

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HIGH COURT CIVIL APPEAL NO. 24 OF 2019

(Arising from the Original Decision of the District Court of Magu at Magu (J.O. Ndira, RM) in Civil Case No. 10 of 2016 Dated 15th day of February, 2019)

**NATIONAL INSURANCE CORPORATION OF
TANZANIA LIMITED APPELLANT**

VERSUS

SOMEKE KUWILWA CHANYA (as administrator
of the estate of the late Jiduta Mashilimu Chanya **1ST RESPONDENT**

LUCIA MADUKA JILALA (as administratrix of
the estate of the late Jiduta Mashilimu Chanya) **2ND RESPONDENT**

STEPHEN NGULA LUGUKU **3RD RESPONDENT**

JUDGMENT

10 & 25/06/2020

RUMANYIKA, J.:

It is against judgment and decree of shs. 20.0 million and interest of 7% thereon issued by Magu district court (the trial court) on 15/02/2019 for general damages following fatal accident that took lives of Jiduta Mashilimu Chanya, relative of Someke Kuwilwa Chanya (the 1st respondent).

According to the amended memorandum of 16/03/2020, rephrased the six (6) grounds of appeal revolve around two main points:-

1. That the trial court had no jurisdiction.
2. That the trial court improperly evaluated the evidence.

Mr. Marko A. Nsimba learned counsel appeared for National Insurance Corporation of Tanzania Ltd (the appellants). Messrs Adam Robert appeared for Someke Kuwilwa Chanya and Lucia Maduka Jilala (administrators of the estate of Jiduta Mashilimu Chanya) the 1st and 2nd respondents respectively. Stephen Ngula Luguku (the 3rd respondent) had service of Mr. G. Gwakisa learned counsel.

Following the global COVID-19 Pandemic, and pursuant to my order of 23/04/2020 the parties were present online and by way of audio teleconferencing heard;

Mr. Marko A. Nsimba learned counsel in a nutshell submitted that the trial court had jurisdiction because from the Public Corporation Act, 1998 and now under Receiver Managers the PSRC then and CHC with effect from 12/06/1998 up to until 2018 when it was de specified, by virtue of Section 43(1) (b) of the Bankruptcy Act Cap 25 R.E. 2002 unless the Chief Justice had vested them jurisdiction cases involving the bankrupt appellant should not have been instituted in the trial court or any other courts subordinate to the High Court of Tanzania much as also courts' jurisdiction was statutory not a creature of the individuals' agreement (case of **Sospeter Kahindi V. Mbeshi Mashini**, Civil Appeal No. 56 of 2017 (CA) at Mwanza, unreported.

Secondly; Mr. M. A. Nsimba learned counsel submitted that with regard to names of the deceased the evidence was contradictory therefore

liable to be ignored. Chacha or Chanya? When exactly one was injured and admitted in hospital?

Three; that if anything, one should have reported the accident within the first 48 hours as there was no proof if at all the 3rd respondent reported it through posts.

Four; compensation of shs. 20.0 million general damages without evidence it was unfounded, leave alone nondisclosure of the deceased's monthly income at the time and 7% interest. It wasn't clear whether the amount awarded was specific or general damages. Mr. Nsimba learned counsel further contended. That the issue of jurisdiction could be raised at any time therefore the issue of taking one by surprise in court shouldn't have raised.

Mr. Adam Robert learned counsel only submitted that with the issue of jurisdiction he was taken by surprise in court so much so that he could not have sufficiently prepared. **Secondly,** that the issue of the deceased's name was long ago deliberated and resolved as infact it was Chanya (not Chacha) contrary to what, at a later stage the salary slip wrongly suggested much as all the witnesses named the deceased correctly, **thirdly;** that the trial court was right because being claimed it was general damages which one, unlike specific damages it needed no proof as the death was not disputed.

Mr. G. Gwakisa learned counsel chose to argue the issue of evaluation of evidence only and he did not fault the learned resident magistrate for 4 main reasons; **One;** it was not disputed that the motor vehicle involved in accident was insured and duly covered on 02/12/2012

two; the accident was timely reported (Exhibits D2 and D3), **three;** the 3rd respondent was deadly injured therefore he could not have within time reported the accident because consequent to it and for quite some time he was admitted and hospitalized at Bugando hospital and later attended as outpatient therefore 30 days later much as it was intended that reporting only exhibited genuineness of the claims and in the instant case the deceased had just died on the spot. **Four;** that the administrator of the estate could not have sued the appellant because the latter was not a party to contract but through notice a mere third party.

