

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

AT DAR ES SALAAM

CIVIL CASE NO. 87 OF 2019

**UMOJA WA MADEREVA WA MABASI
TANZANIA (UWAMATA).....PLAINTIFF**

VERSUS

**SURFACE AND MARINE TRANSPORT
AUTHORITY (SUMATRA) - NOW KNOWN
AS LAND TRANSPORT REGULATORY
AUTHORITY (LATRA).....DEFENDANT**

Date of Last Order: 7/12/2021
Date of Judgment: 16/12/2021

JUDGEMENT

MGONYA, J.

This is a suit for declaratory orders by the Plaintiff that this Honorable court declares that:

"The act of the Defendant or its Agents, employees and workmen of penalizing, fining and issuing notification to the Defendants beneficiaries (i.e. Public bus drivers) are illegal, unlawful and against the law of the Land."

Further, the Plaintiff herein is praying for the following orders:

- i. Permanent injunction against the Defendant or its agents, workmen and employees not to issue fines, penalties or notifications to Defendant's beneficiaries;*
- ii. Payment of the sum of Tanzanians Shillings Three Hundred and Fifty Million (Tshs. 350,000,000/=) to the Plaintiff being the amount of money paid to the Defendant by the Plaintiff's beneficiaries; and*
- iii. General damages to be accessed by the Court.*

Prior to the above prayers, the Plaintiff through their respective Plaint have informed the court that, among the major duties and function of their Union (UWAMATA) is to protect the interest (s) of its members (i. e Public bus drivers) in any act when they are in the course of their employment.

Further to that, the Plaintiff averred that, from **2017** to the date of institution of the instant case and before the grant of the temporary injunction by this court, the Respondent, its agents, workmen and employees were penalizing, fining and issuing notifications to public bus drivers by forcing drivers to pay

penalties, fines or notifications which were illegal and unlawful made. That, to justify the penalty, fines and notifications the Defendant or its agents, workmen and employee have been using the **Transport Licensing (Public Service Regulations, 2017)**. Further that, the **Transport Licensing Act (CAP. 317)** and the **Transport Licensing (Public Service Vehicles) Regulations, 2017** are said to be applicable only to the owners of the buses in which under the law are the Licensee of the Defendant.

The Plaintiff further pleaded that, in the cause of administering the Defendant's decision hereto, the Defendant and its agents, workmen and employee have vigorously stopped Drivers on the way while transporting passengers and issued them a fines and notifications unreasonably.

It is the Plaintiff's concern that, the Defendant or its agents, acts to stop buses while are on their roots has been not only illegal and unlawful but also creates chaos to both public bus drivers and to the passengers; hence the Transport Licensing Act and the **Transport Licensing (Public Service Vehicle) Regulation 2017** does not give power to the Defendant or its agents, to penalize, fine and issue notifications to public bus drivers while are in the course of employment.

It has been stated that, due to the act of Defendant or its agents, of penalizing and fining public bus drivers, the Public Bus Drivers have been using their income (salaries and allowances) to pay fines and penalties. According to the Plaintiff, as from 2017 where the Vehicle Tracking System started working up to the time of instituting the instant case, the amount involved in fines and notifications is more than **Tanzania Shillings Three Hundred and Fifty Million (350,000,000/=)** which was paid to Defendant illegally. It is from those fines, the Plaintiff averred that, in consequence of illegal and wrongful fines, penalties and notifications, the drivers and their families have suffered and continuing suffering from financial, mental and psychological damages.

That prior to this case, all the efforts to have the Defendant or its agents, to discuss about this matter has proved futile as the Defendant and its Agents were still penalizing and fining Public Bus Drivers unreasonably. It is from the above failure, the Plaintiff has resolved to institute the instant case before this honourable court.

On the contrary, the Defendant denies the Plaintiff's claims and stated that the Plaintiff's allegations are groundless and unfounded as the Defendant is a **Regulatory Authority** in

relation to surface transport sector, having full authority and mandate to protect the interests of consumers/passengers but also with full powers to administer **Laws, Rules** and **Regulations** governing the Authority and its duties.

Before I proceed further, referring to the pleadings before the court, I would like to identify parties to this case as herein below. It has been stated from the Plaintiff that the Plaintiff herein **UMOJA WA MADEREVA WA MABASI TANZANIA (UWAMATA)** is the Drivers' Union registered and incorporated in 2005 under the laws of Tanzania.

On the other hand, the Defendant herein was initially known as **The SURFACE AND MARINE TRANSPORT REGULATORY AUTHORITY (hereafter referred to as SUMATRA)** of which was a **Multi Sectoral Regulatory Agency** which was established by **THE SURFACE AND MARINE TRANSPORT REGULATORY AUTHORITY ACT, 2001**. The main objective of the Authority was to regulate Rail, Road and Maritime transport services in Tanzania. Road accidents being major concern for the Road Transport Sector in Mainland Tanzania, in **2019** the **LAND TRANSPORT REGULATORY AUTHORITY (LATRA)** was established whereas amongst its functions is to coordinate land transport safety activities, to register crew and certify drivers of

regulated sector, to monitor the performance of the regulated sectors including availability of safe, quality and standards of services, costs of service; efficiency of production and distribution of services.

