

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

DC CIVIL APPEAL NO. 9 OF 2021

(Originating from Dodoma District Court in Civil Case No. 2 of 2019)

**1. VICOBA GROUPS UNION OF TANZANIA (VIGUTA)
2. CHRISTINA RWEBANGIRA.....** } **APPELLANTS**

VERSUS

JUDITH NDABARESPONDENT

JUDGMENT

27/04/2022 & 12/05/2022

KAGOMBA, J

In this appeal, VICOBA GROUPS UNION OF TANZANIA (VIGUTA) (1st appellant) and CHRISTINA RWEBANGIRA (2nd appellant) are challenging the decision of the District Court of Dodoma at Dodoma (henceforth "the trial court") in Civil Case No. 02/2019, which was made in favour of JUDITH NDABA, the respondent herein.

The appellants have come up with seven grounds of appeal which boil down to three grounds of appeal summarized as follows: -

- (1) That, the trial court granted the respondent special damage of Tshs. 73,111,000/- while the respondent totally failed to prove specific damage to the awarded amount.

- (2) That, the trial court erred in law and fact in awarding Tshs. 30,000,000/= as general damages to the respondent without proving loss of gain which she allegedly suffered.
- (3) That, the trial court erred in law and fact by proceeding to adjudicate the matter without having jurisdiction.

In the trial court, the respondent sued Vicoba Group Union of Tanzania, Dauda Ibrahim Salim and Christina Rwebangira as the 1st, 2nd and 3rd defendants, respectively, claiming among other things, the payment of Tshs. 90,111,000/= as specific damages for alleged breach of an oral agreement between her and the said defendants and Tshs. 75,000,000/= for loss of gain she had suffered following breach of the said oral agreement. It was alleged by the respondent that vide the said oral agreement, she was engaged by the said defendants to manage the 1st appellant's office in Dodoma.

It was further alleged that the respondent, was assigned, among other duties, to supervise and operationalize a low-cost (cheap) house building project at Vikonje area in Dodoma, as well as surveillance and planning of the said project. The respondent alleged that in the course of implementing that agreement, the 2nd and 3rd defendants failed to honour their obligation, particularly provision of project funding, which necessitated the respondent to borrow money for the project, hence occasioned disturbance and loss to the respondent.

The trial court found merit in the claims for specific damages but declined to award the entire claim of Tshs. 90,000,000/= and awarded only Tshs. 73,111,000/=; due to lack of jurisdiction in employment and labour

issues. The trial court also awarded the respondent loss of gain to the tune of Tshs. 30,000,000/= plus costs of the case. It is that decision which the appellants are not happy with, hence this appeal.

The hearing of the appeal proceeded by way of written submissions, following a court order to that effect. Mr. Castor Rweikiza, learned Advocate from GM Attorneys, drew and filed the submissions the appellant, while Mr. Froidius M. Mutungi, learned Advocate from Eastwoods Attorneys drew and filed the reply submissions for the respondent.

On the first ground of appeal, Mr. Rweikiza submitted that the respondent totally failed to establish her claims during trial. He said, the claims of Tshs. 90,111,000/= for specific damages and the loan of Tshs. 70,285,500/= purportedly borrowed by the respondent for the project were not supported by documentary proof. He further submitted that the amounts of monies itemized by the respondent to demonstrate her claims were unsupported by receipts or any other reliable evidence.

Mr. Rweikiza added that even Exhibit P4, which was a print out of an electronic message purported to be communicated between the respondent and 2nd defendant Dauda Ibrahim Salmin did not prove it was a communication between them, and neither did it prove that the respondent was authorized to borrow that amount of Tshs. 70,285,500/=. The learned advocate invited the court to scrutinize the evidence to see if the specific damages awarded were duly proved.

On the second ground of appeal, regarding the award of the general damages, Mr. Rweikiza submitted that since the same are awardable upon proof by the claimant that she really suffered consequences of unjustified

or illegal acts of the appellants, the claim of Tshs. 75,000,000/= as loss of gains suffered by the respondent from the alleged appellants' failure to honour their contractual obligation is not justified for lack of proof.

He submitted further that the respondent failed to prove existence of the terms and conditions of the oral agreement and that the learned trial Magistrate failed to evaluate evidence of PW1, who asserted that she was mandated to borrow for the project versus the evidence of DW1, who denied to have given the respondent mandate to borrow. He added that PW1 -the respondent, while asserting that all terms and conditions of the oral agreement were engineered by the 2nd Defendant, one Dauda Ibrahim Salmin, she failed to bring him to the court as her witness.

