in **Admiralty Commissioners S. S. Susguehann** (1926) A.C 655 at page 661 stated thus:-

*"If damage be general, then it must be averred that such damage has been suffered, but the quantification of such damage is a question of the jury."*

Before I finally make my observation and finding on this aspect let me make one quick observation.

The appellant before the tribunal did not pray for general damages as a relief. However, he claimed for ancillary relief under paragraph 7(v) of the application in which he prayed for the following:-

*"Any other or further reliefs which the Honourable District Land and Housing Tribunal deems just and proper to award."*

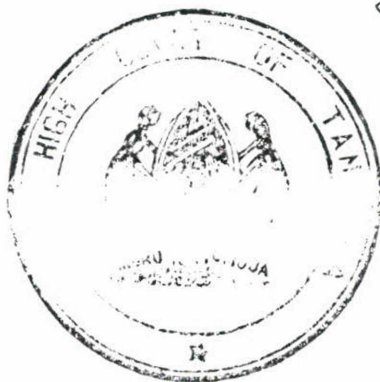
The pertinent question is, can the court grant relief to the appellant under this head?

The Court of Appeal of Tanzania in **Zuberi Augustino V. Anicet Mugabe** (supra) seems to have settled this when it came to the conclusion that having found that the respondent was somehow entitled to some relief, although he had failed to prove special damages, the Court granted an award of TShs. 500,000/- under the prayer "*any other relief*."

Applying the principle to this case, I am satisfied that this is one such case which is just and equitable to grant the appellant TShs. 5,000,000/- under "*any other relief*" this is because the 1<sup>st</sup> respondent admittedly confessed to have sold the appellant's trees to the 2<sup>nd</sup> respondent.

In the end result the appeal is dismissed except to the extent allowed above. The respondents should pay costs of this appeal.

Ordered accordingly.



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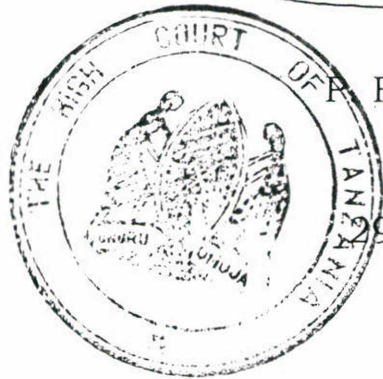

P. F. KIHWELO

JUDGE

29/05/2015



Right of Appeal is fully explained.



F. KIHWELO

JUDGE

29/05/2015