

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 186 OF 2018**

*(Appeal from the decision of the RM'S Court of Dar es salaam at Kisutu dated the 30<sup>th</sup> day of April, 2015 (FL. Moshi RM in Civil Case No. 252 of 2011))*

**MUSSA MOHAMED SILI.....APPELLANT**

**VERSUS**

**1. SALEH NDIWA**

**2. DEO BIKO**

**3. SALUM MKAMATE)**

**4. MOHAMED MTIPA)**

**5. ABDALLAH HASSANI) T/A SOUTHERN  
PORTABLE TRANSPORT**

**.....RESPONDENTS**

**JUDGMENT**

*Date of Last Order: 4/10/2019*

*Date of Judgment: 21/10/2019*

**MLYAMBINA, J.**

The Appellant herein was the Plaintiff before the Resident Magistrate's Court of Dar es Salaam at Kisutu in Civil Case No. 252 of 2011. After the trial, the Respondents who were the Defendants were ordered to pay the plaintiff the remaining sum of TZs 9 million. Aggrieved with that decision, the Appellant lodged this appeal on the following four grounds:

1. The Trial Magistrate erred both in law and fact and totally misdirected him on issues of the law of contract/agreement

more-so in finding that there was no agreement between the Plaintiff and the Defendants when his two framed issues were amply proved by the Plaintiff in his evidence on record.

2. The Trial Magistrate being a new Magistrate to the case, missed and mixed up the subject matters before the court and totally failed to analyze the evidence on record as a result gave unbalanced judgment thus denying the Plaintiff all his rights claimed and prayed for in the plaint.
3. Despite of the Trial Magistrate finding as a fact that the Plaintiff suffered damages the Trial Magistrate erred in law and fact in not awarding the damages hence denying.
4. The awarding of a meager sum of TZs 9,000,000/= as an outstanding sum for the lost goods was without ascertaining what amount was paid.

*Wherefore,* the Appellant asked this court to quash the whole judgment and the decree of the RM'S Court and all the orders made subsequent thereto and make a finding for the Appellant and costs of this appeal be met by the Respondents.

The appeal has been argued by way of written submissions. The Appellant was represented by G.S. Ukwonga, Advocate the Respondents were represented by Major Mbalasila of Mbalasila and Co-Advocate.

From the reading of the four grounds of appeal, one will note that the central issue is; *whether the Trial Magistrate correctly analyzed the evidence before him.*

It is in record that at the commencement of prosecution case hearing, that is on 2<sup>nd</sup> October, 2013 the Trial Magistrate was honorable B.N. Mashabara SRM. He heard the whole plaintiff's case on 14<sup>th</sup> July, 2014. Following the transfer of Trial Magistrate to another station, the case was re-assigned to Hon. Moshi SRM. On 7<sup>th</sup> October, 2014, at the consent of both parties, Honorable Moshi commenced with defence hearing to its finality.

There were three issues before the Trial Court.

- 1. Whether the plaintiff suffered damages as a result of lost goods in the hands of the defendants.*
- 2. Whether or not amount and relief claimed by the plaintiff in the plaint were justifiable.*
- 3. What relief (s) are the parties entitled to?*

On the first ground, the Appellant argued that he gave evidence that has all along been using the Respondents' services in transporting his goods from Dar es Salaam to Mtwara. This was a fact that the Respondent never denied.

In view of the Appellants, elements of contract were long established as there was contract of carriage of goods. Thus, it was obvious that where goods got lost or destroyed in the cause of transportation, the transporter is in breach and therefore liable.

It was the Appellants' submission that the Trial Magistrate was wrong in considering the way he did. Thus, there was no contract. The Appellant offered for his goods to be transported and the Respondents accepted to transport the goods and the Appellant paid the consideration.

In reply, the Respondent stated that basing on the plaint, the only omission which the Appellant failed to honour was the duty to disclose the fact that before the institution of the case in issue there was an agreement to settle the matter out of court which was in progress as per exhibit DI, D2, D3 and D4. PW1 told the court that he doesn't know how much the defendant paid at the bank in his account.

The Respondent submitted that; it was the duty of the Plaintiff during hearing to prove his case a fact which was not done. The trial magistrate basing on evidence of both parties was correct on law and fact that the only amount entitled to the plaintiff (Appellant herein) is TZs 9,000,000/= which was the remaining sum of the

amount already paid as per exhibit DI, D2, D3, D4 save the other claims which were not proved in the court and were not relevant to the case in issue. The awarded amount was not a meager or a peanut as speculated by the Appellant.

From the afore submissions, I must confess the allegation that there existed a contract of carriage between the parties was not an issue. Indeed, the issue whether the Respondents breached the contract was no more an issue. The issue was how much should the Appellant be paid therefrom.

It is the cardinal principle of law that he who alleges must prove so as dictated by ***Section 110 (1) of the law of Evidence Act.***

From the evidence, the Appellant failed to prove that the Respondents had to pay him more than the balance of TZS 9 Million. Exhibit DI, D2, D3 and D4 made the trial magistrate to reach a just decision that the Respondents were yet to pay the Appellant the sum of TZS 9 Million.

Given that the sum of 9 million was to be paid in fulfilment of their agreement, I equally find it was proper not to award other damages.

In the circumstances I find the appeal is devoid of merits. The appeal is dismissed. Each party to bear his own costs.



**Y. J. MLYAMBINA**  
**JUDGE**  
**21/10/2019**

Judgment pronounced and dated 21<sup>st</sup> day of October, 2019 in the presence of Emmanuel Gikaro Advocate for the Appellant and the 2<sup>nd</sup> Respondent in person.



**Y. J. MLYAMBINA**  
**JUDGE**  
**21/10/2019**