IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

CIVIL APPEAL NO. 17 OF 2021

(Originating from the District Court of Chunya, at Chunya, in Civil Case No. 4 of 2021, the Judgment dated 25th August, 2021 by Hon. Msafiri J.C. Senior Resident Magistrate).

1. GEORGE KATABI MTASHA.....1ST APPELLANT
2. FIDEL ALPHONCE NTANYINYA.....2ND APPELLANT

VERSUS

MASHAURI WILLSON NTIZU.....RESPONDENT

JUDGEMENT

Date of Last Order: 27.04.2022
Date of Judgment: 28.06.2022

Ebrahim, J.

On 25th August, 2021 the District Court of Chunya, at Chunya passed a judgment on admission in respect of civil case No. 04 of 2021. The herein above 1st and 2nd Respondents being aggrieved by the judgment and the resultant orders, appealed to this court with the following grounds that:

1. The trial court erred both in law and facts for entering judgment on admission over matters which were disputed by the Appellants.
2. The trial court erred in law and facts to award general damages which were not proved as required by the law.
3. The trial court seriously erred in law to condemn the 2nd Appellant liable who was not privy to the contract between the 1st Appellant and the Respondent.
4. The trial court seriously erred to enter judgment on admission in violation of cardinal principles of natural justice.

On the foregone grounds of appeal, the Appellants prayed for this court to allow the appeal with costs.

The facts raising to this appeal are not hard to comprehend. They can be briefly stated as follows; the Respondent, a Plaintiff in the trial court (i.e MASHAURI WILLSON NTIZU) and the 1st Appellant **(GEORGE KATABI MTASHA)** are businessmen. They entered into a contract to extract mineral (GOLD) on a Primary Mining License No. 001018/SWZ held by the 1st Respondent. The mining area is located at Mwango Village within Makongolosi at Patamela forest reserve. The Respondent started the work as per their contract.

Later on, the 1st Appellant invited the 2nd Appellant (**FIDEL ALPHONCE NTANYINYA)** for the same work and in the same area in the absence of the Respondent. The 1st Appellant also purported to serve the respondent with the notice to terminate contract.

Being aggrieved by that trend, the respondent instituted the case against the 1st appellant for breach of contract. He included the 2nd respondent as a party to the case on the allegation that he was invited by the 1st appellant to the site after the breach of contract. The respondent, in his plaint prayed for the following orders against both respondents; a sum of Tshs. 62,186,204/= as specific damages; a payment of interest at a commercial rate from the date of filing the suit to the date of payment; and payment of interests at the court's rate of 12% from the date of judgment to the date of payment in full. He also prayed for payment of general damages to a tune of Tshs. 400,000,000/= as could be assessed by the court; costs of the suit; and any other relief(s) the court would deem fit to grant. **In the alternative** he prayed for an order compelling the 2nd appellant to vacate from

the site, and compel the 1st appellant to confirm to the terms of the contract.

In reply vide a joint Written Statement of Defence (WSD) the appellants admitted all of the claims. However, they prayed for the costs of the suit to be borne by parties if the hearing of the case would not commence. They also left in the hands of the trial court to assess general damages, urging the court to consider that the plaintiff/respondent worked at the site for few days after he executed a contract with the 1st appellant.

Upon the admission, the trial court passed judgment on admission as per **Order XII Rule 4 of the Civil Procedure Code, Cap. 33 R.E 2019**. The court granted all of the prayers save for the alternatively prayers. The court also granted Tshs. 75,000,000/= as general damages and costs of the suit were to be borne by the appellants. Discontented, the appellants lodged the instant appeal.

At the hearing, the appellants were represented by advocate Alfred Chapa whereas the respondent enjoyed the service of advocate Habib Kamru. The appeal was argued orally.

