

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

CIVIL APPEAL NO. 49 OF 2021

(Originating from the Resident Magistrates' Court of Arusha, Civil Case No. 31 of 2020)

ABDILAH MUSA APPELLANT

Versus

JAILAN MUSA RESPONDENT

JUDGMENT

17th August & 21st October 2022

Masara, J.

In the Resident Magistrates' Court of Arusha ("the trial court"), the Appellant herein sued the Respondent for the tort of assault and battery which caused bodily harm, pain and suffering. In the trial court, the Appellant claimed to be paid TZS 4,282,648/= as compensation due to loss of income, medical expenses, transport costs, costs for hiring an advocate and TZS 1,500,000/= that was lost while the Appellant was being attacked. The Appellant also prayed for general damages as may be assessed by the court, interest on the decretal sum calculated from the date of judgment to the date of final payment and costs of the suit. In his written statement of defence, the Respondent disputed all the claims, putting the Appellant into strict proof thereof.

After hearing the parties' evidence, the trial court found the claims partly proved. It awarded the Appellant TZS 982,648/= as specific damages and TZS 500,000/= as general damages. That decision did not please the Appellant who has preferred this appeal on the following grounds:

- a) That the trial court erred in law and fact when ordered the Respondent to pay the Appellant specific damages to the tune of TZS 982,648/=; and*
- b) That the trial court erred both in law and in fact when ordered the Respondent herein to pay the Appellant general damages to the tune of TZS 500,000/=.*

Basing on the aforementioned grounds, the Appellant prayed for the following orders:

- i) The decision of the trial court be quashed and set aside;*
- ii) An order for payment of specific damages to the tune of TZS 4,282,648/= being compensation for assault and battery;*
- iii) An order for payment of general damages as may be assessed by this Court by considering shock, pain, suffering, loss of ability to work and amenities of life;*
- iv) Costs be in the cause; and*
- v) Any other relief as the Court deem just to grant.*

In order to appreciate this appeal, it is apt to recount background facts of the case leading to this appeal as obtained from the records. The Appellant and Respondent are brothers. On 11th September 2017, the

Appellant was grievously injured by the Respondent. He was attacked by using a bush knife whereby his left leg was broken and his right shoulder wounded. He reported the incident at the Arusha Central Police where he was issued with a PF3 (exhibit P1).

The Appellant was attended at Mt. Meru and Momella Hospitals where he was hospitalized. The Respondent disappeared, but was later arrested. He was charged with the offence of assault at the Arusha Urban Primary Court, vide Criminal Case No. 1212 of 2018. He was convicted and sentenced to pay a fine of TZS 60,000/= or serve three months custodial sentence.

The Appellant was aggrieved by the decision of the primary court, he appealed to the District Court of Arusha vide Criminal Appeal No. 7 of 2019. The district Court dismissed the appeal, upholding the decision of the primary court. According to the Appellant, he spent TZS 252,640/= for medications. Receipts thereof were admitted as exhibit P5 collectively. He also incurred TZS 250,000/= for transport from Olasiti where he lived to Momella. Receipts in respect of transport expenses were admitted as exhibit P6 collectively.

In his testimony, the Appellant also stated that at the time he was assaulted he lost a mobile phone (techno W5) worth TZS 230,000/=.

Receipt in respect of the lost phone was admitted as exhibit P7. He also paid TZS 250,000/= to a law firm known as Law Empire who assisted him in preparing submissions in respect of Criminal Appeal No. 7 of 2019. Receipts thereof were admitted as exhibit P8.

The Appellant accounted that it took him three months and two weeks to recover, he therefore lost income as he was earning TZS 20,000/= per day from his masonry works; thus, for the whole period he was sick, he lost about TZS 1,800,000/=. Also, at the time of assault, the Appellant claimed that he had TZS 1,500,000/= in his possession, but that money got lost. All the above costs made a total of TZS 4,282,640/= which the Appellant claimed from the Respondent as compensation due to assault and battery.

