IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CONSOLIDATED CIVIL APPEAL NO. 41 OF 2021 AND 42 OF 2021

(From the decision of the Resident Magistrates Court of Arusha at Arusha in civil case No 02 of 2020 dated 13/08/2021)

CLAMIAN SALASHY KITESHO .....APPELLANT

VERSUS

JOHN VAN DER MOOSDIJK alias

JOHNNES LOUIS VAN DE MOOSDIJK ..... RESPONDENT

JUDGMENT

01/08/2022 & 18/10/2022

KAMUZORA, J.

The parties to this appeal are challenging the judgment and decree issued by the Resident Magistrate Court of Arusha at Arusha in Civil Case No. 02 of 2020 which ordered the Appellant herein to pay the Respondent an amount of USD 5,000/= as compensation from the loss suffered by the Respondent as the result of non-performance of the contract. Both parties were aggrieved by the decision of the trial court and preferred separate appeals to this court; Civil Appeal No. 41 of 2021 and Civil Appeal No 42 of 2021 and the same were consolidated by the order of this court on 23/02/2022. For purpose of consistence, the

Appellant in Civil Appeal No. 41 of 2021 one Clamian Salash Kitesho will be referred to as Appellant while the Appellant in Civil Appeal No. 42 of 2021 one John Van Der Moosdijk @ Johnnes Louis Van De Moosdijk will be referred to as the Respondent in this consolidated appeal.

The brief background of the matter albeit is that, the Respondent sold his share to the Appellant in a form of a loan at USD 42,000 and they agreed for the Appellant to pay the sale amount in instalment and the final instalments to be paid not later than February 2014. The Appellant started paying the aforesaid amount up to 2016 when he had paid only USD 15,000 and remained with the outstanding balance of USD 27,000. After the effort to claim the outstanding amount proved futile, the Respondent instituted a suit against the Appellant before the Resident Magistrate Court (the trial Court) for the recovery of outstanding debt of the sum of USD 27,000/= equivalent to Tshs. 61,695,000/=. The Respondent also prayed for interests, general damaged and costs.

The trial court after hearing the parties awarded the Respondent USD 5,000 only as compensation from the loss suffered by the Respondent as the result of non-performance of the contract. Both the Appellant and the Respondent were dissatisfied by the decision of the

trial court and preferred separate appeals to this court. The Appellant filed to this court Civil Appeal No. 41 of 2021 on the following grounds: -

1) *That, the learned trial magistrate erred in law and fact by awarding the Respondent what was not prayed by the party.*
2) *That, the learned trial magistrate erred in law and fact by awarding the Respondent while the Respondent testified contrary to his own pleadings.*
3) *That, the learned trial magistrate erred in law and fact by failure to consider properly evidence on record.*

The Respondent also filed to this court Civil Appeal No. 42 of 2021 on the following ground: -

1) *That, the trial court erred in law in not awarding the plaintiff the following categories of reliefs as prayed and proved in trial: -*
   (i) *An order for payment of the outstanding debt in the sum of United State of America Dollars Twenty-Seven thousand only (USD. 27,000) equivalent to a sum of Tanzania Shillings Sixty-one million six hundred ninety-five thousand (Tshs 61,695,000/=)*
   (ii) *An order payment of interest on the principle sum from the 01st day March 2014 until the date of judgment.*
   (iii) *Payment of general damages.*
   (iv) *Payment of interest on the decretal sum from the date of judgment to the date of full and final payment.*

Hearing of the appeal was by way of written submissions and as a matter of legal representation the Appellant was represented by Mr. George Stephen Njooka, learned advocate while the Respondent enjoyed the service of Ms. Magdalena Sylister.

In his submission the Appellant's counsel joined the 2nd and 3rd grounds and argued separately the 1st ground of appeal. Submitting for the first ground the Appellant's counsel argued that, it is a trite law that the court cannot grant the party what is not prayed for by the party. That, the trial magistrate awarded the Respondent compensation of USD 5,000 for the loss suffered due to non-performance of the contract. It is the contention by the Appellant's counsel that there was no claim raised by the Respondent in respect of non-performance of the contract. He claimed that, such a prayer was never pleaded or proved by the Respondent in his evidence as no evidence was tendered in support of that award. He supported his submission with the case of **Salhina Mfaume & 7 others Vs. Tanzania Breweries Co. Ltd,** Civil Appeal No 111 of 2017 CAT (Unreported). The counsel for the Appellant insisted that, loss suffered due to non-performance of contract is special damage which needs to be specifically pleaded and proved.