In amplifying the grounds of appeal, counsel for the appellants argued the 1st and 2nd grounds of appeal together. He submitted that the trial court erred in awarding general damages and costs of the suit without collecting evidence whilst they were disputed. He admitted that general damages are awarded at the discretion of the court but argued that, the trial court was supposed to exercise that discretion by relying at the evidence relating to the claimed damages. According to him, it was not proper for the trial court to award general damages by looking at the plaint and WSD only. Counsel for the appellants referred this court to the case of **Ashraf Akber Khan v. Ravji Govind Vaisan,** Civil Appeal No. 5 of 2017 CAT at Arusha, (unreported) where it was stated that evidence in relation to economic, psychological torture or unwarranted disturbances are supposed to be adduced for the court to grant general damages.

Counsel for the appellants also faulted the trial court in awarding interest at the rate of 12% from the date of judgment to the date of fully payment. He further faulted the trial court for awarding interest of Tshs. 75,000,000/= from the date of filing suit to the final payment and interest on general damages while it was

not prayed by the respondent. He argued also that the trial court did not assign any reason to that effect. According to him the trial court violated **Order XX Rule 21 and section 29 of the CPC** which provides for the interest rates. Counsel for the appellants also faulted the trial court in passing the judgement under Order VII Rule 4 of the CPC.

He also cited the case of **Solvochem East Africa Ltd v. Jielong Holding Tanzania Limited,** Commercial Case No. 65 of 2020 HCT where it was held that disputed claims in the plaint are subject to proof.

Amplifying to the 3rd ground of appeal, counsel for the appellants submitted that the trial court condemned the 2nd appellant to pay costs of the suit unheard. He contended that after the trial court found the 1st appellant to have breached the contract, it was improper to order the 2nd appellant to pay costs since he was not privy to the contract.

On to the 4th ground of appeal, counsel for the appellants contended that the trial court violated the principle of natural justice on the right to be heard by passing the judgment on admission. According to him neither party to the suit prayed for

the judgment as per the requirement of **Order XXII Rule 4 of the CPC**. He argued that the trial court only heard advocates for the parties without involving parties to the case. In furtherance of the argument, he contended that the trial court denied the appellants opportunity to be heard on the disputed issues. He thus prayed for the court to allow the appeal with costs.

In reply counsel for the respondent relying on the case of **James Funke Gwagilo v. A.G** [2004] TLR 161 argued that parties are bound by their own pleadings. He contended that at para 2 of WSD the appellants admitted para 4 of the plaint which contained facts of the claim. That the appellants did not dispute any claim of the respondent and the WSD was jointly signed by both appellants and their advocates signifying that they admitted all the claims.

As for the general damages, counsel for the respondent argued that they were left for the trial court to decide. It was proper for the court to award 75 million. That there was no need of evidence to prove general damages. On the case of **Ashraf** cited by appellants' counsel, he said that it is distinguishable since

in the present case the appellants did not dispute the claims of suffering averred by the respondent.

As to costs, counsel for the respondent expounded that the appellants did not dispute them but prayed each party to bear its own costs. However, he added that as a general rule, costs follow the event and the court is required to assign reasons when it denies costs to the parties.

Furthermore, counsel for the respondent urged this court to correct the anomaly in the trial court's judgment which cited **Order VII Rule 4 of the CPC** instead of **Order XII Rule 4**. He also argued that the mistake in awarding interests i.e commercial interest rate and court's interest rate be rectified by this Court.

With regard to the 3rd ground of appeal counsel for the respondent challenged it on the ground that the appellants filed a joint WSD admitting all of the claims. The trial court could not thus de-associate the 2nd appellant since he did not dispute his involvement in the WSD.

As to 4th ground of appeal that the trial court violated the principle of natural justice, counsel for the respondent argued that

the principle has its exception. That in the matter at hand the appellant admitted the claims and the judgment is on that basis (i.e judgment on admission) as per **Order XXII Rule 4 of the CPC.** He contended that according to the record, counsel for the appellants and for the respondent prayed for the court to enter judgment on admission. That, parties agreed through their advocates. Counsel for the respondent added that advocates are recognized persons under **Order III Rule 1 of the Civil Procedure Code, Cap 33 RE 2019** which means their agreement was parties' agreement. He thus prayed for the dismissal of the appeal with costs.

