

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
CIVIL APPEAL NO. 6 OF 2021

*(Originating from the Court of Resident Magistrate of Mbeya at Mbeya in Civil Case
No. 21 of 2020)*

Between

BANK OF AFRICA TANZANIAAPPELLANT

VERSUS

BILLI AMANI MWAKISU RESPONDENT

JUDGMENT

Date of last order: 17th June, 2022

Date of judgment: 19 July, 2022

NGUNYALE, J.

This appeal originates in the Court of Resident Magistrate of Mbeya at Mbeya via Civil Case No. 21 of 2020 in which the appellant was sued by the respondent for payment of Tsh. 94,154,850.9386 being a principal sum and compound interest at the rate of 21%, interest of 12% from the date of filing the suit up to the judgment, general damages and costs of the suit. In her written statement of defence, the appellant admitted for return of Tsh 30,000,000/= as decreed by the court. Other claims were



disputed by the defendant. Mediation failed hence the matter went for full trial.

Briefly, it was the respondent's case that on 23/5/2015 bought a house from the appellant through public auction. The house was owned by Abubakar Kushoka who defaulted paying the loan from the bank. He bought it at Tsh. 30,000,000/= and was given a certificate. Before being handed the house he was summoned to court in Land case No. 16 of 2015 filed by Abubakar Kushoka. On 10/12/2019 the judgment was delivered and the auction nullified. The court further ordered the bank to refund his money plus interest or compensation. They made negotiation on the payment of money but the bank offered him to be paid interest of 6% while he wanted to be paid interest of 21%. He alleged that the bank stayed with money for more than two years and they were doing business. The house was intended for domestic use and business as such he has suffered damage and loss for he rented other house by paying rent of Tsh 70,000/= for six years.

In defence DW1 Victor Lewanga testified the similar story to that of the respondent. He added that after the sale they handed all documents of ownership to the respondent but the owner Abubakar Kushoka filed a case in the court which nullified the sale. After the case they refunded him Tsh

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30,000,000/= and they had meeting on the compensation to be paid in which they proposed offer of 6% was turned out by the respondent. He alleged that the money was grouped as fixed deposit. The respondent declined the offer and filed the case.

The trial court upon full trial found the appellant liable and was ordered to pay Tsh. 64,152,850.9386/= as compound interest after the appellant had paid the principal sum of Tsh. 30,000,000/= to the respondent and costs of the suit. It is against this decision the appellant filed the present appeal predicated on three grounds;

- 1. That the trial Magistrate erred in law and fact in awarding the sum of Tsh. 64,152,850.9386/= as 21% compound interest without proof and contrary to the law;*
- 2. That the trial Magistrate erred in law and fact for failure to evaluate evidence on record*
- 3. That the trial Magistrate erred in law and fact in deciding the case against the weight of evidence.*

When the appeal came for hearing the appellant was represented by Felix Kapinga learned advocate. He also held brief of Ezekiel Mwampaka also learned advocate. The appeal was disposed by way of written submission. Written submission of the appellant was filed by Habibu Kamru of TSK Law Chamber.



Mr. Kamru faulted the Magistrate for awarding compound interest without proof and analysis of evidence for no reason was pleaded in order the court to award compound interest. He continued to submit that reason advanced was that the appellant stayed with the money for five years and that the house was for residential purpose and business. He added that the delay to pay the respondent was due to case filed in the court. He attributed that the compound interest was to be pleaded and strictly proved as is in form of special damage. He cited the case of **National Oil v Standard Chartered Bank**, commercial case no. 120 of 2005 in which things for considering before compound interest is awarded was propounded. It was Mr. Kamru argument that in this appeal no such circumstance existed for the court to award compound interest.

In reply Mr. Mwampaka supported the decision of the trial Magistrate in awarding compound interest because it was clear that the respondent needed a living house for his family but due to the case his family remained in Arusha. He added that in the case filed by Abubakar Kushoka the appellant never provided any support in consultation preparing court documents and attendance in court and that the appellant is living in the rented house from 2015 to date.

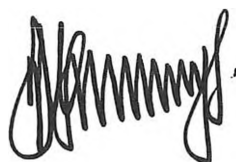
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On whether compound interest was pleaded it was submitted that it was pleaded in the plaint and therefore the court was justified to award it. He cited the case of **Francis Andrew v Kamyn Industries(T) Limited** [1986] TLR 31 which I find irrelevant here. He distinguished the case of **Nation Oil** in that compound interest was not pleaded.

