

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

PC CIVIL APPEAL NO 04 OF 2022

(Originating from Civil Appeal No 94 of 2018 Musoma district Court)

MRAGA MKAMA SELEMANAPPELLANT

VERSUS

PETER MAGESA KIGINGA RESPONDENT

JUDGMENT

22nd September & 24th October 2022

F. H. Mahimbali, J.

The appellant is the businessman in Musoma and amongst his activities is doing cereal shop business. The respondent is/was WEO of Bukima.

Following claims that the appellant was evading paying village levy, the respondent being WEO, arrested the appellant, charged him at primary court for a criminal charge on the said evasion and was finally acquitted by the court.

Upon that acquittal, the appellant sued the respondent at the primary court of Musoma District at Musoma for a total claim of 29,110,435 being damages for loss of property, income and other incidental costs.

Upon hearing of the suit, the trial court awarded 14,803,000/= as costs for the appellant.

Aggrieved by that decision, the respondent successfully challenged the said award before the District Court of Musoma in which after a careful scanning of the appellant's claims and evidence at the trial court, was of the view that there was no evidence establishing of the claims as alleged. Thus, the award of the trial court was wholly set aside for want of proof.

Aggrieved by that decision the appellant has knocked the doors of this court, challenging the findings of the first appellate court basing on three grounds of appeal.

- 1. That the appellate magistrate (first appellate court), grossly failed to distinguish between general damages and specific damages. The award named at page 4 of the appellate judgment, i.e 5,6 and 7 are general damages which did not need specific proof.*

- 2. That loss of Tshs 6,300,000/= named at page 5 of the appellate court's judgment is a mere general damages which did not need strict proof. Furthermore, the appellant adduced evidence to prove the said claim; he tendered documents to prove his claim.*
- 3. That the appellate court's judgment is not dated.*

During the hearing of the appeal, Mr. Thomas Makongo appeared for the appellant whereas Mr. Mligo and Ms. Tweve represented the respondent.

Arguing in support of the appeal, Mr. Makongo on the first ground of appeal submitted that the first appellate court erred in law when it considered the claims as specific damages instead of general damages. That as per his understanding, what was adjudged by the trial court was general damages which just needed establishment of the injury and then the court is left with the discretion to assess the requisite damage to ward the plaintiff. By ruling that there was no enough evidence to prove these claims, Mr. Makongo treated this as needing proof of the said damages. That according to him was not proper as per law. To him so long as the appellant was arrested by the respondent, prosecuted, closed his business, he had then suffered damages. As all this was set in motion by the respondent, then he must be held accountable. In a serious note, he insisted that what was criticised by the first appellate

court (6,300,000/=) as named at page 5 of its judgment is a mere general damage.

Lastly he faulted that the first appellate court's judgment as not properly dated as it misses the formal words: Dated at Musoma this 10th day of November, 2021 as it is done by High Court.

Basing on the above submission, Mr. Makongo prayed that this appeal be allowed.

Rebutting the appeal Mr. Mlilo learned advocate responded on the last ground that the first appellate court's judgment is duly dated and signed as provided by law. Since the said judgment is duly signed and dated that is a full compliance as per law. That it must bear words as reflected in High Court, he submitted that is not the guiding format to all courts.

On the first ground of appeal that there is failure to distinguish between special damages and general damages, he submitted however that in both damages, there ought to be proof. Whereas in general damage the proof is on injury caused, but in specific damage, there must be specific/strict proof of damage sought to be awarded. In the instant case, since the claim at the trial court was not on malicious

prosecution but loss of property and income, the appellant ought to have established so clearly. In the instant case, he insisted that the appellant had not established anything at the trial court regarding the said damages or loss of property alleged.

Considering that general damages are court's discretionary powers as per case of **FINCA Microfinance Bank Ltd vs Mohamed Megayu**, Civil Appeal No 26 of 2020, he prayed that this appeal be dismissed with costs.

In his rejoinder submission, Mr. Makongo reiterated his submission in chief and added that though general damages are court's discretionary powers, the same must be judiciously exercised.

He further insisted that pursuant to order XXXIV, rule 31 of the CPC, the requirement of dating of a judgment is well stated.

I have carefully digested the rival submission of the parties through their counsel. I have equally carefully scanned the lower court's decisions, evidence and proceedings thereof. The vital question is whether the appeal is meritorious.

As per finding of the trial court on why the appellant was ordered to be paid 14,805,000/= as actual damages, my careful scanning of the

said evidence, concedes with the findings of the first appellate court that what actually was awarded by the trial court is not specific damage. I say so because, for one to be awarded with specific damage, the claimant must strictly establish so. As per itemised claims into the appellant's statement of claim at the trial court, loss of profit has never been considered as specific damage as it is dependent upon sale of the said goods. If not sold, the property remains. Thus, there is no actual loss from it but profit loss which then is a general damage. Specific damage refers to actual loss occasioned and not to be accessioned.

