

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
(LABOUR DIVISION)  
AT BUKOBA**

**CIVIL APPEAL NO. 18 OF 2020**

*(Arising from Civil Case No. 49 of 2016 of the Bukoba District Court)*

**ALLI CHAMANI.....APPELLANT**

***VERSUS***

**WP 6917 GLORY.....RESPONDENT**

**JUDGMENT**

*12<sup>th</sup> October & 15<sup>th</sup> October 2021*

***Kilekamajenga, J.***

In this case, it is alleged that the appellant, Mr. Alli Chamani was driving from Karagwe when he was stopped by the respondent who was the traffic police. The appellant's car was inspected by the respondent and found with worn out tires. The appellant was fined for the offence of driving a car with worn out tires. The appellant had no cash to pay for the fine but the respondent pressed for the fine to be paid on the spot. The appellant waited for a while until a 'Samaritan' appeared to advance him Tshs. 30,000/= that enabled the appellant to clear the fine.

Thereafter, the appellant sued the respondent alleging that he (appellant) was put under arrest for about an hour. He further alleged that he (appellant)



committed an offence which was not among the arrestable offences and that, his arrest amounted to abuse of the respondent's position causing mental and psychological torture to the appellant. In the suit, the appellant claimed Tshs. 20,000,000/= as general damages. Despite service of summons to the respondent, she did not appear to defend the suit hence the case proceeded *ex parte*. After the trial, the case was dismissed.

Being disgruntled with the decision of the trial District Court, the appellant preferred this appeal armed with four grounds of appeal thus:

- 1. That the trial court erred in law and fact after finding that the respondent breached a duty towards the appellant for not awarding damages on the ground that the respondent was not a proper party, but the respondent's employer to pay the same;*
- 2. That the trial court erred in law and fact for holding that restricting the appellant to move with the vehicle, did not affect his freedom to move, hence not arrested;*
- 3. That the trial magistrate erred when he reasoned that the appellant was not detained, but only a vehicle;*
- 4. That the trial magistrate erred in law and fact for raising the issue of joining the employer on tortious liability committed by the employee *suo motu*.*

When the appeal came for hearing, the appellant appeared in person but the respondent was absent. The court ordered the appeal to proceed in absence of



the respondent. In his oral submission, the appellant decided to argue the 4<sup>th</sup> ground of appeal and invited the court to consider the other grounds. On the 4<sup>th</sup> ground, the appellant argued that the trial court raised, *suo motto*, the issue of vicarious liability. The trial court discussed the issue of vicarious liability and concluded that the respondent's employer was the necessary party in this case. He argued further that, raising an issue *suo motto* without inviting the parties to address on it was improper. The appellant cemented the argument with the case of **Kapapa Kimpindi v. Plant Manager, Tanzania Breweries LTD, Civil Appeal No. 32 of 2010**, CAT at Mwanza (unreported). Thereafter, the appellant rested his case.

In determining the instant appeal, I wish to begin the discussion with the 4<sup>th</sup> ground which was argued by appellant. On this ground, the appellant argued that it was un-procedural for the trial magistrate to raise an issue, which was not among the framed issues for determination, and discuss it without inviting the response from the appellant. I am fully aware that the position of law on this issue is well settled that when a new issue arises when composing the judgment or where such issue is raised, *suo motu* by the magistrate or judge, it is always prudent to invite the parties to address the court on the new issue before making the decision. The same stance was taken in the case of Kapapa (*supra*) where the Court of Appeal of Tanzania observed that:



*It was an issue which he raised suo motu as he was composing his judgment. If the learned first appellate judge had found it as a crucial issue in the determination of the appeal before him, he was enjoined by law to summon the parties, reconvene the court and ask the parties to address him on it...Had he done so, he would have not fallen into an incurable error of condemning the appellant unheard and sustaining the dismissal order which never was.'*

Therefore, raising a new issue and discuss it without affording the parties the right to be heard contravenes well settled principles of the law and the constitution in particular which obliges courts to adhere to the principle of fair hearing that requires parties to be afforded the right to be heard.

In the instant case, the trial court framed issues for determination that:

- 1. Whether or not the defendant breached the duty towards the plaintiff in the due course of her employment;*
- 2. Whether or not the plaintiff was unlawfully arrested and detained;*
- 3. What reliefs are parties entitled to.*

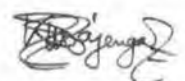
In the judgment, the trial magistrate addressed the raised issues accordingly. For clarity, I wish to reiterate the findings of the trial court on each issue. On the first issue, the trial magistrate was of the view that the respondent breached her duty of care in '*the course of her employment*' for not affording the appellant time to pay the fine. On the second issue, the trial magistrate's finding was that,

the appellant was not arrested because he was given an option to park the car at Bunazi Police Station and continue with his journey. In other words, the appellant was not apprehended and neither was he deprived his freedom of movement nor put in custody. Instead, he was denied the option of paying the fine later after the respondent demanded the payment of fine on the spot and not otherwise.

After analysis of the raised issues, the trial magistrate, by way of an obiter, brought-in a new discussion of vicarious liability. When concluding, he clearly summed-up the discussion thus:


*'In my view the first issue is answered in affirmative and the second and third are answered in negative.'*

Thereafter, the trial magistrate proceeded to dismiss the appeal. In my view, the issue of vicarious liability just came in as an advice and did not determine the merit of case because, the magistrate had already resolved the framed issues. In his findings, he was already firm that the appellant was not arrested. I also join hands with the trial magistrate that, the evidence adduced before the trial court does not suggest that the appellant was apprehended nor restrained from moving. So far, he was given an option to park the car and find an alternative way of travelling something which he objected. In my view, his lack of cash for the fine cannot be construed as an arrest. I have fairly considered the evidence



and decision of the trial court and I do not find any serious error that occasioned failure of justice. I do not see the need to address the other grounds because I have already addressed the nature of the dispute, the evidence and findings of the trial court. In conclusion, I find no merit in the appeal and hereby dismiss it accordingly. It is so ordered.

**DATED** at **BUKOB**A this 15<sup>th</sup> day of October, 2021.

  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**15/10/2021**

**Court:**

Judgment delivered this 15<sup>th</sup> October 2021 in the presence of the appellant but in absence of the respondent. Right of appeal explained to the parties.

  
  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**15/10/2021**