I have carefully followed the rival submissions by the counsel for the parties. Seemingly, the appellants' grievances are on the reliefs granted by the trial Court save for specific damages. According to the impugned judgment and the decree, the trial court granted the following reliefs, excluding specific damages:

- Interest on the principal sum at the rate of 12% from the date of judgment to full satisfaction.
- Tshs. 75,000,000/= as general damages.

- 12% interest from the date of instituting the suit until the date of judgment.
- Costs of the case.

Before considering the viability of the granted reliefs which in my opinion are the basis of the appellants' appeal; it is important to firstly resolve the appellants' complaint in the 4th ground of appeal. In that regard I shall begin with the issue as to whether or not there was a breach of the principle of natural justice i.e, the right to be heard.

I need not repeat the glimpse of the cardinal principle of the right to be heard which is enshrined under Article **13 (6) (a) of the Constitution of the United Republic of Tanzania of 1977 Cap. 2 R.E 2019,** was well stated by the Court of Appeal of Tanzania in the case of **Mbeya-Rukwa Auto Parts & Transportation Limited vs Jestina George Mwakyoma** [2003] TLR 251.

Counsel for the appellants complained that judgment on admission was entered by the trial court upon the prayer made by their counsel. According to him, parties were denied of their rights to be heard. On his part, counsel for the respondent was of the views that advocates are recognized person under **Order III Rule 1**

of the CPC; thus, their dealings concerning the parties' case in court binds the parties. I concur with him. It is my views that parties who are represented by advocates are at better position to understand the legal consequences of their dealings. When the appellants entrusted their advocate to appear for them, what was done by their advocates in proceedings bound them. They cannot turn now and challenge the dealings of their advocates in court proceedings. Hence the concession of Advocate Baruti for the Appellants in the trial court to enter judgment on admission which was prayed by advocate Rwekaza for the Respondent was as good as the Appellants' consensus. Thus, 4th ground of appeal is dismissed.

Now, it is on the legality of the reliefs awarded by the trial court. Starting with general damages, counsel for the Appellants claimed that the trial court was supposed to collect evidence in connection with that claim. With different view, counsel for the respondent maintained that the trial court would not collect evidence where the appellants admitted each and every fact. Whether the respondent was supposed to prove general damages or not it should not detain me. As correctly argued by

the Respondent's counsel, parties are bound by their own pleadings. See, **James Funke Gwagilo** (supra) also the case of **Barclays Bank (T) Ltd v. Jacob Muro,** Civil Appeal No. 357 of 2019 CAT at Mbeya [2020} TZCA 1875 (Tanzlii). I find it crucial for easy reference to re-state the Appellants' joint WSD at para 5 in relation to general damages where they averred that:

> *"That, the Defendants states that, since the general damages are determined by the court with consideration to the fact that the plaintiff after execution of the contract with the 1st defendant only work at the site for few days."*

The Appellants in giving such statement had already admitted all facts constituting the cause of action narrated by the Respondent. Upon those undisputed facts the trial court considered Tshs. 75 million as sufficient to redress the suffering of the Respondent. It is inconceivable in such admission how could it be possible for the trial court to collect evidence of the parties.

However, as correctly argued by the Appellants' counsel, general damages are awarded at the discretion of the court, exercised judiciously. See **RENI International Company Limited vs Geita Gold Mine Limited,** Civil Appeal No. 453 of 2019 CAT at

Dodoma (unreported). In the case at hand, the appellants did not object that the 1st appellant breached contract. The Respondent in his plaint claimed that he suffered loss including the expectation of profit and he incurred many expenses. He further averred that he obtained a loan of Tshs. 90,000,000/= with a view of speeding the extraction of Gold.

As hinted earlier the appellants admitted all those claims. The trial court considered at length the circumstance of how breach of contract between the 1st appellant and the respondent occurred. It is also a law that when the court finds that there was breach of contract, the affected party should be compensated as per **section 73 of the Law of Contract Act, Cap. 345 R.E 2019**. What remains now is the determination as to whether the award of Tshs.75 million as general damages is justifiable.

