

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**CIVIL APPEAL NO.31 OF 2021**

*(Originating from Civil Case No. 9 of 2018 at the Resident Magistrate's Court of Manyara at Babati.)*

**NATIONAL INSURANCE CORPORATION OF TANZANIA LTD.....APPELLANT**

**Vs**

**OTENYO MICHAEL OLIECH (The personal legal representative of Nikusubila Johnson Brown) .....1<sup>ST</sup> RESPONDENT**

**DIRECTOR MVUMO INVESTMENT CO LTD.....2<sup>ND</sup> RESPONDENT**

**NURU LWIDIKO NJIKU.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

*Date of last Order:16-9-2022*

*Date of judgment:5-12-2022*

**B.K.PHILLIP,J**

Aggrieved by the judgment of Resident Magistrates' Court of Manyara at Babati in Civil Case no.9 of 2018 delivered on 19/04/2021, the appellant herein lodged this appeal on the following grounds;

- i) That, the Hon. Magistrate erred in law and fact in entertaining the suit without having pecuniary jurisdiction.
- ii) That, the Hon. Magistrate erred in law and fact in holding that the motor vehicle with registration No. T704 belongs to the 2<sup>nd</sup> respondent and registered in the name of 3<sup>rd</sup> respondent was insured by the appellant.
- iii) That, the Hon. Magistrate erred in law and fact for failure to take into consideration the weight of the appellant's document tendered and the evidence adduced by DW3 that the insurance

documents tendered by the 3<sup>rd</sup> respondent does not belong to the appellant.

- iv) That the Hon. Magistrate erred in law and fact for failure to take into consideration that, once the insurance interim cover note has been issued to a person the same cannot be issued to another person.
- v) That, the Hon. Magistrate erred in law and fact in reaching the decision and hold the appellant liable based on contradicting evidence.
- vi) That, the Hon. Magistrate erred in law and fact in reaching the decision and hold the appellant liable without considering that, the accident occurred due to the act (*sic*) of high speed, the over speeding of the driver the act which cannot make the appellant liable.
- vii) That, the Hon. Magistrate erred in law and fact in holding the appellant liable to pay 1<sup>st</sup> respondent due to the death of his wife who died in the accident caused by the motor vehicle with registration No. T 704 DFM in which she was a passenger in that motor vehicle while it was not proved the said motor vehicle to be (*sic*) licensed to carry passengers and without prove of passenger's ticket.
- viii) That, Hon. Magistrate erred in law and fact in holding appellant liable while there was no evidence to prove that the driver had valid driving license and the motor vehicle had a valid road license /authorization to carry passengers.
- ix) That, the Hon. Magistrate erred in law and fact in entertaining the suit involving the appellant and reaching the decision and

hold the appellant liable without considering/ following the procedure laid down in relation to third party and third-party procedure.

- x) That, the Hon. Magistrate erred in law and fact in holding that the appellant is liable to pay the 1<sup>st</sup> respondent a general damage to the tune of Tshs. 40, 000,000/= without any proof of damages suffered by the 1<sup>st</sup> respondent.

A brief background to this appeal is that the 1<sup>st</sup> respondent herein was the plaintiff in Civil Case no. 9 of 2018. One Frank Eugen who is not a party in this appeal was the 1<sup>st</sup> defendant. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein were the 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively. The appellant herein was the 3<sup>rd</sup> party. She was joined in the case following the application made by the 3<sup>rd</sup> respondent who claimed that his car, with registration No. T. 704 DFM which was involved in an accident allegedly caused the death of one Nikusubila Johnson Brown (Henceforth "the deceased") was insured by the appellant under a third party insurance cover. It was alleged at the trial Court that the said car was in possession of 2<sup>nd</sup> respondent. On the fateful day it was being driven by one Frank Eugen and was involved in an accident which resulted in the death of Nikusubila Johnson Brown (Henceforth "the deceased"). At the trial Court the 1<sup>st</sup> respondent prayed for the following reliefs;

