IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY OF MOSHI

AT MOSHI

CIVIL APPEAL NO. 03 OF 2022

(Arising from District Court of Rombo at Mkuu, Civil Case No. 01 of 2020)

THE REGISTERED TRUSTEES OF SISTERS OF ST. JOSEPH, HIMO, MOSHI KILIMANJARO.....APPELLANT

VERSUS

HIPATEC COMPANY LIMITED..... RESPONDENT

20/09/2022 & 11/10/2022

JUDGMENT

MWENEMPAZI, J.

This appeal originates from the District Court of Rombo where the respondent sued the appellant for breach of contract seeking orders for specific performance of the construction agreement, payment of Tshs.80,807,964/= being contractual amount due to the plaintiff(Respondent in this appeal), additional costs to the project including repairs and restoration based on deterioration of standard of destruction caused by the delayed in completion of the project, interest, specific damage in terms of direct loss that the school has caused Tshs.1,660,000/= and general damages of Tshs.30,000,000/=. The matter was heard and at the end of the trial, the trial court found there

was a breach of contract, and ordered the appellant to pay the amount due to the plaintiff to the tune of Tshs.40,403,982/= and its interest at commercial rates from the date of judgment till full payment, general damage of Tshs.15,000,000/= and costs of the suit.

The appellant was dissatisfied and lodged this appeal seeking to impugn the decision of the trial court under the following grounds: -

1. *That the Honourable Trial Magistrate erred in law and fact by failure to analyse that alleged contract which was the center of the dispute was not entered into by the appellant, entertaining the matter while knowing that the suit was brought against the wrong party and failed to appreciate that the contract so tendered was illegal.*
2. *That the Honourable trial Magistrate erred in law and in fact by declaring that there was a lawful contract between the plaintiff and defendant whilst the defendant was not privy to the contract which was alleged to be breached.*
3. *That the Honourable trial Magistrate erred in law and in fact by failing to appreciate that the respondent was not a legal person capable of entering into an enforceable contract.*
4. *That the trial Magistrate erred in law and fact for failure to appreciate that the alleged party to the contract in dispute namely*

Ritaliza of Mt. Carmel Primary School was not a legal entity capable of entering into an enforceable contract.

5. *That the trial Court erred in law and fact for awarding the respondent general damages without assigning any reason and that amount was exorbitant in the circumstance for it was not backed up with any legal justification.*
6. *That the Trial Court erred in law and fact by stating for holding that specific performance will be healed in other prayers without stating the same and it was not so done and explained.*
7. *That the trial court erred in law and in fact for awarding a sum of 40,403,982/= without assigning any reasons and or justification, the amount which was neither prayer for nor proven.*
8. *That the trial Court erred in law and in fact for failure to analyse and scrutinize the testimonies and evidence tendered during the hearing when composing her judgment and consequently held in favour of the respondent.*

The parties agreed on the appeal to be disposed of by way of written submissions, which agreement was blessed by leave of the court and a scheduling order to which both complied with by filling their respective written submissions.

For the appellant, Aristides Ngawiliau, Advocate for the appellant submitted in his written submission that the respondent herein alleged at the trial that there was the existence of a construction contract between the respondent and appellant herein and the appellant breached it. He submitted that the parties to the alleged contract are the respondent and Ritaliza of Mount Carmel Primary School, as per exhibit P.4 of the trial proceedings though it is not a legal entity and the respondent did not prove whether the latter legally existed. He submitted that the appellant is a stranger to the said contract as per the aforementioned exhibit.

He submitted on the first and second grounds of appeal that PW1 admitted during trial that parties to the contract were Ritaliza of Mount Carmel Primary School as a client on one party and the respondent as a contractor. The same was supported by PW4 who introduced himself as a former accountant of Ritaliza Primary School but he failed to show any document to prove his status. He also claimed to pay the respondent in four phases by way of a bank account but he failed to mention the bank account involved in the payments and the amount of money already paid. The counsel contended that there is no way the appellant is meant to be a party to that contract and the respondent contravened the doctrine of privity of contract. In support of his submission, he cited the English case **Dunlop Pheumatic Tyre Co. Ltd vs. Selfridge and Co. Ltd [1915]**

A.C 847 and Burns and Blane Limited vs. United Construction Company Limited [1967] H.C.D no. 156.

