

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY)**

**AT ARUSHA**

**CIVIL APPEAL NO. 26 OF 2017**

(Originating from Resident Magistrate Court of Arusha Civil Case No. 86/2016)

**MATHEW NDELILIO KAAYA.....APPLICANT**

**VERSUS**

**ISAYA M. KIVUYO.....RESPONDENT**

**JUDGMENT**

*Date of Last Order: 01/08/2018*

*Date of Judgment: 15/08/2018*

**BEFORE: S.C. MOSHI, JUDGE**

The appellant was aggrieved by the decision of the Resident Magistrates' Court of Arusha in respect of Civil Case No 26/2017 which was delivered on 13/07/2017; hence he preferred the present appeal on the following grounds:-

1. That, the honourable resident magistrate erred in law and in fact by granting special damages in the sum of Tshs. 2,000,000/= while there was no evidence produced in court to prove the respondent to have had suffered any loss.
2. That, the honourable resident magistrate erred in law and in fact by making an order for payment of general damages of T.shs. 1,000,000/= without any basis.

3. That, the honourable resident magistrate erred in law and in fact for failure to realize the nature of how the appellant signed the documents to commit himself to pay back the purchase price of the sum of Tshs. 6,500,000/= of the land which he sold to the respondent despite the fact that the appellant testified it on his evidence in record of which the trial court did not put it into consideration.

Before me the appellant appeared in person whereas the respondent was represented by Mr. Asubuhi John Yoyo, advocate. The appeal was disposed of by way of written submissions.

Regarding the first ground of appeal; the appellant argued that, the court erred to order him to pay T.shs. 2,000,000/= as special damages and Tshs. 1,000,000/= whereas there was no evidence to justify the claim. He said that the respondent made a general claim that he claimed Tshs. 2,000,000/= from the appellant after he had taken him to the police station. However the respondent did not call any witness and he did not tender any document to prove how he arrived at that figure. On the other side the respondent's advocate responded that the respondent presented sufficient material and sufficient explanation that demonstrated to the satisfaction of the court that he indeed suffered the damages which were related to the breach. I have considered the evidence on record. It is true that the respondent did not demonstrate how he came up with the amount that he is claiming as special damages. He just said, I quote:-

“The failure by the defendant not, to pay the debt, I affected in the business Mang’ola I waste a lot of time , incur a lot of cost including the payment /cost for clan head.”

This statement does not show how he reached at the amount that he is claiming as specific damages. The respondent was duty bound to prove his claim, see the case of **Bambrass Star Station Ltd Vs. Mrs. Fatuma Mwale** (2000) T. L. R No 390. In this case the court held among other things that:-

*“It is trite law that special damages being exceptional in their character and which may consist of off pocket expenses and loss of each earnings incurred down to the date of trial must not only be claimed specifically but also strictly proved.*

In view of what I stated above, I find that the specific damages of Tsh. 2,000,000/= were not proved. I thus find this ground of appeal has merits.

On the third ground of appeal it is common ground that the appellant sold the land to the respondent at the sum of Tshs. 6,500,000/=. It is also in evidence that the appellant did not hand over the land to the respondent hence the appellant promised to pay back the purchase price. The applicant claims that he already gave possession of the land to the appellant and that he was forced to sign on the agreement that shows that he is ready to return the money to the respondent. I have considered these pieces of evidence; it is apparent that the appellant agreed to pay back the purchase price and there is no evidence on his part to show that he ever handed over the land to the respondent. It is

my view that the trial magistrate did correctly decide as she did. The appellant is duty bound to pay back Tshs. 6,500,000/ being the purchase price.

I have considered the general damages of Tshs. 1,000,000/= It is my opinion that the amount is reasonable. Hence I find that the second ground of appeal has no merits.

However, I don't see the basis for an order of 31% interest; I set aside that order; instead I order interest on the principal sum of Tshs. 6,500,000/= at court rate of 12 %.

The appeal is partly allowed to the extent that I have shown above.

Each party to bear its own costs.

Right of appeal is explained.



  
**S.C. MOSHI**  
**JUDGE**  
**15/08/2018**