- i) Payment of general damages to be assessed by the Court*
- ii) Costs of the suit.*
- iii) Any other relief (s) that the Court may deem fit to grant.*

The case was heard on merit. The trial Court framed the following issues;

- i) Whether the death of Nikusubila Johnson occurred.*
- ii) Whether the death of Nikusubila (if occurred) was a result of accident involved in motor vehicle number T. 704 DFM.*
- iii) Whether the said car number T. 704 DFM had the valid insurance cover note for the third part.*
- iv) To what reliefs are the parties entitled to (if any).*

The 1st respondent testified as PW1 together with two witnesses namely Edward Paschal Sukule (PW2) and Theodora Carol (PW3). PW1's testimony was as follows; that he was the deceased's husband. On 20<sup>th</sup> August 2017, the deceased was one of the passengers in motor vehicle with registration No. T.704 DFM (Herein after to be referred to as "the motor vehicle"), which was being driven by on Frank Eugen. The said motor vehicle was involved in a accident. The deceased was seriously injured. She was taken to Mrara Hospital. Later on she was referred to Serian Hospital but she did not recover. Consequently, on 23<sup>rd</sup> August 2017 she passed on. The deceased was a government employee. She was a teacher. She was the bread earner in his family. PW1 tendered in Court the following exhibits ; His letter of appointment as the administrator of the deceased estate ( Exhibit P1), the marriage certificate( Exhibit P2) , Serian Hospital discharge form ( Exhibit P3) and the death certificate ( Exhibit P4).

PW2's and PW3's testimonies were similar. They testified that they witnessed the accident which involved the motor vehicle in question. The deceased was seriously injured and finally passed on.

For the defence case there were two witnesses, Nuru Lwidiko ( DW1) and Yasin Mvumo( DW2).DW1's testimony was to the effect that the motor vehicle that was involved in the accident belonged to him and

was insured by the National Insurance Corporation of Tanzania (the appellant herein). Yasini Mvumo, the director of the 2<sup>nd</sup> defendant is his friend and business partner. DW1 tendered in Court a receipt and Insurance Cover Note in the respect of the motor vehicle. Both were admitted as exhibits D1 and D2 respectively. Moreover, he told the trial Court that the appellant is the one responsible to indemnify the 1st respondent for the damages arising from the accident since the motor vehicle had a third party insurance cover issued by the appellant.

DW2's testimony was as follows; that he is a businessman dealing with transportation business. The Motor vehicle with registration No. T.704 DFM belonged to the 3<sup>rd</sup> respondent. It was involved in an accident on 20<sup>th</sup> August 2017 while driven by one Frank Eugen. Following that accident one person was seriously injured. She taken to hospital and passed on while receiving treatment. Moreover, he testified that he informed the owner of the motor vehicle about the accident. He identified exhibits D1 and D2 and was of the view that the appellant is liable to pay the damages/losses arising from that accident.

On the other hand the appellant's claims manager, one Catherine Nangali testified as DW3. In her testimony, she denied the appellant to have issued third party insurance cover note in respect of motor vehicle that was involved in the accident. She disputed exhibits D1 and D2. She told the trial Court that exhibits D1 and D2 are in respect of cover note No. 6881478 which was issued to a motor vehicle belonging to one Halifa Suleiman Humoud. She contended that exhibits D1 and D2 were not genuine documents. She tendered in Court an Interim Cover Note (exhibit D3) and receipt (Exhibit D4) issued by the appellant for Interim Cover Note No. 6881478 in favour of Halifa Sulemain



Humuod. In addition, she tendered an Interim Cover Note Book (exhibit D5).