In this case, the Plaintiff had the services of **MR. NESTO MKOBA**, learned Advocate, while the Defendant herein was represented by learned State Attorneys **MS. ALICE MTULO, MS. SELINA MLOGE** and **MR. ERIGH RUMISHA** respectively.

During hearing, the Plaintiff brought before this Court four witnesses to wit; **ABDALLAH SYLVESTER LUBALA** (PW1), **LAZARO JOHN FIFI** (PW2), **DEOGRATIUS JOHN KIMARO** (PW3), and **MWILA PAUL KABWA** (PW4). While on the Defendant's side, two witnesses were brought before this Court to wit; **GILLIARD NGEWE** (DW1) and **RAHIM MUSTAPHA KONDO** (DW2).

In support of the Plaintiff's case, Mr. **ABDALLAH SYLVESTER LUBALA** a resident of Sam Nujoma Road, in Dar es Salaam appeared as the Plaintiff's first witness (**PW1**). The witness identified himself as the Plaintiff's Secretary General, meaning the UWAMATA Secretary General. In support of the existence of the Plaintiff, PW1 tendered in court the **CERTIFICATE OF REGISTRATION** with No. 11528 in favour of

UMOJA WA MADEREVA WA MABASI TANZANIA (UWAMATA) duly issued by the Ministry of Home Affairs on 18th February 2005 of which was respectively admitted for evidence as **Exhibit P2**.

Further, PW1 informed the court that their main concern is on their Members' claims that have been tabled to the Plaintiff. It is from the record that the Plaintiffs avers that, more than **200** drivers were kept in custody out of failure to pay Notifications due to the fact that drivers' salaries are very minimal to the extent that they have to ask the Plaintiff's office to pay for their Notifications. On the serious note, PW1 testified to the effect that the drivers have been fined illegally as the fines are supposed to be directed to the Transporter (the owner of the vehicle), and not to them.

Testifying further, it is PW1's concern that the Notifications of which the Defendant and its Agents have been channelled to the drivers have been affecting them and the Association too, such as the Association funds have been used to pay for those fines. Further, drivers are said to have been physiologically affected with the fines and they have been reluctant even in participating the Association's activities. Due to those facts, it is the PW1's assertion that the member of their members has

decreased, as the result of affecting the Association's funds as the Plaintiff's operations are depending on Members subscriptions. Further as for drivers, they are affected financially and affect their families' welfare as they have to repay the the Association after they have been advanced some money from the Plaintiff.

In support of the fact that the drivers have been fined excessively through notifications, PW1 tendered for evidence the batch of documents being the **NOTIFICATIONS** and **FINES/PENALTIES** issued to the Plaintiff's members on different dates are of which collectively were admitted for evidence as **Exhibit P.1** respectively.

Explaining on the efforts that the Plaintiff did to resolve the controversy between the parties, PW1 informed the court that as a result of the controversy at hand, they tried to write the Defendant on several occasions and tried to conduct some meetings in vain.

Concluding his testimony, PW1 prayed this Honourable Court to order the Defendant to refund the Plaintiff's Members monies which were taken from them illegally through notifications to the tune of **Tshs. 350,000,000/=**.

PW2 LAZARO FIFI, PW3 DEOGRATIUS JOHN KIMARO and **PW4 MWILA PAUL KABWA** are all Plaintiff's witness who

each testified to be drivers employed by their different employers and issued excessive notification this is the reason as to why I have decided to consolidate their testimonies. These witnesses admit to be drivers driving passenger buses heading to different locations. It is testified that each at his own time and destination was approached by an officer that introduced himself as SUMATRA officer and notified them that they have been identified to have been over speeding at the time of travelling. Hence subjected to notifications that indicated the amount of fine they have been penalised and were required to pay the same failure to which could result into being kept in custody.

All the above witnesses admit to have committed the offences addressed to them by the SUMATRA Officers that approached them. PW2 admits to have been provided by a notification by one Shadrack, a notification numbered **0002661** bearing the name of **LAZARO FIFI** and was required to pay **Tshs. 4,000,000/=**. PW3 informed the Court to have been given a notification with number **0013353** bearing his name **DEOGRATIUS JOHN KIMARO**. The notification was provided to him by one Simba. PW4 also testifies to the effect that he was given a notification with number **0004103** with his name **MWILA PAULO KABWA**.

Further it was the testimony of **PW 2 LAZARO JOHN FIFI**, **PW 3 DEOGRATIUS JOHN KIMARO** and **PW 4 MWILA PAUL KABWA** that the offence they had committed was over speeding when travelling and the same was from a result of the Vehicle Tracking System which was regulated by **SUMATRA (now LATRA)** of which the witnesses find themselves not to be subjected or controlled by them since there is already the **Road Traffic Act** that is managed by the Traffic Police.