Regarding the 2nd and 3rd grounds of appeal, the counsel for the Appellant pointing at page 4 to 7 of the Plaint filed by the Respondent at the trial court argued that, the Respondent claimed for unpaid amount arising out of selling of his shares to the Appellant, but during hearing the Respondent submitted to have advanced a loan to the Appellant and not selling his shares. Reference was made to page 13, 15 and 16 of the typed proceedings.

The Appellant's counsel further submitted that, the first issue on whether there was valid transfer contract between the parties was answered in affirmative by the trial magistrate by stating that there was valid share transfer contract without analysing the evidence on whether the Respondent proved the same. He was of the opinion that, such act contravened the provision of section 110(1) (2) of the Law of Evidence Act Cap 6 R.E 2019 which requires a person alleging to prove. He insisted that, the Respondent failed to prove his case since he made two different cases as he alleged for the breach of transfer of share agreement in his plaint but testified on new case of loan agreement through bank transfer. He added that, parties are bound by their pleadings as it was held in number of cases referring the case of **NBC Limited & IMMA Advocate vs Bruno Vitus Swalo,** Civil Appeal no

331 of 2019 CAT at Mbeya (unreported) and the case of **Agatha Mshote vs Edson Emanuel & others**, Civil Appeal No 12/2019 CAT at DSM (Unreported). He maintained that, in the present matter the Respondent departed from his pleadings which is contrary to the law so his suit ought to have failed and dismissed.

The Appellant went on and submitted that, had the trial magistrate properly analysed the evidence, she could have discovered that the plaint was signed and verified by the Respondent while in South Africa while on the plaint it was verified at Arusha Tanzania. He contended that, the law requires the plaint to be verified and it should indicate the place where the verification took place in accordance with Order VI Rule 15(3) of the Civil Procedure Code R.E 2019. The Appellant prays for the appeal to be allowed and the decision of the trial court be quashed and set aside.

Responding to the 1st ground of appeal the Respondent's counsel Ms. Magdalena Sylister submitted that, the award of USD 5,000 was awarded as a general damage as prayed under item (iii) of the plaint thus, it is not correct for the Appellant to argue that the said relief was not pray for. She added in alternative that, the court has discretion to award the relief which has not pleaded or prayed for. In support of her

argument the counsel for the Respondent cited the case of **Salhina Mfaume & 7 others vs. Tanzania Breweries co. Ltd.** She however argued that, the trial court did not determine the issue that was not pleaded or famed hence, prays for this court to disregard the 1st ground of appeal.

Regarding the 2nd and 3rd grounds, the Respondent's counsel submitted that, the dispute is about sale of shares as pleaded in the plaint at paragraph 4, 5 and 6. That, at page 15 of the proceedings, the Respondent stated that he sold the shares to the Appellant thus other statement indicating that there was no sale of share were just typing errors.

The Respondent's counsel argued that, it is a settled principle that the evidence of any case should be considered as a whole and not by relying only to one sentence. That, the pleadings and the evidence in record shows that there was a contract of sale of shares between the Appellant and the Respondent and exhibit P2 proves the same. That, since the Appellant was unable to pay the purchase price at the time of signing the agreement then the same was treated as a loan which the Appellant agreed to repay to the Respondent. That, the Appellant admitted that the transaction in question was a sale of shares

agreement and that the shares were treated as a loan. To her, the Appellant knew those facts and that is why he admitted to be indebted to the Respondent before the trial court. She insisted that, the Appellant signed the agreement voluntarily and even performed part of his obligation thereof by paying USD 15,000. She added that, the money which the Respondent claimed to have transferred to the Appellant was the money for payment of shares allotted to the Respondent. That, the money was transferred to the Appellant as he was the company secretary. That, when the Respondent sold those shares to the Appellant the money to which he had paid for those shares became a loan which the Appellant agreed to repay to the Respondent.