Moreover, DW3 testified that since the driver did not testify in Court it is difficult to know he was driving at what speed. The appellant was not informed about the accident. Neither the Police form no. 115 and a sketch map of the scene of the claim nor the driver's driving license and motor vehicle registration card were tendered in Court as exhibits. She concluded her testimony by urging the trial Court to hold that the 1<sup>st</sup> respondent herein failed to prove his claims. The trial Court answered all issues in the affirmative. He entered judgment in favour of the 1<sup>st</sup> respondent and ordered the appellant to pay him general damages to a tune of Tshs. 40,000,000/=. The appellant was aggrieved by the trial Court's judgment. Thus, lodged the instant appeal.

The appeal was heard viva voce. The appellant was represented by Christopher Bulendu and Marko Nsimba learned advocates whereas the learned advocates Kuwengwa Ndonjekwa and Jonathan Mdeme appeared for the 1<sup>st</sup> and 2<sup>nd</sup> respondent respectively.

Submitting on the 1<sup>st</sup> ground of appeal, the learned advocate Bulendu argued that the trial Court had no pecuniary jurisdiction to determine the case because the claim before the Court was for payment of specific and general damages. Referring this Court to paragraph 15 of the plaint he contended that the amount of specific damages was not stated. He maintained that the position of law is that the issue of jurisdiction is statutory. To support his position, he cited the case of **Sospeter Kahindi vs Mbeshi Mashiri, Civil Appeal No.56 of 2017** (unreported).

Moreover, it was Mr. Bulendu's contention that the pecuniary jurisdiction of Resident Magistrate Court is provided for under section 40 (2) of Magistrates Court Act, Cap 11 ("CMA") and section 11 of the Civil Procedure Code ("CPC") provides that matters have to be filed in a Court of the lowest grade with jurisdiction. He pointed out he is alive that the Resident Magistrate Court and District Magistrate Court have concurrent jurisdiction.

Mr. Bulendu strongly argued that failure to state the amount of specific damage claimed by 1<sup>st</sup> respondent amounted to failure to establish that the trial Court had jurisdiction since specific damages is the one which determines the Court's jurisdiction. To bolster his argument, he cited the case of **M/S Tanzania China Friendship Textile Co Ltd Vs Our Lady of Usambara Sisters, Civil Appeal No.84 of 2002**. He insisted that general damages do not determine the jurisdiction of the Court. The judgment of trial Court is nullity for lack of jurisdiction. The trial Magistrate erred to rely on general damages to determine the pecuniary jurisdiction.

On 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> ground of appeal he submitted that the plaint indicates that the motor vehicle which was involved in the accident belonged to the 2<sup>nd</sup> respondent and in his testimony the 2<sup>nd</sup> respondent told the trial Court that the motor vehicle belonged to him. Similarly, in the 3<sup>rd</sup> party notice he asserted that the motor vehicle belongs to him whereas the 3<sup>rd</sup> respondent told the trial Court that vehicle belonged to him. To cement his arguments he referred this Court to page two of the impugned judgment at paragraph three. Mr. Bulendu pointed out that no motor vehicle registration card was tendered in Court to prove the ownership of the motor vehicle between the 3<sup>rd</sup> and 2<sup>nd</sup> respondent.

Moreover, he submitted that appellant's stance is that she did not insure the motor vehicle in question. To bolster his contention he referred this Court to exhibits D3, D4 and D5. He further alleged that the 3<sup>rd</sup> respondent tendered in Court exhibits D1 and D2 which bear the same cover note number with exhibits D3, D4 and D5, to wit; cover note No. 6881478. He insisted that Interim Cover Note No. 6881478 was issued to one Halifa Suleman Humoud and it is not possible for one cover note to be issued to two different people. To bolster his argument he referred this Court to exhibit D5 collectively. It was Mr. Bulendu's contention that there were differences noted between the two cover notes which bear the same number. He referred this Court to page 3 of the impugned judgment. He went on submitting that the trial Court did not take into consideration the differences pointed out by the appellant's witness and did not accord appropriate weight to the appellant's evidence. Expounding on this point, he submitted that exhibit D5 bears numbers ICND 00951001 up to 50 and includes the cover note issued to their client Halifa Suleman Humoud. Exhibit D2 was issued on 30/11/2016 and it expired on 29/11/2017 whereas exhibit D3 was issued on 17/8/2014 and expired on 17/8/2015. He insisted that exhibit D2 is not a genuine document.