General damages have been well elaborated in the case of **TANZANIA SARUJI CORPORATION Vs AFRICAN MARBLE COMPANY LTD [2004] TLR 155** that: *"General damages are such as the law will presume to be direct, natural or probable consequence of the act complained of; the defendant's wrongdoing must, therefore,*

have been a cause, if not the sole, or a particularly significant, cause of damage"

In essence, General damages are those elements of injury that are the proximate and foreseeable consequence of the defendant's conduct – See **Anthony Ngoo & Another Vs Kitinda.** Mar, Civil Appeal No.25 of 2014 that: *"general damages are those presumed to be direct or probable consequences of the act complained of ".*

I am aware that court award general damages after consideration and deliberation on evidence on record able to justify the award which in our case follows the admission of the claim in the plaint. I am also aware of the discretion of the court in awarding general damages, the discretion which must be exercised judiciously, by assigning reasons.

Again, the award of general damages is the province of the trial court and appellate courts are discouraged to interfere it. However, appellate court may only interfere upon being satisfied among other factors that the trial court in assessing the damages awarded the amount that is so inordinately high.

In this case, one can only imagine the loss of expectations of business and disappointments suffered by the plaintiff. Nevertheless, the claimed amount suffered and admitted by the defendants is Tshs 62,186,204/=. It is on those grounds, I find that the award of Tshs. 75 million which is more excessive than the actual loss is on the higher side. Accordingly, I reduce the same to Tshs.20 million and I find that it would save justice of this case.

Other reliefs are interest at the rate of 12% from the date of judgment to full satisfaction of the decretal sum; and 12% per annum for the period from the date of instituting the suit until the date of judgment. Closely looking at the judgment and decree by the trial court, the awarded, 12% interest from the date of judgment to the full satisfaction of the decree was awarded on the principal amount on specific damages that is Tshs. 62,186,204. Whereas, the latter i.e., 12% interest from the date of instituting the suit to the date of judgment was awarded on the general damages i.e Tshs. 75 million.

As correctly contended by the appellants' counsel, in the plaint the respondent did not pray for interest on the general damages. On that basis the trial court misconceived the facts

hence illegally granted the same. That being the case 12% interest awarded in relation to general damages is hereby quashed.

The above Notwithstanding since 12% interest per annum from the date of judgment to the date of full satisfaction of the payment in relation to specific damages is the requirement of the law as per **Order XX Rule 21 of Cap 33,** this court has no reasonable ground to fault the trial court, it thus remains as ordered.

Another complained relief is costs of the suit. As a general rule costs follow the event. Whenever the court denies costs to the winning party, it should assign reason for such denial – **Njoro Furniture Mart Ltd vs Tanzania Electric Supply Co. Ltd** [1995] TLR 205. In the instant case, the respondent in the plaint prayed for costs, whereas the appellants through their WSD prayed for each party to bear its own costs in case the suit would not commence hearing. Indeed, the suit did not commence hearing. The respondent did not file a reply to the WSD which implicated that he conceded to the prayer of every party to bear its own costs.

In the circumstance, the trial court was supposed to decline the award of costs of the suit. Else, it would have heard the

parties regarding the grant of costs. This is because, in my opinion, the appellants foresaw that the matter would not go to a full trial as they admitted the claims in the plaint. It was thus improper for the trial court to award costs while the parties have agreed to the contrary. To that regard, order in respect of the award of costs is hereby quashed.

All said grounds 1, 2, and 3 of the appeal have been determined. This is because, the 3rd ground was a complaint in relation to the award of costs against the 2nd appellant in which the same have been quashed.

In the end result, the appeal succeed to the extent of the reliefs explicitly quashed and reduction of general damages to the tune of Tshs. 20 million only. As the appeal is only partly allowed, each party shall bear its own costs.

Ordered accordingly.

R.A. Ebrahim
JUDGE

Mbeya
28.06.2022