The counsel for the respondent also submitted that, the trial court properly analysed the evidence and came to a conclusion that there was a valid agreement between the parties and the Appellant breached the agreement. That, the law is clear that parties are bound by the agreement they freely entered into. She referred the decision in the cases of **Unilever Tanzania Ltd Vs. Benedict Mkasa t/a Bema Enterprises,** Civil Appeal No. 41 of 2009 and the case of **Lulu Victor Kayombo Vs. Ocenic Bay Limited and Mchinga Bay Limited,** consolidated Civil Appeal No. 22 & 155 of 2020, CAT at Mtwara. She

insisted that, the Appellant is bound by the terms of the agreement in question hence estopped from denying the validity of the agreement in question. She referred the provision of section 123 of the Tanzania Evidence Act and added that, as the Appellant agreed freely to treat the consideration for shares into a loan and started to pay the same, he is estopped at this stage from denying the validity of the contract in question.

Responding to the issue of verification of the plaint the Respondent submitted that, the same is not a material discrepancy hence does not have any significant effect on the plaint. She contended that, it is a minor technical issue and the same be ignored by virtual of the overriding objective principle stipulated under section 3B (1)(a) of the Civil Procedure Code Cap. 33 which directs the court not to be bound by trivial technicalities. She added that, the Appellant has not been prejudiced in anyway by that minor issue.

In arguing the ground of appeal raised by the Respondent in Civil Appeal No. 42 of 2021 the counsel for the Respondent submitted that, since the trial court found the Appellant to have breached the agreement, the court ought to have ordered the Appellant to pay the Respondent the outstanding debt and other categories of reliefs. She

pointed out that, at page 9 of the impugned judgment the trial court rightly stated that the unpaid balance of USD created a debt. However, that, the trial court failed to order the Appellant to pay the said debt and misconstrued the provision of section 59 of the Law of contract Act by misquoting the words stipulated under section 54 of the Act. She added that, section 54 of the Act presses the burden to a party who had breached a contract to compensate the innocent party for such breach.

The Respondent's counsel also submitted that, the most appropriate provision which governs compensation for breach of contract in dispute like the present one is section 73(1) of the Law of contract Act. She also referred the case of **Sao Hill Industries Ltd Vs. Nipo Group Ltd,** Commercial case No. 80 of 2020 HC (Unreported) where the court made a finding that when the contract is breached, the injured party is entitled to compensation and that, the outstanding sum is usually among the first categories of compensation which the injured party is entitled to get due to the breach of contract. She thus insisted that, the Respondent was entitled to compensation of USD 27,000 and by not awarding the same as a relief is allowing the Appellant to unfairly enrich himself.

The Respondent's counsel added that, the Respondent was also entitled to interest as the Respondent was deprived from the use of the

money. To support this position, she referred the case of **Scolastica Shayo Vs. Tumaini Magibo,** PC Matrimonial Appeal No. 1 of 2021 HC (Unreported). Referring the case of **Anna Babu t/a E & L Catering service Vs. Akiba Commercial Bank,** Commercial Case No. 68 of 2007 HC (Unreported) the counsel for the Respondent urged this court to award interest to the Respondent from 1st March 2014 to the date of Judgment at the rate of 20% as he was deprived of that money for long time. She insisted that, interest is a statutory relief under Order XX Rule 21 (1) of the Civil Procedure Code Cap 33 R. E 2019 thus prayed for interest at the rate of 12% on the decretal sum be also ordered as the Appellant defaulted paying the money without justifiable reasons.

In a rejoinder submission the Appellant added that, the amount of USD 5,000 awarded to the Respondent is the specific damage and not the general damage. That damages suffered due to non-performance of the contract is a specific damage because damage suffered due to non-performance of the contract is always specific damage and not general damage. He maintained that, one has to plead and prove specific damage.

Regarding the 2nd and 3rd grounds of Appeal the Appellant re-joined that, the Respondent's case as per the plaint is the loan from selling

shares but the evidence is on the loan given to the Appellant and deposited in his account hence two different cases. He insisted that, the Respondent had a duty to prove the loan out of selling shares. He added that, the Respondent's counsel stepped into the shoes of the Respondent by bringing new evidence not adduced during trial in stating that the money which the Respondent was talking about during trial was for the purchase of shares allotted to the Appellant.

The Appellant's counsel does not dispute the fact that the Appellant admitted the claims that he bought shares on credit as per the contract. He however insisted that, the Appellant raised a defence for failure to pay as the Respondent failed to market the tourist business. He insisted that, the shares are still with the Respondent as they were never transferred to the Appellant. He maintained that, pleading are not evidence and the evidence by the Respondent did not support what was pleaded in the plaint. He therefore reiterated the prayer for this court to allow Civil Appeal No. 41 of 2021.