With regard to the 6<sup>th</sup> ground Mr. Bulendu submitted that it is not in dispute that the accident occurred due to over speeding, so appellant cannot be held liable for the negligence of the driver who was driving the vehicle in question.

On the 7<sup>th</sup> and 8<sup>th</sup> ground of appeal, Mr. Bulendu submitted that no exhibit was tendered in Court to prove that the motor vehicle was licensed for transportation business. No evidence was tendered to



prove that the deceased in this case was a passenger in that motor vehicle since no ticket was tendered to that effect. No evidence was tendered to prove that the driver had a valid license. He pointed out that section 19 (1) of the Road Traffic Act, Cap 168 requires a driver to have a valid driving license. If a driver had no valid driving license, then he can not shift his liability to the insurer. To bolster his argument he cited the case of **Bertha Msemwa vs Clarence Simon Mjukuu and 2 others, Civil Case No. 174 of 2004 (Unreported)**.

Submitting for the 9<sup>th</sup> ground of appeal, Mr. Bulendu argued that the trial Court did not observe the requirements provided in Order 1 Rule 18 (1) (2) of the Civil Procedure Code ("CPC"). He contended that the trial Court was required to issue summons for the dates for delivery of the directives but did not do so. He maintained that the omission is fatal and vitiates the proceedings of the trial Court.

With regard to the 10<sup>th</sup> ground of appeal Mr. Bulendu submitted that general damages awarded by trial Court was not proper because there was no any proof whatsoever that the deceased was a mother and teacher as held by the trial Court hold. He was emphatic that despite the fact that the trial Court had discretionary powers to grant the prayer for payment of general damages, the same was supposed to be exercised judiciously by relying on the evidence adduced by parties which is normally a basis for the calculation of the general damages. The 1<sup>st</sup> respondent had a burden of proving the damages he alleged he had suffered. To cement his argument e cited the case of **Finca Microfinance Bank Ltd vs Mohamed Omary Magayu, Civil Appeal No. 26 of 2020 (Unreported)**.

Responding to Mr. Bulendu's argument in respect of the 1<sup>st</sup> ground of appeal, Mr. Ndonjekwa submitted that the trial Court had jurisdiction to try the case. He contended that the Resident Magistrate Courts has powers to adjudicate any claim on general damages. To support his argument he referred this Court to 1<sup>st</sup> schedule item no. 1 (b) (ii) of the Court Fees Rules GN. No. 247 of 2018.

With regard to the 2<sup>nd</sup> 3<sup>rd</sup> and 5<sup>th</sup> ground of appeal, Mr. Ndonjekwa submitted that there was no any dispute on the ownership of the motor vehicle. The issue on the ownership of the motor vehicle has been raised at this stage as an afterthought and it cannot be determined by this Court. No motor vehicle registration card was tendered in Court because there was no dispute on ownership the motor vehicle. Moreover, Mr. Ndonjekwa pointed out that no any policy from the appellant's company was tendered in Court to prove that exhibits D1 and D2 are not in line with the appellant's policy, thus were forged/not proper .

On Mr. Bulendu's argument that motor vehicle was driven in high speed Mr. Ndonjekwa was of the view that term " high Speed" is a relative term and the appellant did not state the speed which the vehicle was being driven. He insisted that the main issue in the case was whether or not there was an accident. .

Mr. Ndonjekwa's response to the 7<sup>th</sup> and 8<sup>th</sup> ground of appeal was as follows; that if the driver had no valid driving license he was supposed to be charged under criminal law. The issue on whether or not the driver had a valid driving license was not raised at the trial Court and the driver did not dispute driving the motor vehicle in question.

With regard to the 9<sup>th</sup> ground of appeal Mr. Ndonjekwa submitted that the legal procedures for joining the appellant in the case were properly complied with. The trial Court accorded the appellant opportunity to defend the case.