Regarding to the third and fourth grounds of appeal, he submitted that it is trite law that any contract is a legal document that ought to speak for itself. He said exhibit P.4 does not describe the law under which Ritaliza of Mount Carmel Primary School the party to the alleged contract was created as a legal person. The counsel submitted that the defendant witnesses DW1 and DW2 disowned exhibit P.4 and stated that there was no signature, name, and title of any trustees of the defendant nor school officers or seal of the defendant. He further submitted that when PW4 was cross-examined as reflected on page 55 of the typed proceedings said exhibit P4 does not bear his name and title. Also, PW1 on page 35 of the same proceedings said the name of directors of the plaintiff are not indicated on exhibit P.4 and he does not know if Ritaliza has the capacity to enter into the contract and that no one signed the contract from Ritaliza. He contended that the lack of knowledge by PW1 on whether their client is a legal person is not an excuse pursuant to the maxim *"ignorantia juris non excusat"*. He added that exhibit P.4 does not bear any names and titles of the persons who executed the alleged contract to determine their legal capacity in accordance with the provision of sections 10 and 11(2) of the Law of Contract Act (Cap. 345 R.E 2019). The counsel

contended that the competency of the aforementioned contradictory names of the school is undetermined since no description as to under which law the same was created. He added that as a matter of law, primary schools are not legal entities as per the decision of this court in the case of **Richard I. Sumayi vs Shule ya Msingi Kambarage, Labour Revision No. 27 of 2013, HC Shinyanga registry** (unreported). He submitted that the trial Magistrate failed to appreciate that the capacity of the parties in exhibit P4 is nonexistent due to observed legal anomalies.

In the fifth ground of appeal, the counsel submitted that the trial Magistrate failed to state reasons for her decision on granting general damages of Tshs. 15,000,000/= contrary to Order XX Rule 5 of the Civil Procedure Code, Cap. 33 R.E. 2019. He contended that general damages are on the discretion of the court but the said discretion has to be exercised judicially and the plaintiff has to show how far she has been affected by the conduct of the defendant something which was not done.

On the sixth ground, the counsel submitted that the trial Magistrate failed to explain why and how the plaintiff will be healed by other orders issued by the court. To his surprise, he awarded a plaintiff sum of Tshs. 40,403,982/= for specific performance of the construction agreement instead of Tshs.80,807,964/= as prayed for. He contended that there was

no justification for the same which is contrary to Order XX Rule 5 of the Civil Procedure Code.

In respect of ground seven of appeal, the counsel submitted that the trial Magistrate failed to scrutinize and appreciate that the plaintiff's claim of Tshs.80,807,946/= for specific performance was unfounded and invalid though the same court awarded half of the amount. He submitted that PW1 tendered exhibits P5 and P8 (invoices and bank statements) however PW1 did not show any name of the defendant appearing on the sheet leave alone not showing the dates the alleged transaction was effected from which account number of the defendant to account number of the plaintiff. He submitted that an invoice is a statement sent to the customer describing the quantity and price of the specific items for payment and it is thus not a proof of payment for the goods, it was a mere bill. In support of the argument, he cited the case of **Lamshore Limited and J.S Kinyanjuif vs. K.U.D.K [2001] T.L.R 237**. The counsel submitted that PW1 testified that the contract price was Tshs.442,719,303/= but when cross-examined he said he does not know the amount the plaintiff has received from the defendant. PW1 further testified that the receipts he tendered in the court valued Tshs.132,3815,790 plus 77,435,900 which makes a total of Tshs.210,251,690/=. The counsel contended that the witness at the same time testified that the money claimed by the plaintiff