Mr. Mwampaka continued to submit that the appellant was making business on money of the respondent for almost six years hence attracting compound interest. He cited the case of **Nation Bank of Commerce v Wakulima Engineering Company & 2 Others** [2005] TLR 273 in which it was stated that bank all over the world charge compound interest against the loan. Based on this reply he prayed the appeal to be dismissed.

I have considered submission both parties for and against the appeal. The only issue calling for my determination is whether the court was justified to charge compound interest.

In this appeal the appellant submitted that he failed to pay the money to the respondent because of the land case filed in the court regard the sale of the house. It was further admission that they are prepared to pay the respondent at a simple interest of 6%. In reply the respondent did not essential dispute the above rather he submitted that the respondent failed

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to bring his family in Mbeya after the purchased house and in the alleged land case the appellant never provided any assistance.

In resolving the issue, the term compounding interest is defined as the interest on a loan or deposit calculated based on both the initial principal and the accumulated interest from previous periods. In the case of **Nation Bank of Commerce v Wakulima Engineering Company & 2 Others** [2005] TLR 273 , also cited by the respondent, the court quoted with approval the definition in the Black's Law Dictionary (6 ed) that;

'Compound interest is interest that is paid not only on the principal but also on any interest earned but not withdrawn during earlier periods ...when then interest of a sum of money is added to the principal and then bears interest, which thus comes secondary principal....'

The manner of charging compound interest is mainly based on terms to be agreed by the parties. In arriving at the decision whether to charge compound interest, this court in the case of **National Oil v Standard Chartered Bank (T) Ltd**, Commercial Case No. 120 of 2005, HC, Commercial Division Fikirini, J, (as he then was), laid some of the basic things to be considered, **one;** nature of business the parties transacted, **two;** trade and custom of the business, **three;** stipulation in the

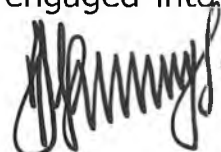


agreement made between the parties and **four**; intention of the parties and consequences of the commercial transaction.

There is no dispute that banks charge the loan at the rate of compound interest but the transaction in this appeal was not a loan to the bank. Looking at the evidence advanced by the respondent in justifying award of compound interest did not prove the same. If indeed he had rented a living house or room and was paying the rent of Tsh. 70,000/= he ought to have produced a contract to that effect or called a witness to prove tenancy agreement.

The appellant asserted that it could not refund while there was a pending case in this court. I find substance in this line of argument because there was ample evidence that immediately after the respondent purchased the house, the appellant made all necessary steps including to avail him with all documents to change ownership. Further evidence is that there was Land Case No. 16 of 2015 in which the disputant were respondents, exhibit A which was concluded in 2019. Common sense dictates that the appellant's sale of the house to the respondent was valid until it was declared illegal and unprocedural by the court.

In addition, there was clear evidence that after the judgment of the court exhibit A, the appellant and respondent engaged into negotiation only



that it did not materialize because the parties failed to agree on the interest rate to be charged. Evidence of the appellant reveals further that their offer to the respondent was on simple interest of 6% while the respondent wanted the interest of 21%.

I agree that awarding compound interest is in the form of special damage which must be pleaded and strictly proved. Going through the plaint compound interest was pleaded but it was not strictly proved as demonstrated above.

The argument that the appellant was doing business on the money of the respondent is very attractive but is based on assumption for even the respondent did not demonstrate to the court that the money could be re-invested and generate the profit to the tune of Tsh. 64,152,859.9386/=.

In view of the above, taking all circumstance of this case it can't be said with certainty that the appellant was to shoulder the blame. The appellant has made an offer to the appellant that the respondent's money of Tsh. 30,000,000/= be charges a simple rate of 6%. This evidence was also echoed by the appellant and to date they maintain such interest rate. There is no evidence when full Tsh. 30,000,000/= was paid to the appellant rather that after fourteen days he completed 75% of the sale. Again, the respondent admitted that after he filed the case the appellant

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refunded Tsh. 30,000,000/=, I take it to be in July, 2020. By simple calculation the appellant has stayed with the respondent's money for five years to which they are ready to pay. For interest of justice bearing that the appellant is ready to pay the respondent at simple interest of 6% per annum for five years, this court indorse the same.

In the upshot, the appeal is allowed, judgment of the trial court for payment of compound interest of 21% is set aside and substituted with a simple interest of 6% for five years at the tune of Tsh. 9,000,000/= to the extent demonstrated above. Each party to bear own costs.

DATED at MBEYA this 19th day of July, 2022




D.P. Ngunyale
Judge