The above named witnesses reiterated before this Court that the fines imposed to them by **SUMATRA** are severe and unjust and that they do not afford such amount of money. Further the same causes them to take loans from their Association (**UWAMATA**) the Plaintiff herein. Moreover, taking of these loans causes them to have hardships in their daily lives for they have a small income that is required to sustain them and repay the loans taken.

It suffices to say that all the Plaintiff's witness testified to the effect that, the action of Defendant of issuing notification form is illegal and they went further and testified that the notification form issued by the Defendant required them to pay the respective fines are not for in their favour but rather are supposed to be

issued to the bus owners. After PW4's testimony, the Plaintiff closed its case.

In defending their case, the Defendant lined up a total of two witnesses whereas DW1 one **GILLIARD NGEWE**, the **LATRA Director General**, testified before the Court by informing this Court the history and transition of **SUMATRA** to **LATRA** together with the source of the establishment of Vehicle Tracking System of which was inverted by the Government in January 2017 after occurrence of massive road accidents.

DW 1 testified further that, the matter before the Court is on controversy of the Vehicle Tracking System that is used to regulate speeding of public vehicles on the roads. This system allows LATRA to issue notifications and penalties to the drivers that offends the **Public Service Vehicles Regulations revised in 2017 under section 23 (2) (b)**. DW1 further testified that, LATRA in due course of exercising its duties provides drivers with licence and a timetable that binds them if the same is contravened and subjects the offender into a fine.

The witness further testified that, Penalties under the said Law states that the same will not be exceeding **Tshs. 500,000/=**, and that the notifications given are in accordance to the laws and regulations of LATRA and the offender is required to

pay the penalty. In conclusion of his testimony, DW1 confessed that, after the installation and use of the system, accidents decreased in number and even when occurred the effects were minor.

DW2 RAHIM MUSTAPHA KONDO, testified that he works with LATRA and before that he worked with SUMATRA and was responsible for fixing Vehicle Tracking System devices in buses as he was in the control room. Further he was levied with the duty to monitor the buses and prepare reports on those who were identified to be over speeding. In the cause of DW2's testimony, he tendered the Speed Violation Report of which was admitted as **Exhibit D2**.

Mr. Rahim also testified towards the notifications of Lazaro John Fifi, Mwila Paulo Kabwa and Deogratius John to be notifications of various overspeedings events for more than one day being accumulative hence they attracted huge amount of fines in diverse dates with more than one event of over speeding per day.

The witness informed the court also that the Vehicle Tracking System has benefits as it manages the smooth and peaceful running of journeys on the roads. Its main purpose

being to track and monitor the drivers and the vehicles speeds of which at the time of the journey to safeguard people's lives and their properties as one of LATRA's main duty.

Moreover, DW2 testifying about the fines under the **Amendments of 2016** in the **7th Schedule, Item 16** he stated that the fine is **Tshs. 250,000/=** for an offence of failure to comply with the Regulations, over speeding being of them. He said it is from the said Regulations they have powers to charge the over speeding offenders.

DW2 further informed the court that since the injunction order, they have failed functioning since they do not have the powers to perform their duties as before the Court's order. Stating on the current situation, the witness declared that the passengers are seeking for the Authorities assistance in controlling the buses over speeding in order to save their lives.

Conditioning his testimony, DW2 commented that it should be noted that the Vehicle Tracking System is for the benefit of the Nation and safety of the passenger travelling endlessly each day. Further that the system has costed tax payers' money to be inverted so the same should be used in serving people's welfare.

After the DW2's testimony, Defence closed their case. At the end of the trial, the learned Advocates were ordered by the court to file their respective closing submissions on an agreed schedule. Up to the time of writing and delivering of this judgement, the said order was duly complied only by the Defendant's Advocates. It suffices to say that I haven't come across any final written submission by the Plaintiff's Counsel. That being the case, and since the filling of final submissions is an order which originated from the court and not statutorily, I proceed to determine the case in the absence of the Plaintiff's submission. Nevertheless, I have to thank the Defendant's team for their well-researched and professional piece of work as demonstrated in their submission. I applaud the Defendant's Advocates for their respective submission of which has been of the great assistance to the court in the cause of composing this judgement.

In accordance with the provisions under the **Civil Procedure Code, Cap. 33 [R. E. 2019]**, after the First Pre Trial Conference, Parties headed to the Mediation as law requires. However, the same proved failure. It is from there, progress towards trial began.

During the Final Pre-trial Conference, issues framed by the parties and their respective advocates in collaboration with the Court were as follows:

- 1. Whether issuing of Notifications to Public Bus Drivers by the Defendant was illegal;***
- 2. If the first issue is answered in affirmative; whether the Plaintiff had suffered any damages; and***
- 3. To what reliefs are the parties entitled to.***

At this juncture, I have with profound attention carefully considered the evidence adduced by parties herein. Now the task before me, of course is to analyze the evidence adduced before the court and make decision with reasons of each framed issue for the purpose of determining the instant controversy.

