

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CIVIL APPEAL CASE No. 6 OF 2022

*(Originated from the District Court of Musoma at Musoma in
Civil Case No. 1 of 2021)*

MOHAMED KASOBI NYONGA APPELLANT

Versus

AZIZI MAGAMBO RUBALE RESPONDENT

JUDGMENT

15.08.2022 & 17.08.2022

Mtulya, J.:

This court was invited on 18th day of May this year, in **Civil Appeal No. 10 of 2021** (the appeal) at the District Registry of Moshi at Moshi to resolved a complaint on double jeopardy in civil cases. The contest in the appeal was initiated by Mr. Michael Zacharia against Flomena Sombananga. At page 11 of the judgment, this court stated:

...abusive words attract criminal and tortious liability.

The fact that the respondent had already been

convicted in Criminal Case No. 36 of 2019 at Usseri

Primary Court is not bar to sue her for defamation. The

main purpose of criminal liability is to enforce criminal

justice while tort law has a central motive of

compensating the victim...even when the respondent

was found guilty and convicted, she paid fine to the state. The tortious liability claimed in the matter is to provide reliefs to the injured party...being sued for tortious liability after the criminal case, does not amount to double jeopardy. The principle is only applicable in criminal cases when a person is prosecuted and punished twice for the same offence.

Before this quotation was pronounced, there was already in place a bunch of precedents on the subject (see: **Eliakimu Jonas v. Victoria Japhet**, (PC) Civil Appeal Case No. 26 of 2016; **Tatu Kiungwe v. Kassim Madai** [2005] TLR 405; and **Razia Jaffer Ali v. Ahmed Mohamed Ali Sewji & Five Others** [2006] TLR 433). On 20th day of April 2018, this court based at the District Registry of Arusha, in the precedent of **Eliakimu Jonas v. Victoria Japhet** (supra), when determining a complaint on whether an award of compensation in criminal case is a bar to civil suit for damages, at page 6 of the judgment, decided that:

...I am of the considered view that the award of compensation in criminal case is not a bar to subsequent civil suit for damages resulting from a criminal act. Indeed, compensation awarded by criminal court cannot obstruct civil claim, if extra

damages can be awarded for damage arising from the same criminal act to serve the purpose for which damages are awarded for, i.e. bringing the claimant to the same position she was before the commitment of the wrong act.

This text was cited in this court the day before yesterday by two learned minds, Mr. Thomas Makongo and Mr. Emmanuel Gervas contesting on proper interpretation of the plain words of this court in the text. For appreciation of the contest, a background of the dispute, albeit in brief, be displayed: the **District Court of Musoma at Musoma** (the district court) had admitted and decided **Criminal Case Number 45 in 2020** (the criminal case) between the Republic and Mr. Mohamed Kasobi Nyonga (the appellant) and Mr. Azizi Magambo Rubale (the respondent) had appeared as prosecution witness number one (PW1).

The appellant was arraigned in the criminal case to reply the charge of assault causing actual bodily harm contrary to section 241 of the **Penal Code** [cap. 16 R.E. 2019] (the Code). After full trial, the district court convicted the appellant with the charged offence and sentenced him to pay a fine of Tanzanian Shillings Six Hundred Thousand (600,000/=) and in default to

serve two (2) years imprisonment. Finally, at page 7 of the judgment, the district court ordered that: *the accused to compensate the victim PW1, the sum of Tanzanian Shillings Five Hundred Thousand (500,000/=) for the injuries he suffered.*

It is this last order on payment of Tanzanian Shillings Five Hundred Thousand (500,000/=) for the injuries caused by the appellant to the respondent had brought the dispute at this court. The respondent thought that the award was minimal compared to the injuries caused hence preferred **Civil Case No. 1 of 2021** (the civil case) in the district court praying for specific damages amounting to Tanzanian Shillings 73,268,500/= and general damaged of Tanzanian Shillings 30,000,000/=. After a full contest in the civil case, the district court, at page 4 & 5 of the decision, decided that:

In the circumstances, I find the case by the plaintiff in specific damages is not proved...basing on the facts of the case, the plaintiff is entitled to Tshs. 10,000,000/= as general damages.

With regard to double jeopardy, the district court at page 3 of the judgment, stated that:

...the defendant defence that as he paid compensation to the plaintiff to the tune of Tshs. 500,000/= in criminal case No. 45 of 2021, then he should not be held liable in this civil case, has no legs to stand.

This judgment aggrieved the appellant hence filed **Civil Appeal No. 6 of 2022** (the appeal) in this court complaining on two issues, *viz.* first, the district court grossly misdirected for awarding double compensation for the same matter; and second, the award of Tshs. 10,000,000/= as general damage was poorly considered without any merit.

The two parties, the appellant and respondent were summoned in this court on 10th and 15th of August 2022 to contest their points in the appeal. It was fortunate that both parties invited legal services of Mr. Thomas Makongo and Mr. Emmanuel Gervas, learned counsels to argue the appeal for them. Mr. Makongo, who appeared for the appellant, had brief submissions. In his opinion, the respondent had already been awarded and enjoyed compensation of Tshs. 500,000/= for injuries suffered in the criminal case and must be barred from claiming more compensation in civil suit emanated from the same injuries. On the second ground of appeal, Mr. Makongo complained that the district court in the civil case did not justify

on how it arrived at the award of Tshs. 10,000,000/=, except at the bottom of page 4 of the judgment where it stated that: *it is obvious that from the time he was injured to the time he fully resumed to the work, he was prevented to perform his work.* According to Mr. Makongo, this reasoning is shallow and shows that the district court in the civil case did not perform its assessment judiciously.