though did not work for is Tshs.80,807,964/=. He said at this junction the question is where is Tshs. 80,807,964/= (the claimed money) derived from and under which consideration. The counsel submitted that arithmetically the amount in the contract minus the money paid as per receipts, bank statement, and invoice does not make a remaining Tshs. 80,807,964/=. The remaining balance ought to be 232,467,613/= which is contradictory and there was no single evidence adduced to prove these claims. He referred to this court to the case of **Africarriers Limited vs. Millenium Logistics Limited (CAT) Civil Appeal No.185 of 2018** where it was decided that it is not a duty of the respondent to prove the claim of the appellant but the appellant himself.

On the eighth ground, the counsel submitted that it was the burden of the plaintiff to prove his allegation on the existence of the construction agreement between the parties to the balance of probabilities. In support, he cited section 110 of the Evidence Act [Cap. 6 R. E.2019]. He submitted that the plaintiff failed to prove his allegation about the existence of any legal binding agreement with the defendant. He cited the case of **Roseleen Kombe vs. A.G [2003] TLR 347** and the case of **Agatha Mshote vs. Edson Emmanuel and 10 Others** (supra).

It is their humble submission that the learned Magistrate failed to scrutinize and evaluate properly the evidence adduced before the court

hence making erroneous judgment and decree in favour of the respondent. They pray for judgment in favour of the appellant with costs.

In response, Mr. Denis Maro, Advocate for the respondent submitted on the first and second grounds of appeal that the respondent sued a proper party and the contract was entered legally between the appellant and the respondent herein. He submitted that the appellant is the trust registered and operating in Tanzania and owns a school called Ritaliza of Mount Carmel Primary School. The contract entered was between the appellant's school and the respondent as shown in exhibit P.4 of the trial court proceedings; and it is for the construction of underground water tanks, water supply systems, rainwater harvesting systems, wastewater systems, and landscaping. He submitted that it is true the Registered Trustees of Sister of St. Joseph-Himo, Moshi Kilimanjaro were not a party to the contract as a general rule under the doctrine of privity of contract, however, the doctrine has various exceptions and among them is trust. He contended that it happens that a person who is not a party to a contract can be sued on behalf of a party to a contract. He submitted that a client who was the party to a contract (Ritaliza of Mount Carmel Primary School) is owned by the Registered Trustees of Sisters of St. Joseph - Himo, Moshi Kilimanjaro therefore under the exception of the doctrine of privy to contract is subject to be sued. In support of his submission, he

cited the case of **Tanzania Union of Industrial and Commercial Workers (TUICO) vs. Mbeya Cement Company Ltd and National Insurance Corporation (Tanzania) Ltd (2005) TLR 41** where it was held that: -

"A stranger to a contract cannot sue or be sued upon it unless he is given a statutory right to do so."

He also cited the case of **Kanisa La Anglikana Ujiji vs. Abel Samson Heguye, Labour Revision No. 05 of 2019, HC at Kigoma** (unreported) where the court quoted the case of **Registered Trustees of the Catholic Diocese of Arusha vs. The Board of Trustees of Simanjiro Pastoral Education Trust, Civil Case No. 3/1998 HC Arusha** (unreported) where it was held that: -

"No other body of unincorporated trustees can sue or be sued in any court of law as they have no legal personality."

The counsel went on and cited section 8(1) of the Trustees Incorporation Act (Cap. 318 R.E 2002) and submitted that the respondent herein sued the proper party at the trial court and the appellant herein should be responsible for the acts done by her school.