With regard to the 10<sup>th</sup> ground of appeal Mr. Ndonjekwa argued that there was no dispute that the deceased was a teacher and mother. The 1<sup>st</sup> respondent was deceased's husband. Furthermore, he argued that the trial Court took into consideration the evidence adduced by both sides and the amount of general damages awarded is proper.

Mr. Jonathan's response to the arguments raised by Mr. Bulendu was follows; with regard to the 1<sup>st</sup> ground of appeal he submitted that the issue on the pecuniary jurisdiction of the trial Court was supposed to be raised at the trial Court. He contended that in the case of **Sospeter Kahindi** (supra) the Court held that any point of objection on the Court's jurisdiction is supposed to be raised at the beginning of the case.

With regard to 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> ground of appeal, Mr. Jonathan argued that the appellant's advocate has raised the issue of forgery/ fraud at an appellate stage contrary to the acceptable legal procedures. Relying on Order 6 Rule 4 of CPC, he contended that if there is an allegation of forgery/fraud the same has to be raised specifically and all necessary information pertaining to the alleged fraud has to be disclosed in the pleadings. It was Mr. Jonathan's contention that the written statement of defence filed by appellant at the trial Court does not give any details of forgery/fraud which the learned advocate purported to raise in his submissions. The appellant's advocate had opportunity to raise the

claims for forgery/fraud at trial Court whereby the Court could have framed an issue on forgery/fraud because it is serious allegation, but he did not do so. Thus, he is now barred from raising that issue at this stage, contended Mr. Jonathan. To support his position, he cited the case of **Alex Senkoro and 3 others Vs Eliyambuya Lyimo, Civil Appeal No. 16 of 2017** and case of **Twazihirwa Abraham Mgemo vs James Christian Basil, Civil Appeal No.229 of 2018** (both unreported).

Furthermore, he argued that the appellant did not object to the admission of exhibits D1 and D2 during the hearing of this case at the trial Court. Thus, he cannot be heard claiming that those exhibits should not be relied upon by the Court. To support his arguments he cited the case of **Joseph Deus@ Sahani and another vs Republic, Criminal Appeal No.564 of 2019**, (unreported). Moreover, he argued that the appellant's advocate did not file any final submission in which he could have raised all inconsistencies he is trying to raise in this appeal.

With regard to 7<sup>th</sup> and 8<sup>th</sup> ground of appeal he submitted that there was no issue on whether or not the driver had a valid license. On the issue of the 3<sup>rd</sup> party procedure, he joined hands with advocate Ndonjekwa that the 3rd party procedure was properly complied with.

With regard to the 10<sup>th</sup> ground of appeal, Mr. Jonathan submitted that the case of **Finca** (supra) cited by appellant's advocate states very well that the trial Court has powers to decide on the amount of general damages befitting the claimant. Section 61 of Evidence Act provides that evidence can be oral or in documentary. So, if the Court is satisfied with oral evidence adduced by parties it cannot be faulted for doing so.



In rejoinder Mr. Marko submitted that issue of jurisdiction can be raised at any stage. He pointed out that the issue of jurisdiction was raised at the lower Court. He claimed that the lower Court's proceedings speaks for themselves. With regard to the issue on the 3<sup>rd</sup> party procedure, Mr. Maiko insisted that the same is mandatory and has to be adhered to the hilt. He cited the provisions of Order 1 Rule 18 (1) (2) and Rule 14 of CPC, to cement his argument. He maintained that all concerns raised in this appeal were raised at trial Court. He referred this Court to page 47-60 of the proceedings. On the 3<sup>rd</sup> party procedure, Mr. Marko insisted that the procedure as laid down under Order 1 Rule 18 (1) (2) and Rule 14 of CPC is mandatory and the same was not complied with in this case.