Before I venture to decide the merits of the present suit, I do appreciate the parameters, of the burden of proof established by the **Law of Evidence Act Cap. 6 [R. E. 2019]** and which provides:

110 (1) whoever desires any court to give judgment as to any legal rights or liability dependent on the existence of facts which he asserts must prove those facts exist;

2) When a person is bound to prove the existence of any facts, it is said that the burden of proof lies on that person;

3) The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side.

I am also alive that, it is a cherished principle of law that, in civil cases, the burden of proof lies on the party who alleges anything in his favour. It follows therefore the party with legal burden also bears the evidential burden balance of probabilities.

The first issue seeks to investigate whether ***issuing of Notification to Public Bus Drivers by the Defendant was illegal.***

As rightly heard from DW1, the Director General to the Defendant, the introduction of the **VEHICLE TRACKING, AND MONITORING SYSTEM (VTMS)** did not emerged from nowhere. There were clear reasons and justifications to that effect. The decision to have VTMS came from the rise in the number of death toll caused by road accidents. It is from that fact, the Government of Tanzania in 2010 directed SUMATRA to identify means to reduce road accidents on inter-regional routes. In 2011, Ministry of Home Affairs set up a project team to identify

options to control the speed of passenger vehicles and provide its recommendations on the best solution. It is from that task, the Vehicle Tracking and Monitoring System was seen the best way to reduce death rates and casualties of the road accidents. It was evident from DW1's testimony before the court that the Government being responsible for its people's safety, funded the project from the tax payers' monies to install the system.

It is further from the DW1's testimony that, after the installation and performance of the VTMS, as per the statistics which was submitted before the court as **Exhibit D2**, the accidents decreased contrary to the current situation where the system is not performing due to the temporary injunction that was granted by this court in the cause of this litigation whereas the situation has returned to the previous situation of which is worse.

From the above explanation, it is very clear that, there was in place a lawful justification for the Government to invest a lot of funds for this project. However, for the better legal enforcement of the project, SUMATRA as a Coordinator to the surface transport, had to come up with the legal framework for enforcement of the same.

In order to ensure safety to passengers and their belongings, pursuant to **Regulation 25 (a) (iii) of Transport Licensing (Public Service Vehicles), 2017 (GN No. 421 of 2017)** of which was preceded by the **NATIONAL TRANSPORT POLICY (2003)** and the **TRANSPORT LICENSING ACT (2016)**, the inter-city or international public services vehicles are required to be installed with a vehicle tracking device (VTDs) authorized by the Authority. Generally, **Regulation 23(2) of THE TRANSPORT LICENSING (PUBLIC SERVICE VEHICLE REGULATIONS), 2017** provides several obligations to a **crew** of a public service vehicle. One of the obligation *inter alia* provided for under **Regulation 23(2) (d)**, where a crew is obliged to comply with **Road Traffic Act and other relevant laws**. Pursuant to **Regulation 3** the word "**crew**" is defined to **include driver**, conductor and any other employee of the licensee working in the public service vehicle or school bus while en-route. From this accord, as I had an ample time to go through **Exhibit P1** being a batch of Notifications issued to different Drivers, it is evident from the testimony of PW1 and, testimonies of both **DW1** and **DW2** and exhibits produced by DW2 to wit the Vehicles Tracking System (VTS) Speed Reports that, all the

notifications were issued to drivers who due to the offence of **over speeding**.

As seen above and from the testimony of both **DW1** and **DW2**, the notifications were issued in accordance **with Regulation 23(2) (d) of the Transport Licensing (Public Service Vehicle Regulations), 2017**. Therefore, the Defendant acted within its legal mandate to issue notifications to all **crews (drivers)** who acted in contravention of the conditions of license provided under **Regulation 23(2)(d) of the Transport Licensing (Public Service Vehicle Regulations), 2017** for failure to comply with the **Road Traffic Act** and **other relevant laws**. It is well known principle under the law that one cannot be said to be acting wrongfully or unreasonably when he is executing the laws duly enacted and passed by the Parliament as it was held in the case of ***ZUBERI MUSSA VS SHINYANGA TOWN COUNCIL, Civil Application No. 100 of 2004, in the Court of Appeal of Tanzania at Mwanza (Unreported) pg.9.***

Further, it has to be noted that, the Defendant being multi sectorial Regulatory Agency established under **THE SURFACE AND MARINE TRANSPORT REGULATORY AUTHORITY ACT 2001**, and with full mandate to regulate Rail, Road and Maritime

transport services in Tanzania, it has the mandate too to regulate the behaviours of Drivers by using different devices one of it being VTMS.