On his part, the Respondent denied to have wounded the Appellant. In his defence, which was supported by that of Mariam Hemed (DW2), he stated that the case was perpetrated by the fact that the Appellant does not want to recognize the Respondent as his brother. That the Appellant was injured while in Gallapo constructing a house, where he fell down from the top of the house. Further, that he was also involved in a motor cycle accident where his leg was broken. He informed the court that the dispute between them was attributed by compensation that was paid after

their house was demolished paving way for construction of the East African Highway. According to DW1 and DW2, after being compensated the Appellant denied the Respondent a share. The Respondent prayed for dismissal of the case as he was not involved in wounding the Appellant.

Submitting in support of the first ground of appeal, the Appellant contended that the primary court confirmed that the Respondent assaulted him with panga, and that he was bed ridden for three months recovering from the assault. He insisted that he ought to have been paid the amount TZS 4,282,648/= claimed. He urged this Court to take into consideration the exhibits tendered at the trial and reverse its decision.

Regarding the second ground, the Appellant submitted at lengthy challenging the amount of TZS 500,000/= that was paid to him by the trial magistrate as general damages. He maintained that the Respondent assaulted him with a panga and an iron bar with the intention of killing him. He further submitted that he is yet to recover following the assault inflicted on him. By ordering TZS 500,000/= as general damages, the trial court did not consider the injury sustained and the shock that he was being killed. Clarifying the purpose of general damages, the Appellant maintained that they serve to punish the wrong doer and tend to restore

the victim to the original status. He prayed that this Court examines the trial court records and make its own assessment of damages.

On his part, the Respondent contended that the Appellant has grievances with him because he has always been saying that the Respondent is not part of their family. He added that, the Appellant intended to sell the Respondent's house, that is why they started quarrelling. He insisted that the Appellant is a mason and the accident met him in his masonry works but he wants to use the injuries sustained to increase the extent of damages. The Respondent admitted that they fought but the Appellant was not injured the way he presents himself both in this Court and in the trial court. It was his further argument that the amount awarded by the trial court is more than he can afford to pay. He intended to challenge the amount awarded but he did not know if he could have filed a cross appeal.

I have carefully examined the grounds of appeal, the trial court record and the submissions by both the Appellant and Respondent. The task ahead of me is to determine the appeal based on the grounds submitted by the Appellant.

In the first ground of appeal the Appellant faulted the trial court for awarding him TZS 982,648 instead of TZS 4,282,648/= that he claimed.

The basis of the Appellant's claim is deduced from the plaint filed in the

trial court. According to paragraph 11 (items i-vi) of the plaint, the claims therein are what accumulated the amount claimed by the Appellant. Now my task is to ascertain if the Appellant managed to prove every item claimed in the said paragraph.

In item (i), the Appellant contended that he spent TZS 250,000/= for hiring taxi from his home place, Olasiti, to Mt. Meru Hospital and then to Momella Hospital in Arumeru District. That claim was supported by receipts, exhibit P6 collectively. Regarding the first item, there is no doubt that the Appellant spent the specified amount for hiring taxi because the same is supported by documentary proof. In item (ii), the Appellant accounted that he incurred TZS 252,648 as costs for medical services. The same was supported by documentary proof as shown in exhibit P5 collectively. He further stated in item (iii) to have lost a phone that was worth TZS 230,000/= which was lost at the time he was assaulted. The receipt in support of that claim was admitted as exhibit P7. In item (iv), the Appellant alleged to have paid TZS 250,000/= to Letan & Co. Advocates who assisted him in drawing the documents in respect of Criminal Appeal No. 7 of 2019. That is evidenced by exhibit P8. The four items above, when summed up, they make a total of TZS 982,648/=.

The Appellant alleged in item (v) that on the eventful day, he lost TZS 1,500,000/= that was in his possession. However, in his evidence both in the trial court and in the primary court as reflected in exhibit P3, the Appellant did not substantiate where exactly that amount of money was kept. That claim, as correctly stated by the trial magistrate, was not proved.

Further, the Appellant contended that he was earning TZS 20,000/= per day from his masonry works. He added that he had been sick in bed for three months, cumulating to a lost income to the tune of TZS 1,800,000/=. That also was not proved by the Appellant. In the first place, there was no proof that the Appellant was bed ridden for three months and two weeks. Second, there was no attempt to prove that the Appellant was earning TZS 20,000/= per day, making it a total of TZS 1,800,000/=. Therefore, the claims in items (v) and (vi) of paragraph 11 of the plaint were not proved by the Appellant.