In responding to the Respondent's appeal, the counsel for the Appellant Mr. Njooka submitted that, the issue framed by the trial court was whether the Appellant was indebted to the Respondent. That, the trial court was not moved to determine the issue of breach of contract.

The Appellant conceded that, the wordings used by the trial court are not from section 59 but rather section 54 of the Law of Contract Act but regarded the same as a slip of pen. He was of the view that, the remedy for the parties as per section 54 of the Law of Contract act is compensation but the Respondent failed to prove the loss due to the fact that he still owns the shares. To him, the Respondent cannot claim to have suffered damage as he owns both USD 15,000 and the shares. He was of the view that, the case of **Saw Hill** (supra) cited by the counsel for the Respondent is distinguishable as it was based on the breach of contract while the case at hand is based on the debt arising from reciprocal promises. He also distinguished the cases of **Scolastica Shayo** (supra) and **Anna Babu** (supra). He thus urged this court to dismiss the Respondent appeal, Civil Appeal No. 42 of 2021.

In a brief rejoinder to the Appellant's reply to Civil Appeal No 42 of 2021, the counsel for the Respondent, Ms Magdalena submitted that, it is not true that the Respondent did not prove loss which he suffered as a result of the Appellant's wrongdoing. She insisted that, the Respondent proved loss which is non-payment of the outstanding debt. That, the parties did not agree for the Respondent to keep shares in case the Appellant fail to pay in full. She insisted that, parties are bound

by their agreement and failure of the party to fulfil his promise automatically amounts to a breach of contract. That, whether the expression breach of contract is used or not still, the Appellant is indebted to the Respondent as he admitted the whole debt at the trial court. reference was made to the case of **Leonard Dominic Rubuye t/a Agrochemical Supplies Vs. Yara Tanzania limited**, Civil Appeal No 219/2018 CAT at DSM (Unreported). She also insisted that, the case she cited were relevant to the matter and not distinguishable as suggested by the counsel for the Appellant. She concluded by reiterating the prayer that the Respondent's appeal be allowed.

In the outset, I would like to put clear that, I will discuss jointly the three grounds of appeal raised by the Appellant and I will conclude with the ground of appeal by the Respondent. The grounds by the Appellant are based on the issue as to whether the trial court's award was based on the proper analysis of evidence. In this I will look into the evidence of the Respondent visa vis the pleadings, the relief prayed for visa vis the relief awarded and the analysis of evidence in general. Then I will direct myself to the ground raised by the Respondent which is centred on whether the trial court properly analysed and awarded the Respondent's reliefs.

Before going to the grounds of appeal, I would like to address the issue of verification that was raised by the counsel for the Appellant in his submission. It was alleged that, the plaint shows that it was verified at Arusha but the evidence by the Respondent indicates that he verified the plaint at South Africa. I agree with the counsel for the Respondent that the issue of verification is not material defects that goes to the root of the matter. If the same had material importance it could have been raised as one of the grounds of appeal which is not the case in this appeal. Since the rights of the parties were determined and no one seem to be affected by the inconsistence in the verification, I find this argument wanting.

Having determined the issue of verification, let me embark on the grounds of appeal. Starting with the grounds of appeal raised by the Appellant, I have analysed the parties' submissions and visited the trial courts records and discovered that there is no dispute that the parties signed an agreement titled "LOAN REPAYMENT AGREEMENT". The dispute is basically on terms of the agreement, the claim raised by the Appellant visa vis the evidence in support of the pleadings and the decision of the trial court. It was the contention by the Appellant that,

the Respondent presented evidence to prove fact that was not pleaded and the trial court erred in awarding the relief that was not prayed for.

From the Respondent's plaint before the trial court, the agreement entered was for the sale of shares at the tune of USD 42,000. They both agreed for the Appellant to pay the purchase price in instalment to which the last instalment was to be paid by February 2014. In his evidence, the Respondent was referring the agreement he signed with the Appellant, Exhibit P2. For purpose of clarity, I will reproduce the said agreement.