Borrowing the words of my brother Karayemaha, J in **FINCA Microfinance Bank Ltd vs Mohamed Megayu** (supra) that, the area of damages is not a virgin one. *"A lot has been discussed through case laws and literatures. Legendary principles have been accentuated. I wish, now, to borrow the words of Lord Blackburn in **Livingstone vs. Rawyards Coal Company**, (1850)5 App. Case 25 at 6 Page 39 which was quoted by Hon.Kihwelo,J. (as he then was) in **Njombe Community Bank & Another vs. Jane Mganwa**, DC. Civil Appeal No.3 of 2015 at page 17 where it was stated that damages are:"*

That sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have

been if he has not sustained the wrong for which he is now getting compensation or reparation.

In my view, therefore, damages are intended to put the party in the same position, as far as money can do so, as if his rights had been observed. In this case I think the issue of special damages should not detain me. Principles governing this are, as alluded to above, are very clear and elaborative. The case of **Njombe Community Bank & another vs. Jane Mganwa** (supra) quoting the dictum of McNoughten in Bolag vs. Hutchison, (1950) AC 515 at page 525 promulgated the correct principle of law on specific damages which is universally accepted that special damages are:

"such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and, therefore, they must be claimed specifically and proved strictly".

In the case of **Zuberi Augustino vs. Anicet Mugabe**, [1992] TLR137, the Court of Appeal held that:

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

A similar position was accepted in the case of **Tanzania – China Friendship Textile Co. Ltd** (supra) whereby the Court of Appeal of Tanzania discussed at length this issue that special damages need to be proved contrary to general damages which are awarded at the discretion of the court. However, such discretion must be exercised judiciously that is by giving reasons after consideration of evidence in record. According to Lord Macnaghten in **Storms v Hutchison** 1905 A.C. 515

"General damages" are such as the law will presume to be the direct natural or probable consequence of the act complained of.

In a claim for general damages, particulars will not be needed of the quantum of damages claimed. (See **London and Northern Bank Limited v George Newnes Ltd**, (1900) 16 TLR 433, CA. and **Anthony Ngoo and Davis Anthony Ngoo v Kitinda Kimaro**, Civil Appeal No.25 of 2014) (unreported). General damages are defined by Black's Law Dictionary 7th edition to mean:

"Damages that the law presumes follow from the type of wrong complained of General damages do not need to be specifically claimed or proved to have been sustained"

Speaking of the general damages, Lugakira,J (as he then was) stated in the case of **P.M.Jonathan v Athuman Khalfan**, [1980] TLR 175 at page 190 that:

"The position as it is therefore emerging to me is that general damages are compensatory in character. They are intended to take care of the plaintiff's loss of reputation, as well as to act as a solarium for mental pain and suffering"

That the appellant was arrested, prosecuted and acquitted is not a guarantee of an award of damage. Since the suit at the primary court was not based on injuries for malicious prosecution but actual loss, the appellant ought to have established them as per law. In the absence of an injury occasioned in the course of the said closure of business, specific damage cannot substitute general damages. Each is established by its own evidence. The two have never been alternatives, but each depends on its own though it can happen in a similar suit.

However, in the circumstances of this case, considering all that went around against the appellant, his arrest, prosecution and closure of his business, though not specifically established (Special damages), at least I am persuaded to believe that the appellant must have suffered damages in the course. As he was acquitted by Primary Court on the said allegations, obviously he suffered some damages though he failed


to establish them in the legal standard. On that consideration, an amount of 1,500,000/= as general damages will make a little sense.

As regards to the issue of dating of judgment and place of issue; in a careful scrutiny of the first appellate court's judgment, the same is duly signed and dated though in a format distinct from that of Primary Courts.

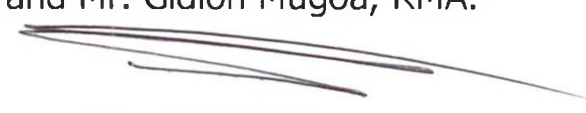
All this said and done, the appeal is partly allowed to the extent of granting a general damage of 1,500,000/= to the appellant. However, as regards to the specific damages, nothing has been established in the said claims. Parties shall bear their own costs.

DATED at MUSOMA this 24th day of October, 2022.




F. H. Mahimbali
Judge

Court: Judgment delivered this 24th day of October, 2022 in the presence of both parties and Mr. Gidion Mugo, RMA.


F. H. Mahimbali
Judge