It is trite law that specific damages must be specifically pleaded and strictly proved. In this respect, I seek guidance from the Court of Appeal decision in **Strabag International (GMBH) vs Adinani Sabuni, Civil Appeal No. 241 of 2018** (unreported), where the Court observed:

*"In this jurisdiction, as it is in most commonwealth jurisdictions, the law on specific damages is settled. Special damages, in accord with the settled law, **must be specially pleaded and strictly proved** as demonstrated by decided cases - see: **Zuberi Augustino v. Anicet Mugabe, Masolele General Agencies v. Arfica Inland Church Tanzania, Stanbic Bank Tanzania Limited v. Abercrombie & Kent (T) Limited, Arusha International Conference Centre v. Edward Clemence and Anthony Ngoo & Another v. Kitinda Kimaro.**"(Emphasis added)*

In light to the above position of the law, the claims that the Appellant lost income to the tune of TZS 1,800,000/=, and that TZS 1,500,000/= was lost at the crime scene, were not born by evidence. In the absence of proof, specific damages cannot be assumed. It follows therefore that the TZS 982,648/= awarded by the trial court as specific damages was justified. There is no evidence to alter that amount. In the end result, the first ground of appeal has no merit.

Regarding the second ground, which the Appellant faults the trial court for awarding TZS 500,000/= as general damages, the Appellant submitted that the amount awarded was low compared to the shock and injury sustained by him. Generally, general damages are awardable at the discretion of the court. They are not meant to punish the wrong doer or restore the victim in the original position as the Appellant contended. In

order to award general damages, a court must satisfy itself that the defendant's wrong has been the probable cause of loss or damage. The relevance of the above position was reaffirmed in the case of **Tanzania Sanyi Corporation vs African Marble Company Ltd [2004] TLR 155**, where the Court of Appeal stated that *"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 wrong doing must, therefore, have been cause, if not a sole or a particularly significant cause of damage."*

In the appeal under consideration, the complained wrong doing was assaulting the Appellant by the Respondent. According to the circumstances of this case, I agree with the trial court that the awarded TZS 500,000/= served the purpose. I have no reasons to alter that amount since the Appellant was also awarded specific damages that aimed at restoring him in the original position. That said, the second ground of appeal also fails.

Before concluding, it behoves me to address one issue abhorrent in the judgment of the trial court. The judgment of the trial court shows that the trial magistrate awarded interest at Court rate on the decretal sum calculated from the date of judgment to the date of final payment. It

should be noted that power to award interest on judgment debts from the date of judgment to the day of full payment is statutorily provided under section 29 and Order XX Rule 21 of the Civil Procedure Code, Cap. 33 [R.E 2019]. The rate is fixed by law. The trial magistrate fatally erred in awarding interest since the amount awarded was not a debt. Further, the discretion to award interest is exercised for the period before judgment and not the period after judgment. In **Anthony Ngoo & Another vs Kitinda Kimaro** (supra), the Court stated:

*"In **Said Kibwana** (supra), it was stated that the Court has a discretion to award interest for the period before the delivery of judgment only in special damages actually expended or incurred, but even this at such rate the Court thinks reasonable. This discretion does not extend to the period after the delivery judgment."*

While associating myself with the authority above, it is my finding that the trial magistrate erred in awarding interest on the decretal sum. Her discretion ought to have been exercised on the period before delivery of the judgment. Fortified by the foregoing, the order to pay interest at Court rate from the date of judgment to the date of final payment is hereby quashed and set aside.

In sum, as I have endeavoured to demonstrate, I fully associate myself with the findings of the trial court, save on the order of interest at the

Court rate from the date of judgment to the date of final payment. Accordingly, I find this appeal to be devoid of merits. In fine, the appeal is hereby dismissed. Considering the relationship of the parties, I order each party to bear their own costs.



Y. B. Masara
Y. B. Masara

JUDGE

21st October 2022.