"LOAN REPAYMENT AGREEMENT

This agreement is made on the 30th Day of October 2009

BETWEEN

JOHN VAN DER MOOSDIJK of Postnet Suit 321, Private Bag X 15 Somerset West 7129, South Africa (herein after referred to as "the Lender") on the one part;

AND

CLAMIAN SALASHY KITESHO of P.O. Box 14749, Arusha (herein after referred to as ***"the Borrower"****) on the other part;*

*WHEREAS the Lender and the Borrower (herein referred to as "****the parties****") had in a year 2006 formed a partnership company styled and named WARRIOR TRAILS LIMITED (herein referred to as "****the company****"); and*

WHEREAS the Lender and the Borrower has decided to detach from the company by way of selling out his shares and the Borrower has agreed to buy the said shares from the Lender;

NOW THIS AGREEMENT witnesses as follows:

1. *That the Lender will sale the shares to the Borrower in a form of a loan at US$ 42,000 [read; United States Dollar Forty two Thousands] only, being capital investment (US$ 40,000) plus 5% interest of that capital amount (US$ 2,000)*
2. *That the Borrower will pay the Lender the said amount of US$ 42,000 by instalment of UD$ 5,250 and at the intervals of six months period from the date the first instalment is paid.*
3. *That the first instalment of US$ 5,250 will be due and payable on February 2010, and the whole amount of US$ 42,000 will fully paid withing a period of four years, that is not later than on February 2014.*
4. *That the Lender will sign necessary share transfer forms, among other documents that may be required in the process of transferring the shares, upon payment of the last instalment of US$ 5,250. The Borrower will advise the Lender on the name into which the shares will be registered.*
5. *That it is the Borrower's commitment to fulfil, satisfy and discharge his part of this agreement within the said time frame.*

IN WITNESS WHEREOF the parties hereto have signed this agreement on the day and year herein below appearing."

In considering the terms in the above agreement, it is very clear that, the shares were sold in form of a loan to the Appellant at the price of USD 42,000. It was agreed for the Appellant to be treated as a Borrower and the Respondent to be treated as a lender. The Appellant was obligated to repay the agreed amount in instalments of USD 5,250 at the interval of six months period within a period of four years but not later than February 2014. It was also agreed for the Respondent/Lender

to sign necessary share transfer documents upon payment of the last instalment and the Appellant/Borrower commitment to fulfil, satisfy and discharge his obligation for payment within a given time. From the terms of agreement, the Respondent was not supposed to sign documents for transfer of shares after the Appellant had paid the last instalment. There is no dispute that the Appellant has not discharged his obligation of paying all agreed amount. He also admitted in evidence that, the amount of USD 27,000 is not yet paid in fulfilment of the obligation under the agreement.

It was argued by the Appellant that, he failed to fulfil the obligation due to the Respondent's failure to honour his promise of marketing the business and securing tourist to the company. It is unfortunate that such fact was not part of the agreement signed between the parties, Exhibit P2. There is nowhere it is shown that the Appellant performance of his obligation will depend on the Respondent's securing the tourists and marketing the business.

It was also argued by the Appellant that, the evidence by the Respondent before the trial court did not support the pleadings. Before the trial court three issues were raised as follows:

- *whether there is valid share transfer contract between the parties*

- whether the Respondent is indebted with the plaintiff

- Any other reliefs entitled to the parties.

In his evidence, the Respondent referring exhibit P2 testified that, he gave the loan of USD 40,000 to the Appellant. The exhibit P2 indicate the amount of USD 42,000 in which 40,000 was regarded as capital investment and USD 2,000 was a 5% interest. The Respondent testified also that, the Appellant paid only USD 15,000 and failed to pay the outstanding balance of USD 27,000. The said exhibit P2 was a loan repayment agreement based on sale of shares. In this matter, there is no dispute as to what was the intention of the parties. The wording used in framing the first issue intended not defeat that intention as the evidence presented tried to capture the intention of the parties in which consideration for transfer of share was treated by the parties as a loan. I do not see how the Respondent's evidence differed with the pleadings as so alleged by the counsel for the Appellant. The contract itself which was the basis of Respondent's evidence indicate that, the payment for shares was treated as a loan. The Appellant does not deny the fact that he is indebted to the Respondent for the amount of USD 27,000. Thus, the argument that the Respondent testified on loan instead of transfer of share is immaterial. When cross examined, the Respondent testified

to the effect that, he transferred the money to worriers account to which the Appellant was a secretary and they agreed later that the Respondent's share be transferred to the Appellant upon payment of the said money which he referred as value for the Respondent's shares.