The counsel submitted that there is no word limited company or company limited by guarantee appended in the name of Ritaliza of Mount Carmel Primary School thus it is clear that the school is a non-

governmental organization operating under the trust. Furthermore, the counsel submitted that it is not disputed that the said Ritaliza of Mount Carmel Primary School is operating under the umbrella of the appellant. Also, it was not disputed the person who signed the said contract was authorized and was among of the members of the appellant. He added that the respondent discharged her obligation to the contract and the appellant through her school (Ritaliza of Mount Carmel Primary School) has benefited from such contract. He submitted that the appellant did not tender any proof to show that her school is an incorporated body and it works independently. He prayed the first and second grounds of appeal to fail.

On the third and fourth grounds of appeal, the counsel submitted that the contract is legal and enforceable against the appellant as the trustees of the appellant signed such exhibit P.4. He submitted that the appellant is the immediate corporate body capable of being sued by the respondent as the appellant is the one who owned Ritaliza of Mount Carmel Primary School. He referred to the typed proceedings on page 59 where DW1 stated among the properties owned by the appellant is the school namely Ritaliza of Mount Carmel Primary School. He submitted that the contract was sealed and signed by trustees and authorized persons and also during the proceeding at the trial court PW4 Didas Mbombo who

was the former accountant of Ritaliza said he was one of the signatories of the contract Exhibit P.4 and he was the one who made the payments to the respondent the fact which was not contested by the plaintiff during the trial. The counsel contended that the respondent discharged her obligation under the contract and the appellant's school failed to discharge her obligation under the contract as he made part payment as she did not make in full as required in the said phrase. He submitted that entertaining the appellant's argument would be occasioned a miscarriage of justice to the respondent as the respondent has no other option of enforcing her rights under exhibit P.4 other than suing the appellant. The counsel contended that in the case of **Richard Sumayi** (supra) cited by the appellant the fact in that case and this case is distinguishable as the plaintiff sued the proper party.

On the fifth ground of appeal, the counsel cited the definition of general damage from Black's Law Dictionary 7th edition on page 394 and cited the case of **Tanzania Saruji Corporation vs. African Marble Company Ltd (2004) TLR 155** and submitted that the general damages are awarded by the court's discretion after considering evidence of plaintiff showing the intensity of loss suffered. He submitted that plaintiff prayed for an amount of 30,000,000/= but after the court made an assessment came out with the amount of Tshs. 15,000,000/= since

there was a breach of contract of the agreement by the appellant's school and the respondent.

On the sixth ground of appeal, the counsel submitted that the trial court availed good reason for not ordering specific performance of exhibit P.4 because the appellant employed technical issues to delay payment. He contended that the specific performance was covered by other remedies for breach of contract as the trial court ordered the payment of Tanzania shillings 40,403,982/= for work done by the respondent in the agreed phrase.

To the ground seven, the counsel submitted that the respondent prayed for Tshs. 80,807,964/= at the trial court being the contractual amount which was proved by the respondent during the trial including the exhibits which were tendered and admitted by the trial court. He contended that after the trial court made an assessment and ordered the respondent herein to be paid half of the amount which is Tshs. 40,403,982/= for part of the work done by the respondent in such phase.

On the eighth ground of appeal, the counsel submitted that the court analyzed the testimonies and evidence brought before it during the proceedings. He said the respondent proved the case by producing some exhibits and also by the testimonies of the witnesses. In the upshot, they

submitted that all grounds of appeal raised by the appellant are baseless and pray that the appeal at hand be dismissed with costs.

In rejoinder, the counsel reiterated his submission in chief and submitted that the respondent never tendered any single evidence proving the allegation that the plaintiff owns and operates the said Ritaliza of Mount Carmel Primary School. He submitted that the respondent counsel is attempting to mislead the court that DW1 admitted that the school that entered into the alleged contract was owned and managed by the appellant which was not true. He denied the appellant to have benefited from the respondent as alleged. Thus, it remains a mere allegation and statement from the bar.

The counsel submitted that Trust is a creature of Trustees Incorporation Act (Cap. 318 R.E 2019) and Non-Governmental Organization is a creature of Non-Government Organization Act (Cap 56 R.E 2019) and both acquire legal personality under the respective laws. That the said school ought to stand on its own feet and hence be sued on its own name and not otherwise.