On the third ground of appeal, the learned advocate for the appellants submitted that in the typed judgment of the trial court, the trial magistrate stated that the trial court had no jurisdiction to entertain the matter as it had labour law intricacies, the appellants also find that the learned magistrate had no jurisdiction as there were elements of labour law involved between the respondent and the appellants. For all these reasons, the learned advocate prayed the court to allow the appeal with costs.

Replying to the above submission, Mr. Mutungi for the respondents submitted that the respondent had an oral agreement with the 1st appellant and according to records, her primary duty was to manage 1st appellant's office in Dodoma, which office was mandated to operationalize the cheap houses building project. He added that the appellants were duty-bound to fund the project but failed, and having failed to provide funds the

respondent was instructed by the appellants to borrow money promising to refund the same, in vain.

Mr. Mutungi further submitted that Exhibit P4 was corroborated by the testimonies of all the appellant's witnesses, which testimonies were uncontroverted. He therefore said that such evidence satisfied the trial court which applied its wisdom to award the specific damage of Tshs. 73,111,000/= after excluding some unsubstantiated claims. He dismissed as misdirection the claim by the appellants' advocate that the specific damages were awarded without being proved, adding that the standard of proof in civil suits is not more than by balance of probabilities.

On the second ground of appeal regarding the award of general damages, Mr. Mutungi submitted that the same are assessed and awarded by the court discretionarily and that the standard of proof proposed by the appellant's advocate is unknown to the law. He referred to the definition of 'general damages' in Black's Law Dictionary which states that the same don't need to be specifically claimed or proved to be sustained. He added that there existed were contractual relations between the respondent and the 1st appellant as per Exhibit P6, and the same ended unceremoniously on account of the appellants, hence the basis for damages. He argued that Exhibit P6 which is the appellants' reply to the respondent's demand notice was also tendered and admitted in evidence as Exhibit D1 without being contested and its clause 3,5,6 and 10 supports the respondent's claims for damages.

Mr. Mutungi dismissed as baseless and unfounded the argument that the appellant failed to parade the 2nd defendant as her witness while his

own legal counsel withdrew from representing the 2nd defendant for failure to access him.

On the third ground of appeal regarding lack of jurisdiction by trial court, Mr. Mutungi submitted that the assertion by the appellant's advocate that the trial court lacked jurisdiction is a gross misapprehension. He submitted that the trial court with caution, only dealt with issues which were purely civil in nature and distanced itself from those issues which seemed to have elements of labour law aspects.

Mr. Mutungi clarified that this matter would have been a labour cause if the respondent had claimed anything to do with fairness or otherwise of her termination, salaries, leave, terminal benefits or reinstatement. He added that paragraph 5 of the respondent's plaint is clear on the relief sought which did not suggest anything employment-related. Hence the trial court had jurisdiction.

In his rejoinder, Mr. Rweikiza reiterated his submission with regards to award of special damages and cited to this court the decision in **Zuberi Augustino v. Anicet Mugabe (1992) TLR 137** and **Stanbic Bank Tanzania LTD v. Abercrombie & Kent Tanzania LTD**, Civil Appeal No. 21 of 2001, CAT at DSM (unreported).

With regard to general damages, Mr. Rweikiza cited to this court the case of **Victoria Laundry v. Nerman (1949) 2 K.B 528** in addition to the case of **Stanbic Bank Tanzania LTD v. Abercrombie & Kent Tanzania LTD (supra)**.

Mr. Rweikiza went further to urge this court, being the first appellate court to subject the evidence adduced by the respondent to a fresh and exhaustive scrutiny to determine whether the claims by the respondent were proved. To this end he cited to the court the case of **the Registered Trustees of Joy in the Harvest v. Hamza K. Sungura**, Civil Appeal No. 149 of 2017, CAT at Tabora (Unreported).

With regard to standard of proof, Mr. Rweikiza rejoined that the law requires he who alleges to prove, citing the provision of section 110(1) of the Evidence Act, [Cap 6 R.E 2019].

On the issue of jurisdiction, Mr. Rweikiza emphasized the need for the court to be sure if it had jurisdiction before determining a case. To this end he cited the case of **Heritage Insurance Company Limited v. Abihood Michael Mnjokava**, Civil Appeal No. 1 of 2020, High Court at Arusha (unreported) in which the case of **Fanuel Mantiri Ng'unda v. Fanuel Mantiri Ng'unda and 2 Others (1995)** TLR 155 was cited.

From the submissions made by the parties, this court finds that there are three issues to be determined, as follows:

- 1) Whether the award of special damages of Tshs. 73,111,000/= to the respondent was done properly by the trial court.
- 2) Whether the award of Tshs. 30,000,000/= as general damages to the respondent was proper in law.