Based on the above discussion, I do not agree with the assertion that the Respondent testified contrary to his own pleadings. I however agree that, the award of USD 5,000 by the trial court to the Respondent was out of context. The reliefs prayed for by the Respondent was clear under the plaint and it included; payment of outstanding debt of USD 27,000, interest on the principle sum from 1st March 2012 to the date of judgment, general damages, interest on the decretal sum from the date of judgment to the date of payment in full and costs of the suit. In its decision, the trial court awarded USD 5,000 as compensation for the loss suffered. It was the trial court's view that, as the Appellant was supposed to pay his last instalment by February 2014 but failed to do so, the Respondent was entitled to be compensated for the loss suffered due to non-performance of the contract.

I agree with the Appellant's counsel that there was no claim for loss and if the same was raised, there was a need for the Respondent to prove such loss. Thus, the trial court was supposed to award what was

prayed for. In this, I refer the decision of the Court of Appeal of Tanzania at Mwanza in the case of **Dr. Abraham Israel Shuma Muro vs. National Institute for Medical Research and another,** Civil Appeal No 68 of 2020 the court cited with approval the case of **Melchiades John Mwenda vs. Gizelle Mbaga (Administratrix of the Estate of John Japhet Mbaga- deceased & 2 others,** Civil Appeal No 57 of 2018 where the court held that,

> *"It is elementary law which is settled in our jurisdiction that the court will grant only relief which has been prayed for."*

See also the case of **James Funke Gwagilo v. Attorney General** [2004] T.L.R 161 and **Hotel Travertine Limited & 2 others Vs. National Bank of Commerce** [2006] T.L.R 133."

The argument by the counsel for the Respondent that the court has power to order any other relief is noted. However, in doing so the court must explain the circumstances leading to the award of the relief that was not sought for. That was not the case in this matter, I therefore find that the trial court acted unreasonably in award the relief that was not sought by the party. I similarly do not agree with the contention by the counsel for the Respondent that, the amount of USD 5,000 was awarded as general damage. I say so because, general damage cannot be

equated with compensation for loss. Whether a party claim that he suffered loss, he has legal obligation to prove the extent of loss suffered. This is opposed to general damage which is assessed in the court's discretion based on the circumstance of the case. I therefore agree with the counsel for the Appellant that, the trial court did not consider the evidence in totality before arriving to its decision.

Tuning to the ground of appeal by the Respondent on reliefs entitled to the Respondent, I agree with the Respondent's counsel that, having concluded that the Appellant was indebted to the Respondent, the trial court errored in not assessing the reliefs sought for purpose of satisfying itself as to what exactly the Respondent was entitled. It was wrong for the trial court to award compensation for a loss a relief which was not sought and failed to consider the relief under the plaint without justifiable reasons.

Stepping into the shoes of the trial court, it is my settled mind that the Respondent was entitled to the outstanding amount of USD 27,000 which is proved as unpaid. As well pointed out in my discussion above, the Appellant did not deny being indebted to the Respondent. the defence he raised did not exonerate him form the obligation to honour the agreement he entered freely with the Respondent. Having found

that the Appellant did not perform part of his obligation, it is proper for this court to order the Appellant to pay the outstanding amount of USD 27,000.

On the claim for general damage, there is no evidence that was tendered with intention to show that the Respondent's situation could attract the award of general damage. The Appellant did not even mention the claim for general damage in his evidence. I therefore find no reason to award something which its foundation was not laid down in evidence. The claim for interest becomes consequential since there is proof that the Respondent was entitled to the amount claimed. Since the payment was to be effected not later than February 2014, the delay for the payment need to be charged for interest.

In the upshot, I find that the Appellant's appeal is partly allowed to the extent that the amount of USD 5,000 awarded by the trial court is set aside. The Respondent's appeal fully succeeds and this court makes an order for the Appellant to pay the Respondent the outstanding debt in the sum of USD 27,000 equivalent to Tshs. 61,695,000/=. The Respondent is also entitled to the payment of interest on the principle sum at the rate of 12% per annum from 1st March 2014 to the date of judgment and interest at the rate of 7% per annum on the decretal sum

from the date of judgment to the date of payment in full. Since the Appellant's appeal partly succeeded, I will not make orders for costs.

DATED at **ARUSHA** this 18th day of October 2022.

D.C. KAMUZORA

JUDGE