IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
PC. CIVIL APPEAL NO. 46 OF 2019

(Arising from the District Court of Nyamagana, Civil Appeal No. 21 of 2017. Originating from the decision of Mwanza Urban Primary Court in Civil Case No. 150 of 2017)

GREEN VIEW EDUCATION ALLIANCE LTD..... APPELLANT

VERSUS

THOBIAS ANDREA..... RESPONDENT

JUDGEMENT

16.4.2020 & 29.5.2020

U.E.Madeha, J

This is the second appeal. The matter originated from Mwanza Urban Primary Court Civil Case No. 150 of 2017 (henceforth the trial Court) whereby Thobias Andrea herein claimed to be paid the compensation of Tshs 21,800,000/- for the breach of contract. The trial Court held that the Green View Education Alliance Ltd used item No. 3 of the contract. It therefore did not breach the contract. The trial Court also ordered Thobias Andrea to repair his vehicle's and to continue with his services for the remaining 10 months. Dissatisfied with the decision of the primary Court, Thobias Andrea appealed to the District Court. Thobias Andrea was a successful litigant in the District Court in Civil Appeal No. 21 of 2017 of the Nyamagana District Court Mwanza. The decree was to the effect that the Green View Education Alliance

Ltd to award the compensation of 10,000,000/- being general damage for the breach of the contract. The compensation order did not amuse the appellant. Hence this appeal. In view of the grounds of appeal raised the issue here are:

1. Whether the appellant was the proper party to the suit before the District Court.
2. Whether the appellant terminated/ breached the Contract.
3. Whether it was proper for the District Court to award the compensation of Tshs 10,000,000/- for the breach of contract.

A brief background of this case is that, the Green View Education Alliance Ltd breached the contract which was supposed to expire after ten months. Thobias Andrea's evidence is that, the Green View Education Alliance Ltd terminated the contract at the same time, the vehicle he had rented to him was not damaged. The vehicle was in the process of picking up students to take them back to school and the contract was abruptly terminated by the Green View Education Alliance Ltd. The Green View Education Alliance Ltd had breached the contract because it hired the car for a period of two years. It terminated the contract when ten months were left before the expiry of the period of the contract. Green View Education

contract would be terminated. It reads:

> *"Clause two above is declared null and void where termination service is a result of the following factors. Poor, unreliable and undependable services, the safety of the pupil in at risks and other general inconveniences arising out of the provision of that service by the transporter."*

Mwanza Urban Court held that in view of the above clause of the contract, there was no breach of the contract. It therefore ordered that, the respondent to repair his vehicle's and to continue with his services for the

Andrea appealed to the District Court. Green View Education Alliance Limited was ordered to pay Tshs 10,000,000 as the general damage for the breach of contract.

Starting with the first issue whether the appellant is the proper party to the suit before the District Court. Mr. Geofrey Kange, the appellant's learned advocate, submitted that it is wrong for the respondent to appeal against a party which was not a party in the trial Court. Green View Education Alliance Limited is a company which is different from the Director of Green view Education (Stella Komba). Instead of suing the appellant in his registered name, he sued the said Director. He cited the case of **South Freight & Export Co. Ltd Versus The Branch Manager CRDB Tanga** High Court of Tanzania at Tanga Civil Case N0. 5 of 2002. Mr. Musa Joseph Nyamwelo, the learned advocate for the respondent, stated that the respondent filed the appeal in the District Court of Nyamagana against the appellant in its proper name and such difference in names observed between Mkurugenzi Green View Education and Green View Education Alliance Limited is not fatal. The appellant has not been prejudiced in any way. The appellant as such managed to enter an appearance in the Primary Court and made defence therein. He cited the case of **National Bank of**

Commerce Limited Versus Alfred Mwita, Civil Application No. 133 of 2011 to support his argument., In that case the Court of Appeal stated that such *inadvertence did not occasion any confusion as to the authority of the 3rd respondent, nor did it occasion any injustice to either party.* Applying the above legal principle to current matters, he submitted that the name of Mkurugenzi Green View Education and Green View Education Alliance Limited are similar names and referring to the same legal entity.

