

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION No. 140 OF 2019

MEDITERRANEAN SHIPPING COMPANY LTD.....APPLICANT

Versus

EMMANUEL A. DAUDI t/a Ishey's General Enterprise.1st RESPONDENT

SDV TRANSAMI (Tz) LTD.....2nd RESPONDENT

RULING

23/07 -16/10/2019

J. A. DE-MELLO, J;

It is the **Judgment on Appeal** that, **Hon. Magoiga J;** dated the **22nd of February, 2019** partly allowing, while dismissing the claim, against the Respondent, by the Appellant. The Appellants were dissatisfied with the findings of the **Resident Magistrate Court at Kisutu** which the **1st Appellate** Court partly upheld. In his **Judgment Hon. Magoiga J;** held as reflected from **page 18 to 19;**

"The purpose of granting general damages is to put the affected party to his original position. In this Appeal there is no dispute that the first respondent was a businessman dealing with money gained to boost his business and actually by not paying him in time as agreed caused him some inconveniences. I have

considered the rival submissions of parties on this point and am convinced that this point needs intervention by this Court. It is therefore, my considered opinion that the payment of TShs. 50,000,000/= will do justice in this appeal to be shared equally between the Appellant and the second Respondent...I have read and re read the judgment of the trial court with a keen legal eyes and mind but have failed to find where the trial magistrate,...have used an unadmitted document to substantiate the claims allowed. ...The rate of commercial interest claimed was 30% but the Court granted only 21%. The argument that the interest is 18 is unfounded...this appeal is partly allowed to the extent explained..."

Oral submissions were heard, with **Counsel Buberwa** insisting the existence of points of law as deponed under **paragraphs 8, 9 & 11** of the Applicants Affidavit, disparities revealed from proceedings at **pages 78, 79** the Counterclaim raised by the Agent him not being party as well as payment of the containers as part of demurrages and replacement. The judgment was confusing for partly allowing and, partly dismissing as seen on **page 20**, alleging there was more than one Appellant. The **TShs.**

50,000,000/= award is even controverted against the principal sum of **USD\$ 11,000.00**, for the missing containers between the **1st and 2nd Respondents**.

Peter, Counsel fending for the **1st Respondent** adopting the Counter Affidavit sworn by **Augusta Nashon** remarked that, the containers were duly delivered upon proof on the balance of probability. The upholding of the lower Court decision and award granted was in order. Nothing contentious is in place for the Court of Appeal to address and determine, he summed up. The Application is unmeritorious and, should be dismissed with costs.

However, **Counsel Salah** for the **2nd Respondent** conceded to the Application as evidenced by non filing of the Counter Affidavit. Registered to share the same views with **Counsel Buberwa** but, wondered on what **pages 17 & 18** of the judgment confirmed special damages that the Trial Court awarded with interest, to put the party to his original position notwithstanding General damages for the same hence doubling rather duplicate the above.

In his rejoinder **Counsel Buberwa** pointed out that **Counsel Lukio Peter** submissions further confirms contentious issues for the Court of Appeal to deal with.

Aggrieved, the Applicants are before me now, with an Application for **Leave to Appeal to Court of Appeal**. On record too, is **Notice of Appeal** while application for copies of **Certified Judgment, Decree on Appeal, Court Proceedings**, are on record, since the 4th of March 2019. The Court is hence moved by **section 5 (1) (2) (a) (ii)** of the **Appellate Jurisdiction Act Cap. 141, Rule 45 (a)** and, of **CA Rules 2009**.

Other than the above, **paragraphs 8, 9 & 10** are explicit of the dissatisfaction by the Applicant.

I am akin and, very much alive of what **Leave to Court of Appeal** entails as was the position held in the case of **Principal Secretary Ministry of Defence & National Service vs. Devram Valambia [1992] TLR 185 stating;**

“...In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty even it it means to extending time for the purpose to ascertain the point

and the alleged illegality be established to take appropriate measures to put the record right”.

I even in line with the Parent Law of the Country, the **Constitution of the United Republic of Tanzania** enshrines under **Article 13 (6) (a)** with regard to citizens right to a fair hearing and Appeal. The matter originating from the Resident Magistrates Court, in which this same Applicant attempted an Appeal to this Court and to no avail upholding the same position, is still unhappy and believes it is the Superior Court that will bring the matter to rest, as he exercises his legal, as well as Constitutional Rights.

Leave prayed is thus granted and, costs to follow event.

It is so ordered.


J. A. DE-MELLO
JUDGE
16/10/2019