

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

CIVIL APPEAL NO 216 OF 2018

(Arising from the Ruling in Civil Case No. 50 of 2017 in the District Court of Temeke at Temeke, delivered on 18 before Hon. KIHAWA RM)

BAHATI MOSHI MASABILE

T/A NDOÑO FILING STATION.....APPELLANT

VERSUS

CAMEL OIL (T).....RESPONDENT

JUDGMENT

Date of Last Order: 10/07/2019

Date of Judgment: 10/07/2019

MLYAMBINA, J.

Before the Temeke District Court at Temeke, Camel Oil (T) Ltd filed Civil Case No. 50 of 2017 against Bahati Moshi Masabile T/A Ndoño filing station praying for judgment, decree and orders against the defendant as follows:

- a) That, the Hon. Court be pleased to order the defendant to pay to the plaintiff the sum of TZs 299,345,000/= being the outstanding amount accrued from the petroleum products supplied to the defendant on credit.
- b) Payment of compensation for losses and damages suffered by the plaintiff due to the defendant refusal, neglect to heed to the terms and conditions of the agreement.

- c) Payment of general damages as may be assessed by this hon. court and other costs and expenditure incurred by the plaintiff as a result of the defendant's failure and breach of the agreement.
- d) That, the Hon. Court be pleased to order the defendant to pay the plaintiff interest in (a) above at a commercial rate of 21% from when the payment was due to the date of judgment charged monthly.
- e) That, the Hon. Court be pleased to order the defendant to pay the plaintiff interest on the decretal sum at the Court's interest rate of 12% from the date of judgment up to the date of payment is made in full and final payment.
- f) Costs of this suit.
- g) Such any other relief (s) as the Hon. Court may deem appropriate to grant.

When filing written statement of defence (WSD), the appellant herein raised *a plea in limine litis*, namely; "*that, the Hon. Court had no pecuniary jurisdiction to entertain the case*"

Upon hearing both parties, the District Court of Temeke, in its Ruling dated 18th July 2018, upheld the *plea in limine litis* and dismissed the suit for want of jurisdiction. But the said trial Court ordered no costs.

The appellant who was the defendant before the Temeke District Court has been aggrieved with the decision of not being awarded with costs. Hence, he lodged this appeal on ground, namely:

"That, the Trial Magistrate erred both in law and fact by refusing to grant costs of the suit without even reasons after sustaining the Defendant's Preliminary Objection on point of law"

Learned counsel Dickson Sanga for the appellant submitted *inter alia* that; it is a general principle of law that usually costs follow the events. In other words, the party who wins the case is entitled to the costs of the case.

In view of counsel Dickson Sanga, if the decree holder is deprived of such costs, there must be sufficient reasons given by the Court.

Furthermore, according to learned counsel Dickson Sanga, costs are awarded based on the discretion of the Court but such discretion must be exercised judiciously and not arbitrarily.

Learned counsel Dickson Sanga amplified his submission by citing the decision of the Court of Appeal in *Civil Application No. 4 of 2014 between Mohamed Salimin v. Jumanne Omary Mapesa* which laid

down four principles for awarding costs. At page 3 of its decision the Court of Appeal stated:

“As a general rule, costs are awarded at the discretion of the Court but the discretion is judicial and has to be exercised upon established principles, and not arbitrarily or capriciously.

One of the established principles, is that, costs would usually follow the event, unless there are reasonable grounds for depriving a successful party of this costs.

A successful party could lose his costs if the said costs were incurred improperly or without reasonable cause or by the conduct of the party or his advocate. The list is not exhaustive. Each case would be dictated by its own set of circumstances...”

It was further stated by learned counsel Diskson Sanga that looking at the ruling delivered by the District Court, especially at page 6 of the said ruling, the Court proceeded to dismiss the suit for want of jurisdiction with no order as to costs. There was no reason stated by the Trial Court as to why the defendant was not entitled to costs.

It was therefore prayed by learned counsel Dickson Sanga that the appeal be allowed with costs and costs of the lower Court.

In reply, learned counsel Hassan Juma Zungiza had a far-fetched submission. In his view, it is a normal procedure for the defendant upon being served, to file Written Statement of Defence. He was of further view that awarding costs is the discretion of the Court. Thus, the Trial Magistrate exercised her discretion judiciously.

With due respect to learned counsel Hasan Juma Zungiza, costs serve among other purposes, to bar parties from filing hopeless cases. There are two reasons:

First, upon losing the case the loser will pay costs of the case. This weakens the loser financially. *Second*, award of costs puts the winning party at his /her financial position prior been sued as far as costs of the case are concerned. The reason been that the winning party has to be refunded all the costs incurred during the trial of the case.

As correctly submitted by learned counsel Dickson Sanga, as a general rule, a winning litigant, as a matter of right, must be awarded costs. Of course, there are exceptional circumstances in which the Court may waive costs depending on each particular case. Some of such exceptions are cases filed under *forma pauperis*, most of matrimonial cases that involves division of matrimonial properties and some probate cases to list a few.

Even in the afore said exceptions each case has to be looked on its own. The overriding consideration must be the welfare of the people by making sure justice is done to each litigant.

In whatever aspect, if the Court is of the view that costs should not be granted, it must state sufficient or concrete reasons except in circumstances where the Court have no reasons of giving reasons. Here I mean that; although reason-giving is a must requirement in judicial decisions, it is often in tension with other values of the judicial process, such as sincerity of the decision maker, guidance to the society and the Court itself, and efficiency in decision making process. Reason-giving must be balanced against these competing values to account for fairness in judicial decision.

The essence of giving reasons in judicial decision are *inter alia* five: *One*, reasons makes litigants to know the extent of how their arguments have been understood and analysed by the Court. *Two*, reasons foster judicial accountability by minimizing arbitrariness. *Three*, reasons facilitate certainty in law by assisting members of legal fraternity and the general public to know how cases of similar nature may be decided. *Four*, reasons are the basis for the appellate court to know if the decision was with apparent error. *Five*, reasons make litigants to know the Magistrate or Judges basis of the decision.

In the instant case, I agree with learned counsel Dickson Sanga that the trial Court Magistrate acted arbitrary by not giving reasons when exercising her discretion in refusing to grant costs. The reason is that after my assessment of the circumstances and facts of the case, I found the Court had no reason of not giving reasons to its decision.

Moreover, the record shows that the defendant had engaged a lawyer, he filed Written Statement of Defence, there are transportation costs incurred, secretarial costs and other related costs. The defendant upon raising *a plea in limine litis*, he prosecuted it successfully. There was no reason of denying him costs. In fact, the denial of costs would encourage scrupulous litigant to file cases before Courts with no jurisdiction for wastage of time while knowing that at the end of the day no costs shall be awarded to the winning party.

In the upshot, I grant this appeal with costs and award costs of the lower Court to the appellant herein. Order accordingly.



Y. J. MLYAMBINA

JUDGE

10/07/2019

Judgment pronounced this 10th day of July, 2019 in the presence of learned Counsel Dickson Sanga for the appellant and learned Counsel Hassan Zungiza for the respondent. Right of appeal explained.



Y. J. MLYAMBINA

JUDGE

10/07/2019