It has further come to the knowledge of this court that the mandate to charge the said fines were derived from **the Written Laws (Miscellaneous Amendments), Act No.13, 2016. Where, the principal Act (the Surface and Marine Transport Regulatory Authority) Act, 2001 which was amended to add section 40A** to empower the Authority to compound offences where a person admits in writing that he has committed an offence under the Act. Pursuant to the **7th Schedule item 16 of the Transport Licensing (Public Service Vehicle Regulations), 2017** a person who contravene **Regulation 23(2)(d) of the Transport Licensing (Public Service Vehicle Regulations), 2017** and admit his offence is liable to pay **TZS 250,000/-** upon compounding his offence. For that matter, as I have noted from the testimonies of **PW2, PW3** and **PW4** that they have never denied over speeding, hence they were all liable and fairly required to pay the fine notifications for the above stated amount for each of the offence committed.

It came to the knowledge of this court too through **DW2** that the driver cannot be under duress to sign the notification form

before the Authority's Officer writing the notification, as always the driver is informed of his whereabouts and his behaviour during the journey before the issuance of notification. Further to that, when the notification is issued, the driver is said to have been informed on the exact location, time and the speed driven at that particular location and the reason why the notification is issued. Hence, this court is of the settled view that the Notifications were issued **fairly, reasonably** and **with justification** to that effect. Therefore, the claim that, issuing of notifications to public bus drivers by **the Defendant was illegal cannot stand and has no any merit.**

In the cause of determining this matter, it came to my knowledge through **DW1** and **DW2** that the VTMS came as a result of unpleasant road accidents that took a number of the innocent citizens of this country due to the reckless driving of bus drivers who were controlled by over speeding. Meaning that they were driving beyond the dedicated speed under the VTMS. During the hearing of the Defendant's witnesses, it came to the knowledge of this court that the VTMS apart from being installed by the huge amount of taxpayers' monies, the system has unexhausted benefits to the number of beneficiaries, being the State itself, public buses owners, drivers and passengers. I would

like to briefly mention some benefits as outlined by coordinators of this system through their testimonies in court. The same are as hereunder.

From the system, the State is to benefit by reducing time spent on roads by employing a massive manpower all over the country to monitor the public buses to endure that the passengers are safely transported. While everything goes digital, there is also less paperwork for operation as it is just needed a control room and application to run the system with a limited number of employees and agents to operate. Further, the location can be checked easily from the application / system or website with no need for recording anything manually. This also prevents errors that can occur when things are done manually.

I have also noted that there are plenty of benefits to the vehicles owners in terms of safety to their properties and in improvement of their operations so as to sustain both their businesses and their employees' employments, **drivers inclusive**. To mention the few, that the tracking system also prevents unnecessary engine idling by employees, hence there will be constant real-time monitoring. With the dedicated speed limits, it ensures less idle time on the road, increased number of trips a day and increased productivity with reduced fuel

consumption. It has also come to the knowledge of this court that, vehicle tracking system monitors not only the vehicle but the driver as well. The system provides a live map which is updated almost instantly. With modern tracking software, one can also receive alerts for each time the employee or driver commits any non-compliant behaviour like sudden braking, speeding, swerving, etc. With such accurate data, the owner can easily keep and check on every driver and how strictly they are following the company procedures and road laws. By having access to each vehicle's real-time location, the owner can easily track his asset/s. If they get lost or stolen, the same can be retrieved right away.

Further it has to be noted that, having a vehicle tracking system will alert the owner whenever the vehicle needs maintenance. This will also ensures that all vehicle servicing needs are up to date and minimises unforeseen costs and repairs of which the system will benefit the owner / company to find efficient routes, which will increase productivity.

Vehicle and drivers' safety have also been identified as one of the benefits that the owner can get as road accidents can be prevented and problems on the road like high jacking, theft etc. can be reduced, and yet is yet another benefit provided by the system. Another impressive benefit to the owner is said to be cost

saving as when the speed is limited, there is a low fuel consumption more than in over speeding.

Coming to the Public or rather passengers, all the benefits mentioned above ultimately result in greater customer satisfaction. Increased productivity as efficient routes means better service for delivery businesses. From all these, it is obvious that passengers will be safe and the death toll will decrease.

Having listed just some of the benefits that are involved in the VTMS and its information, one will obvious find that the system is absolute important not only to the State, Owners and passangers, but also extremely important to the drivers themselves in terms of their **safety** and their **employment**. Then the question comes, if that is the case then, what is the controversy in operating the VTMS in this 21 century?

Following the Plaintiff's pleadings and testimonies before the court, it came to my attention and knowledge that the major problem to some of the drivers such as **PW2, PW3** and **PW4** is the denial to change their working behaviour and particularly refusing to adhere to the designated speed limit set by the system, hence committing an offence of over speeding of which is a deadly offence so to say. The history of what happened to bring up awareness and decision of the establishment of VTMS has

been well elaborated before the court by the Director General for the Defendant who testified as **DW1** whose testimony was duly corroborated by **DW2** the Senior Road Licencing and Monitoring Officer to the Defendant's Organisation.