Mr. Bulendu made a rejoinder on the issue of ownership. He submitted that the issue of ownership of the motor vehicle was disputed. He referred this Court to paragraph 3 of the appellant's written statement of defence. He pointed out that one of the issue that was framed at the trial Court was the validity of the insurance cover and at page 3 paragraph 3 of the impugned judgment the arguments on the inconsistencies raised in this appeal have been reflected. Mr. Bulendu maintained that the case of **Finca** (supra) is relevant in this case as far as criteria for grant of general damages is concerned.

I have carefully considered the arguments made by the learned advocates. Starting with the 1<sup>st</sup> ground of appeal, that is whether or not the trial Court had pecuniary jurisdiction to entertain the case, it is not in dispute that in paragraph 15 of the plaint the 1<sup>st</sup> respondent indicated that he was claiming for specific and general damages, but did not indicate the amount of specific damages claimed. The reliefs prayed for

by the 1<sup>st</sup> respondent did not indicate any amount for specific damages. Therefore, in reality the 1<sup>st</sup> respondent's claim was for general damages. I am in agreement with Mr. Bulendu on the position of the law established in the case of **M/S Tanzania China Friendship Textile Co Ltd** (supra) that is, general damages cannot be used to determine the Court's pecuniary jurisdiction. However, with due respect to him the holding in the case of **M/S Tanzania China Friendship Textile Co Ltd** (supra) cannot be applicable in this case because 1<sup>st</sup> respondent filed his case at the lowest Court with jurisdiction to entertain it as required under section 13 of CPC which provides that every suit shall be instituted in the Court of the lowest grade competent to try it and for the purpose of section 13 of the CPC, a Court of Resident Magistrate and District Court are deemed to be Courts of the same grade.

It is noteworthy that the Court of the lowest level where the 1<sup>st</sup> respondent could file his case was either the District Court or the Resident Magistrates' Court which have concurrent Jurisdiction. Interestingly, in their submissions Mr. Maiko and Mr. Bulendu did not mention which Court the 1st respondent was supposed to lodge his case apart from the Resident Magistrate's Court of Manyara. It is the finding of this Court that this ground lacks merit. Thus, it is hereby dismissed.

With regard to the 2<sup>nd</sup>, 3<sup>rd</sup> and 5th ground of appeal, upon perusing the Court's records, I noted that the issue of ownership of the motor vehicle was not raised at trial Court. Thus, it has been raised in this appeal improperly and I cannot entertain. There is a plethora of authorities on the position of the law that an appellate Court cannot deal with issues

which were not raised at the trial or lower courts.[See the case of **Elisa Mosses Msaki Vs Yesaya Ngateu Matee ( 1990) TLR 90**].

With regard to exhibits D1 and D2, Mr. Bulendu's contention that the interim Cover note No. 6881478 was issued to another person, namely Halifa Suleman Humoud cannot automatically mean that exhibit D1 and D2 are forged documents and that they were obtained fraudulently, bearing in mind that upon checking them, I noted that on their face they appear to have been issued by the appellant. The Court's record reveal that there was no expert evidence produced in Court to prove that exhibits D1 and D2 are forged documents apart from a mere comparison of those documents with exhibits D3, D4 and D5 by just looking at them. In my considered opinion, if at all the appellant seriously believed that Exhibit D1 and D2 are forged documents he was supposed to clearly state the issue of forgery in her written statement of defence, object to the admission of those documents as exhibits and move the Court to obtain expert report/opinion on the authenticity of those documents.

Interestingly, the Court's records reveal that at the trial Court, the appellant did not object to the admission of those documents as exhibits. The position of the law is very clear , that is if a party to a case does not object to the admission of an exhibit, he cannot later on raise an objection on that document when the Court wants to rely on its contents in the determination the of the case. The case of **Joseph Deus @ Sahani** (supra) cited by Mr. Ndonjekwa in his submission is relevant here. In that case the Court of Appeal said the following;

*" It is a settled law that the contents of an exhibit which was admitted without any objection from the appellant , were effectually proved on account of failure to raise an objection at the time of its admission in evidence.. "*

With regard to the concern on the ownership of the motor Vehicle, I am in agreement with Mr.Ndonjekwa that the issue of ownership of the motor vehicle was not raised at the lower. Thus, I cannot entertain it at this stage. From the forgoing, it is the finding of this Court that 2<sup>nd</sup> 3<sup>rd</sup> and 5<sup>th</sup> ground of appeal have no merit. The same are hereby dismissed.