Concerning the validity of the contract, the counsel submitted that the same was not proved by the respondent that it was signed by the appellant's trustees, and secondly exhibit P4 was vehemently disowned and denied by DW1. He added that the counsel for the respondent is

misleading the court by submitting that PW4 was among the signatories of exhibit P4 and he was the one who made payments to the respondent. The counsel referred the court to page 55 of the typed proceeding where PW4 said the contract has his signature and not his name, title, or position is not shown. He also referred to page 56 of the typed proceedings when PW4 was cross-examined and said he was not the one paying the money. Also, on page 56 of the same proceedings, he said he signed the contract as a witness only. The counsel submitted that there was neither one of the trustees nor one of the sisters hence incapable to execute the alleged contract.

The counsel maintained that the trial Magistrate was supposed to advance the reasons for awarding general damages. The said EFD does not bear the name of the appellant who is capable to sue or being sued and does not show any transaction which involves the appellant so they are unworthy to be considered. He finally prays to allow the appeal and judgment of the trial court to be quashed and set aside with costs.

I have considered the grounds of appeal, the submissions of the learned counsels for the parties, and the authorities relied on together with the record of the trial court. This being a first appellate court, this court has a duty to examine the whole evidence afresh before drawing a conclusion bearing in mind that it did not have the opportunity to see or

hear the witnesses. It is in form of rehearing the case. This is also the position as in the case **Nzwelele Lugaila vs Republic (Criminal Appeal 140 of 2020) [2022] TZCA 423 (14 July 2022);** where it was stated that:-

This being a first appeal, it is in the form of a re-hearing where the first appellate court has a duty to re-evaluate the entire evidence on the record to find out whether the trial court correctly appreciated the facts of the case presented before it.

It is trite law that the burden of proof lies to those who assert. This is provided under section 112 of the Evidence Act (Cap. 20 R.E 2022) that: -

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person.

The same is supported by the case of **Abdul-Karim Haji vs. Raymond Nchimbi Alois and Joseph Sita Joseph (2006) TLR 420** where it was held that:-

"It is an elementary principle that he who alleges is the one responsible to prove his allegation."

Starting with the first and second grounds of appeal concerning the legality of the appellant to be sued, Hendry Erasto Lema (PW1) a

Managing Director of the respondent during trial testified that the respondent entered into a contract of building a water well with Ritaliza Primary School on 01/02/2019. When he was cross-examined, he maintained that the contract was between Ritaliza and HIPATEC Company Ltd. In his re-examination in chief, he said Ritaliza is under Sisters of St. Joseph Himo Moshi Kilimanjaro. His testimony is supported by PW4 who claimed to be a former accountant of Ritaliza Primary School which is owned by Sisters of St. Joseph of P.O Box 34 Himo. When cross-examined he said he is not certain but that is what he knows. Catherine Ezekiel Mtenga (DW1) Secretary of the appellant testified that they owned Ritaliza of Mt. Carmel Pre and Primary School. When shown exhibit P4 he said there is no trustee's name in plaintiff exhibit P.4, the stamp is missing and the exhibit had no relation with Registered Trustees of Sisters of St. Joseph Himo. He said their school's name is Ritaliza of Mount Carmel Pre and Primary School and not Ritaliza of Mt. Carmel Primary School. Having scrutinized the above evidence the appellant did not tender any evidence to prove that they own a school by the name of Ritaliza of Mt. Carmel Pre and Primary school as they alleged than a mere allegation. It should be noted that proof in civil matters is on the balance of probability and not beyond a reasonable doubt. I tend to agree with the respondent that the appellant owned a school by the name of Ritaliza of Mt. Carmel. So whether it is Pre and Primary School such contradiction ought to be

cleared by the appellant. Since there was no proof brought to clear that doubt I find that the appellant owned that school. Having found the appellant owned a school by the name of Ritaliza then its Registered Trustees is the proper legal person to be sued as provided under section 8(1)(b) of the Trustees Incorporation Act (Cap. 318 R.E 2019)