Iam not far from the respondent learned advocate that, the names of the company that is Green View Education Limited or Mkurugenzi of Green View Company Education Limited both point to the same company. The Green View Education Alliance Limited is a company duly incorporated. It is an independent person with its rights and liabilities appropriate to it. In a situation where the Green View Education Alliance Limited signed a contract, it would be the company and not the person who signed a contract. The Director of Green View Education Alliance Limited is the one who signed the contract for the company. It is known that the company is responsible for the contract signed and not an individual. The company should be sued by its name for its debt. I agree with the respondent's learned advocate and find that all of the above names related to the same company. There is no

need to dispute the use of the company because it's known and the one who is supposed to pay the debts of the company is the Director of Green View Education Alliance Limited of the said company. It is the director who is responsible for running the company operation including debt repayment.

Coming to the second and third issues, whether the appellant terminated/breached the contract and whether it was proper for the District Court to award the compensation of Tshs 10,000,000 for the breach of contract, Mr. Geofly Kange, the appellant's learned advocate, submitted that, the trial Court erred in law by holding that, the appellant breached/terminated the contract while it is on record that the appellant did not breach or terminate the contract. He only requested the respondent to repair the vehicle for the purpose of maintaining the safety of the student. The respondent did not repair the vehicle which led to the appellant to hire another vehicle. The order of the trial Court was to the effect that the respondent should maintain the vehicle and continue servicing the appellant. something which the respondent did not comply with. Mr. Musa Joseph Nyangwale, the respondent learned advocate, posed a question that assumes that the respondent's motor vehicle suffered mechanical deficit, would it be lawful for the appellant to decide to engage another transporter

in place of the respondent without prior issuance of one month notice? He cited sections 110 and 111 of the Law of Evidence Act Cap 6 (R.E 2002) in support which state that.

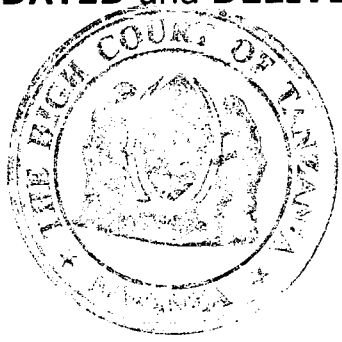
> *"110. Whoever desires any Court to give judgement as a legal or liability depend on the existence of facts which he asserts must prove that those facts exist.*
>
> *111. The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side."*

He also cited the cases of **Geita Gold Mining and another Versus Ignas Athanas**, Civil Appeal No 227 of 2017 and **Anthony M. Masunga Versus Pennina (mama Mgesi) & Another** Civil Appeal No. 188 of 2014 (Unreported). In relation to such authorities, it was stated that in civil cases, the burden of proof lies on the party who alleges anything in his favour. According to the said contract if the services would be poor, unreliable, undependable and the safety of the pupils would be at risk, the contract would be terminated without notice. He concluded that the contract was terminated by the appellant.

In my opinion, I think that, there was undisputedly a two year contract which involved the respondent sending students to and from the appellant's

school every day. The contract was due to expire after a period of ten months. The appellant breached the contract. He did not issue one month notice to the respondent. The question is whether the breach of the contract by terminating it without giving notice would entitle the respondent to the amount he was awarded by the District Court. I understand that, after the contract was breached the appellant did not hold the car against the respondent. Thus, the respondent was not supposed to be paid for the entire period of ten months, at least for a third of the remaining period of ten months. I am of that view because the respondent used the car for other uses. So I find that Nyamagana District Court granted to him a large amount of special damages in the sum of Tshs 10,000,000. On the other hand, the respondent was in error for not repairing his car and keeping it in a good condition. On the part of the appellant, since the problem of damaged vehicle was so common, the appellant had to give a notice of termination of the contract instead of breaching it. As he did. In the circumstances, the principle of contributory negligence would apply and I would find that the respondent is only entitled to damages for three months and hence entitled to a sum equivalent to three months payment with costs. In the end, the appeal is partly allowed. Order accordingly.

DATED and **DELIVERED** at **MWANZA** this 29th day of **MAY** 2020.



U. E. MADEHA
JUDGE
29/5/2020