3) Whether the trial Court had jurisdiction to determine the matter.

Since the issue of jurisdiction is of paramount importance, I start with it. It is true as submitted by Mr. Rweikiza that the trial court in its judgment stated to the effect that it had no jurisdiction to entertain matters regarding labour and employment issue. This is on page 17 of the typed judgment. Apparently, this was the reason for not awarding other claims raised by the respondent such as the claim of Tsh. 12,000,000/= and Tsh. 5,000,000/=. The latter was a claim of salary arrears. Therefore, as correctly submitted by Mr. Mutungi, the trial Magistrate carefully avoided all such claims which were inclined on employer-employee relationship for jurisdictional reasons.

I agree with Mr. Mutungi that the matters determined by the trial court were not labour matters. They were pure civil matters. The claims in the plaint were, by and large, seeking refund of money borrowed, general damages and special damages, among others. They were not pure civil matters for invocation of labour laws such as claim of salaries, terminal benefits, leave, right to join a trade union and the like. Much as the evidence adduced stated that there existed an employer – employee relationship, the claims determined are not of such nature. Hence, the trial court carefully asserted its jurisdiction. For this reason, the third issue is answered in the affirmative.

Regarding the first issue, which pertains to the award of special damage of Tsh. 73,111,000/=, I have accepted the invitation by Mr. Rweikiza to re-examine the proceedings and judgment to see if the claim

was specifically proved. It is trite law that special damages must only be pleaded but also proved. Trial records show that the respondent pleaded the amount of Tsh. 90,111,000/= but the trial court awarded the amount of Tsh. 73,111,000/=. Nowhere in the proceedings the respondent adduced any specific evidence that can be termed as special proof for the special damage awarded by the trial court.

As correctly submitted by Mr. Rweikiza, there were no receipts or any other form of proof to substantiate the specific damages. The duty to prove definitely lied on the respondent. It was not shown how the amount of Tshs. 73,111,000/= was arrived at. It appears to be a pure discretion of the trial Magistrate, which is not supposed to be the case. What is obtained in the evidence is a mere mention of types of costs incurred by the respondent and figures to be refunded, without any proof.

In the cited case of **Zuberi Augustino v. Anicet Mugabe** (supra) it was stated:

*'It is trite law, and we need not cite any authority, that special damages **must** be specifically pleaded and proved'*

[Emphasis added]

Therefore, without specific proof, the award of special damages to the respondent to the tune of Tshs. 73,111,000/= was not proper in the eyes of law and I accordingly set aside that unlawful award.

On the second and last issue for determination, the learned advocates battled on the award of general damages of Tshs. 30,000,000/=. It is true from the evidence adduced by the respondent that

there existed an oral agreement as per appellants' letter admitted as Exhibit P6. It is also in record that the appellants were the cause for the said agreement to end unceremoniously, as they did not fund their project timely and adequately. As a result, the respondent suffered disturbances from the would-be clients of the 1st appellant who demanded to be given their houses in vain.

The assertion by the respondent that she incurred costs for supervision of the project and endured disturbances from clients was not controverted, hence admission. It is from these sufferings and costs incurred by the respondent as a result of the action or inaction by the appellants, I find the basis for awarding her general damages solidly founded.

In the cited case of **Stanbic Bank Tanzania LTD v. Abercrombie & Kent Tanzania Limited (supra)**, the Court of Appeal, on page 15 of its typed judgement, stated some of the basics for awarding general damages:

.....such as the law will presume to be the direct, natural or probable consequences of the action complained of'.

The Court of Appeal went further to quote with approval, from the case of **Victoria Laundry v. Norman (supra)**, with regards to determination of the amount and the purpose of awarding the damages, where it was stated:


'the sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if has not sustained the wrong for which he is now getting compensation or reparation'.

The proof for general damages is different from special damages. It is trite law that while special damages must be specifically pleaded and proved, general damages are assessed and awarded by the court. In light of the cited decision of the Court of Appeal, I have no strong reason to fault the assessment of the amount of Tshs. 30,000,000/= awarded by the trial court for what had befallen the respondent. The second ground of appeal is therefore answered in the affirmative.

For the above reasons, the appeal is partially allowed to the extent that the award of special damage of Tshs 73,111,000/= is hereby quashed while the award of general damage of Tsh 30,000,000/= to the respondent is hereby upheld. Each party to bear her own costs.

Dated at Dodoma and delivered under **my hand** and the **Seal** of the Court this 12th day of May, 2022.




ABDI S. KAGOMBA
JUDGE