Turning to the concern about the validity of the contract, I have examined with an eye of caution the alleged agreement exhibit P4. It shows the parties were Ritaliza of Mount Carmel Primary School (referred as a client) and HIPATEC Company Limited (referred as the contractor). The contract had two parts one in the English language and another that seems a translation into another language. The contract does not disclose the names and personal capacities of the persons who signed it. In the end, it just contained signatures and rubber stamps of the respondent's company on one side and Ritaliza Mt. Carmel Primary School on another side. On the part of the client to sign it was signed by the respondent and there was no place indicated for a contractor to sign. The contract had no names of witnesses, stamp duty, or the advocate witnessing it. For a contract to be valid it must have an agreement, capacity, consideration, and intention. When PW1 was cross-examined he said the contract had the signature of Ritaliza but he did not mention the person who signed it. PW4 who claimed to be the former accountant of Ritaliza said the contract

was signed by him as a witness and the head teacher. He did not state the capacity they had to sign that contract. In my view, I find the contract lack essential element as the parties who signed the contract had no capacity to do so. PW4 and the so-called head teacher whose name was not disclosed had no legal capacity to enter into the contract without the approval of the board members of Registered Trustees or any other authorized personnel from the appellant. In the case of **Ilela Village Council vs Ansaar Muslim Youth Center & Another (Civil Appeal 317 of 2019) [2021] TZCA 181 (07 May 2021),** it was stated that:-

"It follows then that, in law, Ansaar Muslim Youth Centre does not legally exist. As such, any order and/or decree issued in the name of Ansaar Muslim Youth Centre will not be executable because the properties of the Registered Trustees of Ansaar Muslim Youth Centre are not vested in the 1st respondent. Furthermore, the 1st respondent does not have powers to transact any business or invest or manage the properties of the Registered Trustees of Ansaar Muslim Youth Centre. Principally, the Registered Trustees of Ansaar Muslim Youth Centre is a separate legal entity person with its own legal identity distinct from the 1st respondent."

The contract was void ab initio as the parties had no contractual capacity to enter into the alleged agreement as reflected in Exhibit P.4. Therefore, it cannot be said that it binds the appellant.

However, the appellant did not dispute that there was construction going on at the school as reflected in the progress report of the project (Exhibit P.7). Also, the bank statement (Exhibit P.1) shows that on 19/02/2019 Sisters of St. Joseph Himo deposited a down payment for "*WATE TAMC CONSTR*" a sum of Tshs.132,815,790/= to the account of the respondent. That amount was never disputed by the appellant during the hearing, In my view, such a deposit shows that the appellant had knowledge of ongoing construction at their school. It will be unfair to allow the appellant to be enriched by the unpaid work done by the respondent. The respondent among the prayers sought in their amended plaint was the payment of 80,807,964/= being the contractual due of the work they did in phase five. That amount falls within a specific claim and in law specific claim or damage must be specifically pleaded and proved. This is the position in the case of **Zuberi Augustino v Anicet Mugabe, [1992] TLR 137 (CA)** at page 139 it was stated thus: -

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

PW1 testified that there were five phases but they completed four phases only and one phase remaining. He said their previous payment was paid through the bank and they wrote tax invoices after receiving the money. Having gone through the bank statement (exhibit P.8) there was only one transaction effected on 19/02/2019 by the appellant. The witness did not tender any EFD receipts and the tax invoices (P. Exhibit P.5) it was effected on 2018 even before the signing of the alleged contract on 01/02/2019. More so it does not show the payment was in which phase. The witness did not give any evidence to justify the claims in phase five. When he was cross-examined, he said he did not recall the amount paid out of the contractual amount of Tshs. 442,719,303/=. He further added that the phases were not in the contract and the payment was made before the following phase. The key witnesses PW1 and PW2 for the respondent just gave mere assertions of the claim without producing documentary evidence to prove the work they performed to be entitled to be paid Tshs. 80,807,964/=. The trial Magistrate was wrong to grant half of the claimed money without any scintilla of evidence that move her to grant so. There was no evidence tendered before her to prove that phase five costs Tshs. 80,807,964 nor the stage it reached to award half payment. In the case of **RENI International Company Limited vs Geita Gold Mine Limited (Civil Appeal 453 of 2019) [2022] TZCA 245 (06 May 2022);** it was stated that: -