If this is the case then, and after I have come to the conclusion that the Defendant's fining through notifications were in accordance to the law, one could ask as to why some of the Plaintiff's Members are not ready to change their behaviours for the expense of citizens of this Country. I had an ample time of going through the contents of **Exhibit P1** of which is the batch of fines notifications for some of the Plaintiff's Members, **PW2**, **PW3** and **PW4** inclusive and detected that all the notification forms tendered for evidence serve for one which had offence of changing the time table, they were all having the offence of **over speeding**. This has clearly showed that the major problem of some of the Plaintiff's Members is to counter the speed limit of **80 Km/h** dedicated for public buses with the over speeding which has already lost the lives of innocent citizens of this country. No one is not aware of the effects of over speeding.

Tanzania is the State that professes the **Rule of Law**. A State governed by the rule of law describes a state where both private and public powers are removed from the administration of

justice and are regulated by law. The rule of law serves the public good of the community as a whole. The law determines what is necessary in a society to prevent domination and oppression and to promote the common good. As people seek justice through law, the rule of law comes at first from men itself, because men have to obey rules, as they are believed to be just and reasonable. The value of the rule of law lies in the fact that it prevents arbitrary insecurities, secures justice, and prevents tyranny and oppression.

Referring to the case at hand, I have to declare that this court has noted with a lot of grief that illicit decisions by some of the Plaintiff's Members not to obey the laws of the Land for their personal motives purposely, whereby the Laws to protect the Citizens of this Country from hazardous events such as unwanted deaths and paralysis of their activities are in place, it attracts sanctions and penalties.

As I have noted these illicit actions, I am obliged to remind all the Citizens of this Country that **we all have a duty of safeguarding welfare of the sons and daughters of this Country at all costs and further to Public Funds and properties and curb them against losses as much as possible.**

At this juncture I have to state that, as the laws concerning this matter have been enacted and passed by the Parliament, no one is supposed to be above the law. In case of any failure to adhere to the laws, the sanctions are inevitable. Hence the notifications to the Plaintiff's Members were according to law. As rightly seen in the said notifications, by signing the same, the offenders have consented to the Authority that they have gone against the law. The issue of the huge figures of the fines, such as the one to **PW2** being **Tshs. 4,000,000/=** and the rest of **Tshs. 1,000,000/=** and **500,000/-** for **PW3** and **PW4** respectively, as well stated by **DW1** and **DW2**, was accumulation of the unpaid fines to the concerned drivers. Those were the fines according to the Regulations as stated above, hence legal fines.

At this juncture, let me say something about fine punishment. A fine is a form of punishment used in different aspects of the law such as civil law or criminal law, whose goal is decided on the basis of nature of the offence. It is an amount which by order of the Judge, Authority or Statutory has to be paid for the punishment by the offender. In short, a fine is a monetary punishment, similar in function to prison or community service. The amount to the fine shows the severity of an offence committed.

The purposes of imposing a fine is to punish the offender, help compensate the State for the offence, and deter any future criminal or civil acts. A fine is usually established by the laws and imposed on wrong doers that goes against the laws mainly to make offenders learn from their mistakes.

There are a number of factors considered while deciding fining. These are a type of crime, severity, circumstances, the record of the offender, measures taken by the defendant for correcting the mistake and remoteness of committing the wrong if any etc. Moreover, another point to bear in mind when imposing a fine is that such fine must not be unduly excessive. The means of the offender to pay the fine must also be considered. If the same is not considered one might end up imposing a fine which in effect, is no real option to imprisonment and that the offender may fail to pay the fine and end up being imprisoned.

Looking into the instant case before me, the records shows that a fine imposed to a driver who contravenes the Laws as stipulated under **Seventh Schedule** of the **Transport Licencing (Public Service Vehicles) Regulations, 2017 G.N No. 421** under offences and Penalties Compounded by SUMATRA **item 16** the fine is **Tsh. 250,000/=**. One might think this fine is

severe in the eyes of the Law and in opposition of the jurisprudence of consideration of imposing fines as stipulated above.

However, in my considered view, and out of the seriousness of the problem that this Nation has passed through as well testified by **DW1**, in order to have a success outcome of this serious offence which costs lives of people, the termed fine is **reasonable fair**. It is my further view that if one has been notified by alarm just before being notified by fine notification, if he is willing not to commit an offence, he will adhere to the alarm and go back to track to prevent from being fined. However, if he neglects, and in order to save lives of the innocent Citizens from deaths, the dedicated fine is quite reasonable as the same carries the serious consequences.

We are all aware of the consequences or rather outcome of over speeding. To mention the few are:

- Decrease in time for a driver to notice a safety hazard and react to it;
- Protection equipment such as airbags and car safety measures are less effective;
- Speeding leads to an increase in the degree of crash severity, possibly resulting in more fatalities or injuries;

More damage is caused to the vehicles involved at higher speeds, increasing likelihood vehicle will not be drivable after a crash; and

- Finally and the most serious effect is **DEATHS**.