I choose to begin with the fundamental issue of jurisdiction. At least it is on record not disputed; **one;** that the trial court admitted the suit on 14/03/2016, **two;** that with effect from 1998 the third party became a specified public corporation until 2018 by virtue of GN No. 748 of 2018. **Three;** until on 14/03/2016 when the first respondent instituted the suit, pursuant to GN No. 748 of 2018 the appellant was seven years old bankrupt as their assets and liabilities had been placed under Consolidated Holding Corporation (the Receiver Manager) with effect from 2014 the latter handed it over to the Treasurer Registrar. **Four;** it is trite law (Section 97 of the Bankruptcy Act Cap 25 R.E. 2002 (the Act) that with leave (Section 43(1)) of the Act High Court of Tanzania had original jurisdiction unless by order the Chief Justice had delegated the powers to a subordinate court the Chief Justice had not delegated one (case of **NMC and PSRC V. John Paulo**). **Five;** Jurisdiction of the courts of law was statutory therefore not a creature of the parties consensus/convenience (case of **Shya Tnaki and Others V. New Palace Hotel** (1971) 1 EA 199

quoted with approval in the case of **NIC (Tanzania) Ltd V. Abdallah Rashid Seif**, Civil Appeal No. 4 of 2017, HC at Bukoba (unreported).

The central issue is whether the trial court had jurisdiction by notice the appellant was a third party to proceedings yes, but for all intents and purposes a party to case for the purposes of jurisdiction. The provisions of Section 97 of the Act intended that whether one joined as plaintiff, defendant or third party he was adversely affected by the consequential orders. In other words the trial court had no jurisdiction whether or not the appellant was third party is immaterial. In fact once it was sought and granted to defendant, a third party notice presupposed that the applicant had forgotten to sue the necessary but interested party. Saying otherwise Mr. G. Gwakisa learned counsel wouldn't be more incorrect.

It is very unfortunate that the issue of jurisdiction was not among the 3 issues raised at the trial or at all but Mr. M. A. Nsimba learned counsel precisely so in my view argued, the issue of jurisdiction was fundamental liable to be raised even at a later stage (out of unbroken chain of authorities the case of **Ms. Tanzania China Friendship Textile Co. Ltd V. Our Lady of Usambara Sisters** (2006) TLR 70. The complaint of Mr. A. Robert learned counsel was quite unusual because in the line of the principle of ignorance of law is no defence, like Mr. M. A. Nsimba learned counsel argued, the issue of one having been caught by surprise it was neither here or there. Again it is very unfortunate that contrary to the rule in the case of **Fanuel Mantiri Ng'unda V. Herman M. Ng'unda**, Civil Appeal No. 8 of 1995 the trial court just risked it and assumed jurisdiction which risk vitiated the entire proceedings whether or not the parties had

conceded it was immaterial. I would increasingly hold that whenever jurisdiction was ignored the court runs one main risk; the subsequent judgment and decree and the entire proceedings being nullified as I will herein order. One more thing that everybody may wish to know was that fundamentally jurisdiction is not about convenience of the parties or the court it is only convenience of the law suffices the point to dispose of the appeal.

There might have been contradiction in evidence which again it was improperly evaluated, one may have far beyond the prescribed time reported the accident, compensation of shs. 20.0 million general damages plus 7% interest may have been unfounded and soon and so forth but with all what I have endeavored to discuss herein, unless it was only for academic purposes discussed I will rest the points there.

In the upshot and as the trial court lacked jurisdiction, the appeal is allowed to the extent that the proceedings of the trial court are nullified and, for avoidance of doubts the impugned decision and orders are quashed and set aside respectively. It is ordered accordingly.

Right of appeal explained.



S. M. RUMANYIKA

JUDGE

12/06/2020

The judgment is delivered under my hand and seal of the court in chambers this 25/06/2020 in absence of the parties with notice.



S. M. RUMANYIKA

JUDGE

25/06/2020