The interpretation employed by Mr. Makongo was vehemently protested by Mr. Gervas contending that there is already in place a precedent of **Eliakimu Jonas v. Victoria Japhet** (supra), which said it all at its page 6 of the judgment. In his opinion, Mr. Gervas thinks that, the award of compensation in criminal case cannot bar the respondent to file civil suit to return to his previous position before the injuries, as if he had not been sustained any injuries. With regard to general damage of Tshs. 10,000,000/=, Mr. Gervas submitted that there are undisputed evidence that the respondent was injured and could not proceed with his business and the award was fairly assessed by the district court in the civil case.

Rejoining the submission of Mr. Gervas, Mr. Makongo contended that decision in **Eliakimu Jonas v. Victoria Japhet** (supra) does not bind this court and in any case, the judge in the

decision was silent on whether the lower court awarded part of the damages. In his opinion, Mr. Makongo thinks that the respondent was awarded and enjoyed compensation hence cannot come forward and claim further compensation. In order to persuade this court in favour of his submissions, Mr. Makongo invited: first, the common law precedent in **Livingstine v. Rawyards Coal Co.** (1880) 5 App. Case No. 25, where Lord Blackburn stated that the essence of compensation in reparation on the injured party; and second, a book titled Tort written by Winfield & Jolowicz, 11th Edition, Published in 1979 by Sweetwell & Maxwell, at page 598, where the definition of compensation was drafted.

I think, in my considered opinion, this court in the decision of **Eliakimu Jonas v. Victoria Japhet** (supra) used plain English language that:

...the award of compensation in criminal case is not a bar to subsequent civil suit for damages resulting from a criminal act...compensation awarded by criminal court cannot obstruct civil claim, if extra damages can be awarded for damage arising from the same criminal act to serve the purpose for which damages are awarded for.

This statement was rendered down by this court without any further interpolations. However, in the present appeal, Mr. Makongo and Gervas were busy in interpreting the cited paragraph of this court. The guidance from our superior court, the Court is that: *if a words in a text are plain and clear, the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion.*

There is a bunch of precedents on the subject (see: **Republic v. Mwesige Geoffrey Tito Bushahu**, Criminal Appeal No. 355 of 2014, **The Board of Trustees of the National Social Security Funds v. The New Kilimanjaro Bazaar Limited**, Civil Appeal No. 16 of 2004; and **The Registered Trustees of the Pentecostal Church in Tanzania v. Magreth Mukama** (a minor by her next friend Edward Mukama), Civil Appeal No. 45 of 2015.

My understanding tells me that the meaning of words must in the first instance, be sought in the language in which the passage is framed, and if it is plain, the sole function of the courts is to enforce it according to its terms. In the present appeal, the text quoted at page 6 of the precedent of **Eliakimu Jonas v. Victoria Japhet** (supra) is plain and clear, hence must be enforced without any reservations whatsoever.

Enforcing the passage, will attract certainty and predictability of the decision of this court and earn confidence on justice stakeholders. I am aware Mr. Makongo stated that the decision is just persuasive, but in my view, it must be followed unless there are good reasons produced to persuade this court to depart from its previous decisions. I see no any good reasons in the present appeal to depart from previous decisions of this court in **Eliakimu Jonas v. Victoria Japhet** (supra) and **Michael Zacharia v. Flomena Sombananga**, Civil Appeal No. 10 of 2021.

During determination of the specific damages, the district court declined to award the same and reasoned that: the defendant was of the view that the EFD receipts were not readable and hence could not be used as evidence...I find that the argument hold water...the case by the plaintiff in specific damages is not proved. However, the district court awarded general damages of Tshs. 10, 000,000/=. Its reasoning is contested in this appeal. It is displayed at the bottom of the 4th page in the judgment that: *it is obvious that from the time he was injured to the time he fully resumed to the work, he was prevented to perform his work*. According to Mr. Makongo, this reasoning is shallow and shows that the district court did not perform its assessment judiciously.

In my considered view, the statement lacks details in arriving at the appropriate award of the general damages. I am quietly aware that, during proceedings, Mr. Gervas contended that the payment has also considered specific damages which were not granted by the district court. However, there is huge distinction between specific and general damages. Specific damages must be specifically pleaded and proved whereas general damages need not be specifically pleaded or proved. There is a large family of precedents on the subject (see: **The Cooper Motor Corporation Ltd. v. Moshi/Arusha Occupational Health Services** [1990] TLR 96; **K. Hassani v. Kithuku & Chali** [1985] TLR 212; **Rugarabamu Archard Mwombeki v. Charles Kizigha & Three Others** [1984] TLR 350; **Haji Associates Company (T) Ltd. & Another v. John Mlundwa** [1986] TLR 107; **Tanganyika Standard (N) Ltd. & Another v. Rugarabamu Archard Mwombeki** [1987] TLR 40; and **Revocatus I. Kidaha v. National Housing Corporation** [1988] TLR 59).

In the present dispute, the figure determined by the district court in the civil case, appears to have been exaggerated and this court is mandated to substitute the figure. I am aware of the guidance of the Court, in the precedent of **The Cooper Motor Corporation Ltd. v. Moshi/Arusha Occupational Health Services**

(supra), that before the appellate court can properly intervene, it must be satisfied that the lower court in assessing the damages, applied a wrong principle of law. In the present case the district court considered only one factor, but awarded Tshs. 10,000,000/=. The amount of general damages awarded is inordinately high. I therefore think that an award of Tanzanian Shillings Four Million (4,000,000/=) will do justice to the parties. As the respondent has substantially won the appeal, I allow him to have his full costs of the case. This appeal is allowed in part.

Accordingly ordered.

Right of appeal fully explained to the parties.




F. H. Mtulya

Judge

17.08.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Mohamed Kasobi Nyonga and in the presence of the respondent's brother, Mr. John Wanzagi Kimena.


F. H. Mtulya

Judge

17.08.2022