Talking of deaths, this is the outcome that is extreme as the same cannot be reversed. Meaning that the life taken cannot be installed. The Citizens of this Country like any other in this Universe have the Right to Life, as **LIFE** is the Mother of all Rights. The right to life is the most important of all human rights. There is no doubt that if there were no right to life, there wouldn't be a point in having any other human right. **The State has an obligation to protect the lives of its Citizens**, as it is one of the main duties of a State. That is to say, the Citizens should feel safe at all times. It is for this and other reasons that Citizens owe allegiance to their State. They identify themselves with it and they are prepared to render services and meet the various demands made by their State such as payment of taxes and other levies. Failure by the State to maintain law and order and hence lack of reliable security as to life and property of the Citizens can lead to chaos. That is why the Government through its Authorities such as the Defendant herein have been vested with such a serious obligation through the Laws of the Land.

As I was composing this judgement, I wanted to see the actual data in respect of the accidents that had occurred out of over speeding as from **1st December 2021** to **14th December 2021**. The statistics are shocking and frightening. The record that I have received from the Authority being the Police Force, confirmed that, for the above state period, all over the country, number of accidents are **55**, Deaths involved are **50** while the injuries out of the said accidents are **100**. From these figures, there are no words to demonstrate how serious we are supposed to be in tackling this problem.

Having said so, the **first issue is answered in affirmative that the issuing of Notifications to Public Bus Drivers by the Defendant was LEGAL.**

As to the **2nd issue, that *if the first issue is answered in affirmative, whether the Plaintiff had suffered any damages.***

It is evident from the testimony of DW2 and exhibits tendered by **PW1, PW2, PW3** and **PW4** regarding the Vehicles Tracking Monitoring System (VTMS) Speed Reports that, the notifications were issued to drivers who were over speeding. Further it is the testimonies of **PW2, PW3** and **PW4** that they all signed the notification forms to show that they have consented to

the offence committed by them taking into consideration that the rate of over speeding and fine thereto differs considerably from one Driver to another. As stated above, the said Notification Forms were issued in accordance with **Regulation 23(2) (d) of the Transport Licensing (Public Service Vehicle Regulations), 2017** and the fines was per scale indicated under the **7th Schedule item 16 of the Transport Licensing (Public Service Vehicle Regulations), 2017**. It is from that stance, the Plaintiff had suffered nothing at all as the fines were legal.

It has come to the knowledge of this court that the VTS Reports indicated number of speed violation. For instance, Notification form No. 0002661 issued to **Lazaro John Fifi (PW2)** indicates that, from 1st October, 2018 to 10th October, 2018 while driving motor vehicle No. T 203 DGK providing its services between Dar es Salaam and Bukoba had **180 speed violation incidences** which was supposed to be charged **TZS 250,000/-** per each speed violation as stipulated under the **7th Schedule item 16 of the Transport Licensing (Public Service Vehicle Regulations), 2017**, hence, making a total of **TZS 45,000,000/-**. However, the Authority was still considerate and he was issued notification for **16** speed violation incidents

only out of **180** and thus the driver was fined only a total of **TZS 4,000,000/-**, and walk scot free for **164** speed violation incidents.

Further, the VTMS Report indicates that, **Deogratius John Kimaro (PW3)** with Notification Form No. 0013353 while driving a motor vehicle No. T 380 DHT plying between Babati and Dar es Salaam on 11th June, 2019 had a total of **71** speed violation incidences. Pursuant to the 7th Schedule item 16 of the Transport Licensing (Public Service Vehicle Regulations), 2017 the driver was supposed to be fined **TZS 17,750,000/-** but was fined only for four speed violation occurrences and was charged TZS. **1,000,000/-** only leaving **TZS 16,750,000/-** out of payment.

On the other side, The VTMS Report indicates that, **Mwila Paulo Kabwa (PW4)** with Notification Form No. 0004103 indicates that, while driving a motor vehicle No. T 628 DNZ plying between Dar es Salaam and Songea, between 20th February, 2019 and 26th February, 2019 had a total of **265** speed violation incidences. On notification date, he was fined for only 2 speed violation occurrences i.e. **TZS 500,000/=** out of **TZS 66,250,000/-** which was supposed to be charged in accordance with the **7th Schedule item 16 of the Transport Licensing (Public Service Vehicle Regulations), 2017.**

From the above submission, it is evident that, from the sampling of Notification forms of the **PW2, PW3** and **PW4** the offending drivers were under charged. From the above scenario, it is vivid that, the drivers did not pay the fines they deserved.