With regard to the 6<sup>th</sup> ,7<sup>th</sup> and 8<sup>th</sup> ground of appeal, the Court's record reveal that the issue on the cause of the accident ,that is, whether or not it was high speed was not raised at the lower Court. And there was no proof whatsoever/report tendered in Court to prove that the accident was due to the fact that the motor vehicle was being drive in a high speed. Similarly, the issues on whether or not driver had a valid driving license, the motor vehicle was licensed for transportation business and the deceased was passenger in that motor vehicle were not raised at the lower Court. To my understanding , all of the above mentioned issues are aimed at establishing on whether the insured ( 3<sup>rd</sup> respondent) adhered to the conditions stipulated in the Insurance Cover Note so as to hold the appellant liable to indemnify 1<sup>st</sup> respondent. However, as I have said herein above, the appellant did not raise those issues in his defence at the trial court and no issues were framed by the Court to address them. As I have already explained earlier in this judgment, this being an appellate Court, cannot entertain



issues which were not raised and determined by the lower court. In short, the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> ground of appeal is hereby dismissed.

With regard to the 9<sup>th</sup> ground of appeal which is concern with the third-party procedure, the provisions of Order 1 Rule 18 (1) of CPC cited by appellant's advocates provides that the trial Court can fix a date for giving directives upon, either an application made by the defendant presenting the third party notice or on application of the third party who has disputed the plaintiff's claim against the defendant or on its own motion. The Court's records reveal that none of the parties to this case including the appellant herein (third party) moved the trial Court to fix the date for giving directives. It is not in dispute that the appellant filed his defence and was accorded the right to be heard. In his submission Mr. Bulendu did not explain how the appellant was prejudiced by the trial Court's omission to fix a date for directives leaving alone the fact that he had a right to move the Court to fix the date for directives but did not do so. With due respect to Mr. Bulendu and Mr. Marko, under the circumstances of this case, the trial Court's omission to fix a date for directives is not fatal. Thus, the 9<sup>th</sup> ground of appeal has not merit and I hereby dismiss it.

Coming to the last ground of appeal on the amount of general damages awarded to the 1st respondent, the general rule is that the amount of general damages to be awarded to a party is within discretion of the Court. I agree with Mr. Bulendu that such discretion should be exercised judiciously. Mr. Bulendu's contention that the 1<sup>st</sup> respondent did not prove the damages claimed and that there was no prove that the deceased was a teacher, and mother is misconceived because there was no dispute that the deceased was the 1<sup>st</sup> respondent's wife and

that she was a teacher. Exhibit P4 (the death certificate) indicates that the deceased was a teacher.

In addition to the above, the position of the law is that general damages do not need to be strictly proved and that is the difference between general damages and specific damages which need to be strictly proved. [See the case of **Masolele General Agencies Vs African Inland Church Tanzania ( 1994) T.L.R. 192**]. With due respect to Mr. Bulendu, he failed to adduce any convincing arguments that amount of Tshs 40,000,000/= awarded to the 1<sup>st</sup> respondent is excessive/on the higher side. In my considered view, Tshs 40,000,000/= is not on the higher side for the loss of life of someone who was still very young at the age of 34 years only. Definitely, the 1<sup>st</sup> respondent had lot expectations in his marriage life. Therefore, I cannot vary the amount of general damages awarded by the trial Court. Thus, the 10<sup>th</sup> ground of appeal is hereby dismissed.

In the upshot, this appeal is dismissed with costs.

Dated this 5<sup>th</sup> day of December 2022



  
**B.K.PHILLIP**  
**JUDGE**