

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 171 OF 2019

*(Originating from Civil Case No. 66 of 2017, District Court of
Ilala at Samora Avenue)*

SERENGETI LIMITED.....APPELLANT

VERSUS

LEONCE RWEBANGIRA.....RESPONDENT

JUDGMENT

The appellant above mentioned is appealing against the decision of the trial court awarded the respondent mentioned above as sum of Tsh 36,250,000/= being charges for service rendered to the appellant and Tsh 2,000,000/= general damages. In the memorandum of appeal, the appellant grounded that: one, the honorable resident magistrate erred in law and fact by holding that there was a contract between the parties hence breach of the contract, basing on mere words without documentary evidence; two, the honorable resident magistrate erred in law and fact by awarding to the respondent Tsh 36,250,000/= being charges for the service rendered without proof; three, the honorable

resident magistrate erred in law and fact by failing to consider and analyze well the evidence adduced during trial.

Ms. Anna Marealle (Esq.) in her written submission, argued the three grounds cumulatively, the respondent filed a response thereto.

Regarding the third ground, the same has been lodged without sufficient ground of complaint, in his well and sound reasoned judgement comprising of seventeen typed pages, the learned resident magistrate ensured that he leave no stone unturned. This can be evidenced from pages 7 to 16 of the typed judgment, where he properly analyzed the evidence presented by the plaintiff (respondent herein) vis-à-vis defence by the defendant (appellant herein). The learned resident magistrate cemented his argument by judicial pronouncements (case law) and relevant provisions of the law to the subject or issues before him. I therefore decline to the invitation by the learned Counsel for appellant, who called this court to indulge into re-evaluating each and every piece of evidence thrown before the trial court.

On similar footing, an argument that the trial court erred to hold that there was a contract and breach thereof (first ground of appeal), is baseless. From pages seven to eleven of a typed judgment, the learned resident magistrate articulated well on formation of a contract and types of contract, oral contract being inclusive. The learned resident magistrate cited provision of the law and case law to buff up his findings. Of Interest to me, among citation by the learned resident magistrate is a case of **Ruku and Magori vs Magori** (1971) HCD 161, where this Court speaking through the late Kisanga Ag. J (as he then was) had this to say, I re-quote,

"...once he (the Magistrate) found that there was an agreement, and indeed there was sufficient evidence to support that finding, then to my mind the fact that such agreement was not in writing would not affect the position. For, what really matters was the intention of the parties, and since there was sufficient intention of the parties intended to and did in fact create contractual relations, then the court would enforce an agreement at least on ground of equity"

In the instant appeal, there was ample evidence to support that indeed there was an oral agreement between the appellant and the respondent for the later to render service of consultant to the former, over a claim of USD 5,637,842 equivalent to Tsh. 12.4 billion against DAWASA, where the respondent charged 0.5% (a sum of 60 million) of impugned claim. It was in evidence that the respondent had completed an assignment and handed over a report to the appellant who acknowledged receipt with appreciation. This was after the appellant had paid the respondent an advance of Tsh 25,000,000/=. Later the appellant opted to cut off communication. In her defence, the defendant (appellant herein), admitted to had paid the respondent that sum, which DW1 said he handed over to the respondent (a sum which he could not recall), as consultation fee. An argument by DW1 that the said amount was meant for a meeting between the appellant and DAWASA which the respondent was invited to attend, are baseless. Essentially DW1 was contradicting himself, as at first he said when Ms. Serengeti work with another person or company, they must have contract or board resolution. However, DW1 did not tender any contract or board resolution for a work of consultancy services for which he paid the respondent a sum

of Tsh 25,000,000/=. Basically a testimony of DW1 support an evidence of the respondent on the existence of an oral agreement between the parties. Had it not been there or else if at all it is a practice for the appellant to have all agreement codified, DW1 could had not dared to pay and handover a huge amount of cash money Tsh 25,000,000 orally without any piece of paper at least evidencing respondent acknowledging receipt the said sum. In the circumstances, DW1's claim for written document or agreement is a mere defence, to exonerate from liability and hence untenable. Therefore, an argument faulting oral agreement succumb.

With reference to a ground regarding an award of Tsh 36,250,000/= (second ground), in the plaint the respondent had impleaded this amount being fees/charges for service rendered to the appellant and the trial court decreed as such. Therefore, an argument by the learned Counsel for appellant who referred the same and equated to special damages, is uncalled for. Equally her argument for a requirement of strict proof on the same by way of documentary evidence, is irrelevant. Principally, the respondent managed to prove the said sum on the balance

of probability. Actually there is no base upon which to fault an award by the trial court in respect of that sum.

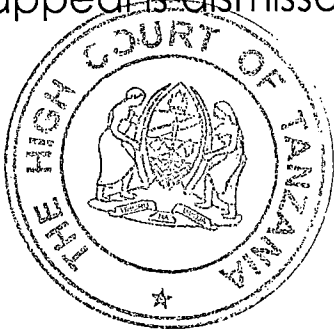
The only award which the trial court went astray, is the purported general damages a sum of Tsh 2,000,000. In the plaint, the respondent did not claim for general damages. During the trial, the respondent who testified as PW1, did not mention or prove the alleged general damages. The learned resident magistrate did not adduce reason as to why he preferred to award the so called general damages. Therefore an award of general damages a sum of Tsh 2,000,000 is set aside.

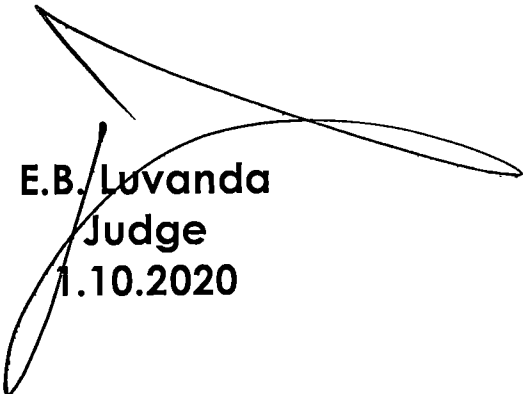
Also there was an anomaly where the respondent had filed an amended plaint on 4/5/2018 purported to have filed it under the auspices of the court order dated 23/5/2018. But upon my perusal of trial court records, that order is missing. What is reflected in the records of the trial court is that, on 23/4/2018 amid examination in chief, the respondent (PW1 at a trial), asked for an adjournment and a window to file a list of additional documents, following a series of objections to documentary evidence which were sustained by the trial court. Instead, the respondent amended a plaint. So far an

amendment was effected without leave of the trial court, the amended plaint is struck out of the court records.

Having adumbrated as above, an award of Tsh 36, 250,000/- is uphold.

The appeal is dismissed with costs.




E.B. Luvanda
Judge
1.10.2020