From the above demonstrated trend of payment of Notification Forms, I totally agree with the testimony of **DW1** that, the objective of the Authority was not to collect revenues from drivers, instead issuing of notification form is for the purpose of enforcing the VTMS controlling the behaviours of the Drivers. Further, that the issuing of Notification form to Bus Drivers in my opinion was to **deter** the drivers who had a habit of over speeding despite the fact that they had knowledge on the consequence of over speeding. Above all the fining was done for the betterment of the majority of the Tanzanians who are the daily users of the public services vehicles (PSV).

Besides, during the trial, there was no any evidence that have been tendered to illustrate that those fine were really paid by the Plaintiff as testified by the Plaintiff's witnesses, to command compensation.

Referring to the Plaint, specifically to paragraphs **14** and **15** thereto, the Plaintiff claimed to be reimbursed by the Defendant the penalties and fines worth **TZS 350,000,000/=** the amount

paid by the drivers out of the said illegal notifications and fines as the same originates from the illegal fining. Further that, they have suffered financial, mental and psychological damages. From the face of it, these are the **specific damages** which must be specifically **pleaded** and **strictly proved**. However, the Plaintiff and its Members have failed to prove the same as no evidence have been tendered to prove whether the Plaintiff paid all the fines imposed to the notification form as there were no any receipts tendered before the Court to that effect. In the circumstances, the Plaintiff have failed to show how they suffered in order to be entitled the payment worth **Tshs. 350,000,000/=**.

In this respect, I wish to cite few cases as hereunder to accompany my argument. The Court of Appeal of Tanzania underscored this requirement in ***NYAKATO SOAP INDUSTRIES LTD V. CONSOLIDATED HOLDING CORPORATION, Civil Appeal No. 54 of 2009 (unreported)*** thus:

"..... It is elementary principle that where specific damages all pleaded, they must be specifically proved".

The said Court also quoted with approval a judgment of Lord Mc Naughten in ***BOLAG V. HUTCHSON [1950] AC 515*** in which his Lordship stated:

"That specific damages are in the nature such as the law will not inter from the nature of the act. They do not flow in the ordinary course. They are exceptional in their character and therefore they must be claimed specially and proved strictly."

Further in **ZUBERI AUGUSTINO V. ANICET MUGABE [1992] TLR 137.**, and in **KIMANI V. ATTORNEY GENERAL [1969] EA 502**, both cases was involved in loss of profit from a lost article. In this judgment, Sir Charles New bold, President with whom other Members of the Court concurred, stated:

"...The claim however relates to a specific loss consequent the loss of use of the article for a specific period prior to the date of the plaint. That is clearly specific damages which..... must be pleaded and proved. The reason for this rule is that a defendant must be given an opportunity of knowing what specific claims are made and thus be in a position to call evidence to show that the claims in respect of the details is not correct....." (at P. 505)

The other case is **HARITH SAID & BROTHERS LTD V. MARTIN S/O NGAO [1981] TLR 327** in which this Court speaking through Samatta, J (as he then was) stated:

"... Unlike general damages special damages must be strictly proved. I cannot allow the claim for special damages on the basis of the Defendants' bare assertion, when he could, if his claim was well founded easily corroborate with some documentary evidence. For all one knows the Defendant might have been incurring losses when he was running the bus..." (at page 332).

In this case, from the above legal reasoning, I cannot grant the Plaintiff's prayer for mentioned damages. I say so for what is being claimed has not been proved as said above and further, the same cannot be paid as this court has already declared that the fines paid through notifications were in accordance to law. In effect that claim are specific damages which the law requires that they must be specifically pleaded and strictly proved, the claim is **unsustainable**.

In the event and for the foregoing reasons, the claims for special damages are hereby **dismissed**. Further, it firmly concluded that, the drivers did not suffer any damages. In the event therefore, the second issue as the day follows the night, the same is answered **NEGATIVELY**.

As to the third issue as **to what reliefs are the parties entitled to**, in the event and for the foregoing reason, **the instant suit is hereby dismissed for being meritless**. I accordingly enter judgment in favour of the Defendant and I hereby proceed to grant the following orders:

- i. That the act of the Defendant or its Agent, employee and workmen of penalizing, fining and issuing notification to the Defendants beneficiaries (i.e. Public bus drivers) was/is illegal, lawful and in accordance with the laws of the Land;*
- ii. That the Vehicle Tracking and Monitoring System which was temporarily suspended is to be resumed and continue with its operations with immediate effect; and*
- iii. As the court has find the Defendant with legal mandate to issue notifications on fine, the court proceeds to order the Plaintiff's Members to adhere to the Laws related to the Public Service Vehicles Regulations respectively.*

Consequently, **the instant suit is dismissed in its entirety**. I make no order as to costs.

It is so ordered.

The Right of Appeal is explained.




L. E. MGONYA

JUDGE

16/12/2021

COURT: Judgement delivered in chambers in the presence of Mr. Michael Nyambo, Advocate for the Plaintiff, Ms. Selina Mloge Senior State Attorney and Mr. Erigh Rumisha, State Attorney for the Defendant; and Mr Richard RMA.




L. E. MGONYA

JUDGE

16/12/2021