"It is a settled principle of law that parties are bound by their pleadings and that where evidence adduced does not support the pleading, the same ought to be ignored. It means therefore that the pleaded amount is not supported by any evidence. Thus, the amount remains unsubstantiated."

In my view, her decision is unfounded and not covered by any law of this land. Furthermore, when PW1 was questioned by the court he said the payment in the contract ought to be made before the work. That clearly shows it was they who breached the contract by performing the tasks against their agreement. It is the principle of the law that those who come to equity must come with clean hands of which the respondent failed to do. In the circumstances, the claim for specific damage must fail.

The remaining evidence is demand notes which had no proof that the appellant received them or acknowledge the alleged debt. It remains mere speculation. In the case of **Jonathan Kalaze vs Tanzania Breweries Limited (Civil Appeal 360 of 2019) [2022] TZCA 312 (13 May 2022),** at page 12, the CAT was faced with a similar situation and stated that: -

"He relied upon exhibits PI and P2 in which he allegedly complained to the respondents but the same were not substantiated and more importantly, they were not even acknowledged to have been received

by the respondent. On top of that, as was rightly submitted by Ms. Mashimba, a mere existence of allegations contained in the said exhibits PI and P2 is not conclusive proof of the allegations against the respondent. In which case, it cannot be said that it was documentary evidence which could not be countered by oral evidence as Mr. John wanted us to believe."

Turning to the general damages awarded, it should be noted that they are awarded in respect of such damages as the law presumes resulting from an infringement of legal rights or duties. In the case of **Tanzania Saruji Corporation vs. African Marble Company Ltd (2004) TLR 155**, it was held that: -

"(i) General damages are such as the law will presume to be the 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."

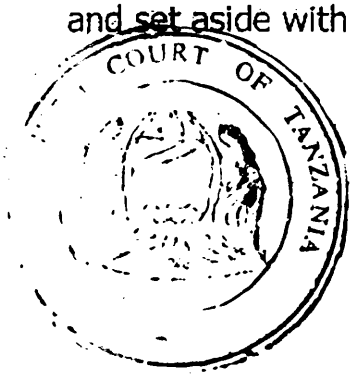
Following the above position of the law, let me examine the record. In their amended plaint, the respondent prayed for general damage of Tshs.30,000,000/= for breach of contract. PW1 testified that the appellant breached the contract. This court has already found the contract was void and there was nothing to rely on by the respondent to prove breach of contract. What is on record is mere speculation. The respondent was

unable to quantify the loss that will entitle them to compensation. The trial Magistrate stated as follows when awarding them: -

"The general damaged prayed to the tune of 30,000,000/= is reduced to Tshs. 15,000,000/= as assessed by this court."

With great respect to the trial Magistrate, she ought to have recorded her assessment in awarding so. I am very much aware that general damages are awarded at the discretion of the trial court, however, such discretion must be exercised judicially after considering the evidence and giving reasons for awarding so. Based on the above findings, if the respondent failed to prove their claims to the required standard, then the respondent is not entitled to any relief sought in their amended plaint.

Having found so, I do not need to belabor on the other grounds of appeal as will serve nothing at this juncture. Therefore, the appeal is allowed, and the judgment and orders made by the trial court are quashed and set aside with costs.



T.M. MWENEMPAZI

JUDGE

11/10/2022