

**IN THE HIGH COURT OF TANZANIA  
TABORA DISTRICT REGISTRY  
AT TABORA**

**CIVIL REVISION NO. 3 OF 2019.**

[Arising from Execution No.6 Of 2019 at Resident Magistrates  
Court and originating from Civil Case No. 9 of 2018 and Taxation  
Case No. 20 of 2018 at Tabora]

**JONAS NZIKU..... 1<sup>ST</sup> APPLICANT**  
**HAJI OMARY.....2<sup>ND</sup> APPLICANT**  
**FAUSTIN BILTON .....3<sup>RD</sup> APPLICANT**  
**REHEMA IDDY .....4<sup>TH</sup> APPLICANT**  
**PAULO MICHAEL .....5<sup>TH</sup> APPLICANT**

**VERSUS**

**MKOPI SEBASTIAN.....RESPONDENT**

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**RULING**  
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Date of Last Order: 03/08/2021

Date of Delivery: 10/08/2021

**AMOUR S. KHAMIS, J.**

Acting under Section 30(2) (a) of the **MAGISTRATES COURTS ACT, CAP. 11, R.E. 2019**, the Resident Magistrate In charge of the Resident Magistrates Court of Tabora forwarded the record in respect of Civil Case No. 9 of 2018 to the High Court for consideration on whether or not to exercise its powers of revision.

Having read a report and records of the case, this Court suo moto initiated revisional proceedings.

Parties were summoned whereby Mkopi Sebastian, the Plaintiff in the trial Court and the respondent herein, appeared. Jonas Nziku, Haji Omary, Faustin Bilton, Rehema Iddy and Paulo Michael, the defendants in the trial Court and applicants in the present proceedings did not show up.

Records show that Mkopi Sebastian instituted Civil Case No. 9 of 2018 in the Resident Magistrate's Court of Tabora against Jonas Nziku, Haji Omary, Faustin Bilton, Rehema Iddy and Paulo Michael for payment of Tshs. 45, 000, 000/= as general damages and Tshs. 11, 200, 000/= as special damages arising from malicious prosecution.

It was pleaded that the five defendants unjustifiably prosecuted Mkopi Sebastian vide Criminal Case No. 71 of 2017 which terminated in favour of Mkopi Sebastian.

Pleadings further revealed that Jonas Nziku, Haji Omary and Faustin Bilton initiated criminal proceedings by reporting to Police Station on loss of 931 iron bars, property of Pangale Secondary School.

Rehema Iddy and Paulo Michael were sued for production of audio evidence in Court which was said to be an act of malicious prosecution against Mkopi Sebastian.

Upon trial, the trial Court (Hon. Joctan Rushwela, RM) granted prayers by Mkopi Sebastian and ordered defendants to pay Tshs. 15, 000, 000/= as general damages, interest thereon at 40% per annum from date of Judgment to final date of payment and costs of the suit.

The issue that emanates from the report by the lower Court is whether the trial magistrate erred in law in granting interest on general damages at the rate of 40% per annum.

As I said earlier, the applicants did not enter appearance throughout these proceedings and Mkopi Sebastian failed to show up on the date of hearing. I am therefore constrained to determine the matter without parties' inputs.

In **ULC (TANZANIA) LIMITED V NIC AND PSRC, COMMERCIAL CASE NO. 56/2000** (unreported) it was observed that there are two groups of interest rates applicable in Tanzania.

The Court explained the two divisions of interest rates as hereunder:

*“ . . . These two correspond to the period for which interest is awarded. The first period covers the whole of that period up to delivery of Judgment. The second period is the period from delivery of Judgment to final satisfaction. The rate to be awarded for the first period is entirely at the discretion of the Court, whereas the rate to be awarded for the second period is also at the discretion of the Court but within set limits i.e between 7% and 12% per annum.”*

In **REV. CHRISTOPHER MTIKILA V ATTORNEY GENERAL (2004) TLR 172** the Court of Appeal held that since general damages have to restore an injured party as far as possible to the position prior to the injury, it is correct in law to include interest in the award of damages as element calculated to offset the effect of inflation and devaluation.

In that case, the Court of Appellant concluded that the appellant was entitled to interest at the commercial rate from the date of filing the suit to the date of delivery of Judgment.

Further, in the said case of **REV. CHRISTOPHER MTIKILA V AG**, the Court of Appeal pointed out the applicable law in awarding interest on the decretal sum including an award of damages, thus:

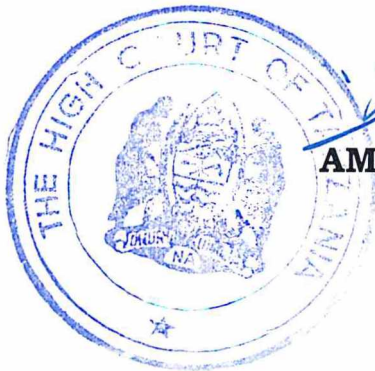
*“It is apparent from the provisions of Section 29 of the Civil Procedure Code read together with Rule 21 of Order XX of the same Code that a Judgment debt shall be calculated from the date of delivery of the Judgment until the same shall be satisfied at the rate of 7% per annum or, not exceeding 12% per annum.”*

In the present case, the trial magistrate awarded 40% interest on general damages which is not only on the higher side but also confute the legal requirements of Section 29 of the Civil Procedure Code read together with Rule 21 of Order XX of the same law.

Having found that the award of 40% interest on general damages was irregular under the Tanzanian laws, I exercise the revisional powers of this Court to reduce the said rate to seven percent (7%) per annum.

It is so ordered.

Dated at Tabora this 10<sup>th</sup> day of August 2021.



**AMOUR S. KHAMIS**

**JUDGE**

**10/8/2021**

**ORDER:**

Ruling delivered in chambers in absence of both sides who were duly notified. Right of Appeal explained.



**AMOUR S. KHAMIS**

**JUDGE**

**10/8/2021**