

IN THE HIGH COURT OF THE UNITED OF REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL APPEAL No. 7 OF 2021

(Originating from Civil Case No. 6 of 2018 of Arusha District Court)

THOMAS SEVERINE SHIRIMA..... APPELLANT

VERSUS

EMMANUEL MASAE KIRITA.....RESPONDENT

JUDGMENT

Date: 22/9/2022 & 27/9/2022

BARTHY, J.

This appeal arises from the decision of the District Court of Arusha on Civil Case No. 6 of 2018 between Emmanuel Masae Kirita (the respondent) against Thomas Severine Shirima (the appellant) and two others who are not party to this appeal.

The respondent claimed against the appellant and two other defendants for declaration that the motor vehicle with Reg. No. T592 CKC is the property of the plaintiff; the defendants to return the motor to the plaintiff in its good condition; payment of mesne profit of Tsh. 40,000/- from 19th December, 2016 to the date of judgment, payment of interest on decretal sum; payment of general damages; interest at 12%, costs of the suit and any other reliefs.

The trial court in its judgment held that the respondent is the owner of the vehicle in dispute and he is entitled to recover Tsh. 24,000,00/- used

to buy the motor vehicle in dispute, the respondent to be awarded general damages in sum of Tsh. 100,000,000/- and that the second and third defendants were executing the lawful order of the court regarding to the loan issued to the appellant.

In order to appreciate well this appeal, the background of the case is; the respondent is the retired teacher who bought a motor vehicle from the appellant on 8/7/2015 for the sum of Tsh. 24,500.000/- The funds were transferred to him through the account of the appellant's wife. The transfer of the said motor vehicle was made and the same was registered in the name of the respondent as per Exh. P1.

The said motor vehicle was used for passenger carriage business, until on 22/11/2016 when it was attached and sold by the order of the primary court on the claim that the same was used as the collateral to the loan issued to the appellant.

The respondent claimed that he used to earn Tsh. 40,000/- every day from transportation business of his motor vehicle and therefore claimed the loss of profit from the time the vehicle was seized to the date of judgment.

The appellant and his advocate did not appear to defend the matter and the court delivered the judgment ex-parte in the absence of the appellant. Aggrieved with the decision of the trial court, the appellant is now before this court, challenging the judgment and decree of the trial court on the following grounds;

1. That, the trial court magistrate grossly erred in law and fact by reaching the decision without sufficient evidence to justify the claims.

2. That, the trial court magistrate grossly erred in law and fact by reaching into a contradicting decision that the second defendant had the original card from the loan secured by the appellant while the respondent testified to have obtained the original card from the appellant and made a transfer into his name without any encumbrance.
3. That, the trial magistrate erred in law and fact by ignoring the appellant's evidence.
4. That, the trial magistrate erred in law and fact by awarding the general damages of Tanzanian Shillings one hundred million (100,000,000.00) without implying any justification for such an award.

During the hearing of this appeal, the appellant enjoyed the service of Mr. Kapimpiti Mgalula advocate, whereas the defendant despite being served with the summons of this appeal he did not appear. The court proceeded with the hearing of the appeal in his absence.

In determining the grounds of appeal, the arguments of the appellant will be considered.

In addressing those grounds of appeal, the court finds that they can be consolidated to the following issues;

1. Whether the trial court failed to evaluate the evidence on record as a result it arrived at erroneous decision.
2. Whether the trial court erred in law and fact in awarding the respondent the sum of Tsh. 100,000,000/- as general damages.

In addressing the first issue, the counsel for the appellant Mr. Mgagula in his oral submissions in support of the appeal, with respect to the first

The first issue would have disposed of this appeal, but for purposes of clarity I will proceed to address the last issue, as to whether the trial court erred in law and fact in awarding the respondent the sum of Tsh. 100,000,000/- as general damages. This rings on the fourth ground of appeal that, the trial court awarded the damages of Tsh. 100,000,000/- without any justification.

Submitting on this ground Mr. Mgagula argued that, giving the award of Tsh. 100,000,000/- without giving any reason was unfounded. He cited the case of **Ashraf Akber Khan v. Ravji Govind Varsan**, Civil Appeal No. 5 of 2017, CAT at Arusha (unreported) referring to the case of **Anthony Ngoo and another v. Kitinda Kimaro**, Civil Appeal No. 25 of 2014 where the CAT held that the court must assign reasons when awarding general damage.

On this ground he argued this court to set aside the award for general damage for being too excessive and awarded without giving any reason.

Going through the judgment of the trial court, it is clear that the trial magistrate did award general damages to the tune of Tsh. 100,000,000/- without giving any justification for the same.

In the same vein, in the case of **Anthony Ngoo and another v. Kitinda Kimaro** (supra) as cited by Mr. Mgalula the court reiterated that it is a settled law that general damages are awarded by the trial after consideration and deliberation on the evidence able to justify the award. It is in the discretion of the judge to award general damages but he must assign a reason to it.

Going back to the record of the trial court, the respondent has prayed for general damages in his *plaint*, but during the hearing of the trial, the

respondent offered no basis in a consideration for the award of general damages. In view of that, I find that the fourth ground of appeal has the merit as well.

From the foregoing analysis as already found above the respondent had failed to prove his case on the balance of probabilities, on that account the award for general damages was not justifiable.

That being said and done, I accordingly quash and set aside the decision of the trial court and allow the appeal with costs.

Dated at Arusha this 27th day of September, 2022



A handwritten signature in blue ink, appearing to read "G.N. Barthy".

G.N. BARTHY

JUDGE

27/9/2022

Judgment delivered in the presence of Mr. Ramadhani Aliasa holding brief of Mr. Kapitimpiti Mgalula for the appellant and in the absence of respondent.



A handwritten signature in blue ink, appearing to read "G.N. Barthy".

G.N. BARTHY

JUDGE

27/9/2022