THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MOROGORO DISTRICT REGISTRY)

AT MOROGORO

CIVIL APPEAL NO. 16 OF 2022

(Arising from Civil Case No. 03 of 2021 in the Resident Magistrate Court of Morogoro before, Kasele – SRM)

DRAGONAIRES LTD ..... APPELLANT

VERSUS

PROF. MARTIN SHEM ..... RESPONDENT

JUDGEMENT

Hearing date on: 09/11/2022
Judgment date on: 29/11/2022

NGWEMBE, J.

The appellant, Dragonaires Ltd, who runs hotel business in Morogoro Municipality was sued before the Resident Magistrate Court of Morogoro (trial court) by the respondent Prof. Martin Shem for specific damages of Tsh. 12,600,000/- in a domain of occupier's liability.

The respondent lodged a claim of being a regular customer to the appellant's Hotel, on 27th August 2020 he visited the appellant's place of business for a drink in night hours. He parked his motor vehicle make Toyota Land Cruiser bearing registration No. T. 556 EAZB and went inside, leaving his vehicle at the parking bay with Tshs. 13,500,000/= Cash money inside. After about an hour he wanted to leave the place,

alas his vehicle was broken on the right of back passenger's window and a total of Tshs. 12,500,000/= were stolen.

He believed that the damage and theft occurred due to the respondent's negligence under the Occupier's liability. Therefore, he sued the appellant as alluded above, claiming for compensation of Tshs. 12,600,000/= as specific damages, general damages and costs.

In turn the appellant denied those claims and further averred, among others, the premises had the warning of visitor would park at one's own risk. Added that, theft had nothing to do with occupier's liability and the tort of negligence.

Upon completing all pleadings, the trial court came up with the following issues for determination namely: - ***one,*** whether the respondent while at the appellant's premises had his car window broken and by whom; ***two,*** whether while at the appellant's premises the respondent's car had Tshs. 13,000,000/= out of which Tshs. 12,000,000/= was stolen; ***three,*** whether the appellant was negligent in not protecting the respondents motor vehicle against the damages and stealing of Tshs. 12,000,000/=; **four,** whether the plaintiff suffered from stress and physical tortures arising from the damages for his motor vehicle and the alleged stolen money; **five** and **six** were on reliefs.

In establishing his claims, the respondent testified as PW1 along with WP 4703 D/Sgt. Mwajabu (PW2). The evidence was that the plaintiff on 27/08/2020 went to CRDB Bank to withdraw some money USD 5000 (slip was tendered as PE1) on the same day he received Tshs. 5,950,000/= from Five Star Meat Processing Ltd, a company against which he had a claim in Civil Case No. 58 of 2020 before Morogoro

Urban Primary Court (settlement deed was admitted as PE2). He thus had around Tshs. 17,000,000/= cash money. He made some payments and remained with Tshs. 13,500,000/= or 13,600,000/= and went to his farm at Mitigani Bigwa with that money and when he came back from his farm, he passed to the appellant's hotel, which is near to his home. Reaching there, the security guard showed him a parking space which had security light. After the guard inspected the vehicle, the plaintiff proceeded to the restaurant for the appellant's services including drinks, while leaving his money in his car.

After an hour, he wanted to leave, he discovered his car's window back on the right side was broken and out of his money, Tshs. 12,500,000/= was stolen. He suspected the guard, who was once arrested. Later he fixed the car window by his costs (Invoice was admitted as Exhibit P4).

PW2 along with other police officers visited the place and found that really the car window was broken. They interrogated the guard who stated that, there were many cars and he was alone. The cautioned statement was recorded, same was tendered as P6.

For the defence, Mr. Yasiri Chalile a Hotel Manager as DW1, on affirmation confirmed that the appellant was their client for a long time. On the day he came and parked his vehicle on the passengers parking lot, which had spot light and other four cars were parked. The light on the side which the respondent parked was relatively weak. After the respondent had the service, he went to the parking, leaving the witness outside chatting with his boss. Soon the respondent came back telling them his car was broken, they went to the car and actually found a hole on the passenger's right-side window, but the doors were intact and

locked. The respondent opened the car in their presence, there was a pile of money at the passenger's front seat, estimated to One Million. He took the money and said there was a lot of money around 5,000,000/= which had been stolen. It seems the respondent was with some other persons; he called that other person who confirmed that there was almost Tshs. 13,000,000/=. DW1 called the police who came at the scene. When talking to the police, the respondent said the money was 20,000,000/=. The respondent kept changing the amount, from 5 million to 13 million, then 15 million and lastly, he said it was Tshs. 20 million.

The trial court in its brief judgment, ruled that the respondent had such amount of money on the material day and out of it, Tshs. 12,500,000/= was stolen. As the area had weak spot light and the premises were not fenced, the appellant had a duty to protect the client from obvious 'hazards'. The respondent suffered stress and psychological tortures. At the end the trial court proceeded to award Tshs. 12,500,000 special damage, Tsh. 4,000,000 general damages and costs of the case.

The appellant was dissatisfied by that decision, he decided to challenge that judgement and decree by way of an appeal clothed with five grounds namely: -

1) That, the trial court erred in law and fact when failed to abide by the principle that parties and the court are bound by their pleadings and issues on court record when determining the case before it.
2) That, the trial court erred in law and fact when decided the case in favour of the plaintiff without proof on balance of probability.

3) That, the trial court erred in law when delivered a judgment which does not comply with Order XX of Cap 33 R.E. 2019.
4) That, the trial court erred in law and fact when held that the defendant (now the appellant) breached a duty of care in terms of keeping safe the money and car of the plaintiff while such a duty did not exist.
5) That, the trial magistrate erred in law when admitted annexture A22 as exhibit PE2 (hati ya makubaliano) without complying with the law of Stamp Duty Act.

From the origin of this dispute, the appellant and respondent secured and maintained the legal services of learned advocates, Prof. Cyriacus Binamungu of CSB Law Chambers and Mr. Jovin Manyama of UBJ Law Chambers, respectively.

Arguing this appeal, Prof. Binamungu commenced by citing to this court, the case of **James Gwagilo Vs. AG [2004] T.L.R 161** where the principle of parties are bound by their pleadings was developed. Continued to justify that principle in relation to this appeal that ground 1 and 2 are squirely fall under that principle. Explained that the respondent pleaded in paragraph 4 that he visited to the defendant's premises, when he was leaving, he noticed his car's window was broken and he had a balance of Tsh. 13,000,000/= and the lost money was Tsh. 12,000,000/=, while in his evidence stated that he took from the bank Tsh. 7,000,000/= making a total of Tsh. 18,995,000/= minus Tsh. 1,000,000/= the balance would be Tsh. 17,995,000/=.

PW1 disclosed that USD 5000 was for settling a debt and actually paid to one Isaac and Ramadhani a total of Tsh. 3,000,000/=. The amount he was paid is Tsh. 5,950,000/=. In this confusion Prof.

Binamungu concluded that what was pleaded mismatched the evidence adduced during trial. To him, the pleading was not proved. At page 5 of the judgment, the appellant was found liable on the reason that the area was not fenced, which fact was not pleaded at all.

Submitting on ground three, the learned counsel pointed out that the judgment did not comply with **Order XX Rule 5** of **Civil Procedure Code.** The raised issues were not stated and reasoned in each issue. He specified that, on page 5, the 2nd, 3rd and 5th issues were determined but without findings and reasoning. The trial magistrate, therefore, failed to adhere to the law when delt with those issues.

Added that the reliefs issued were Tsh. 12,500,000/= while the pleading sought for Tsh. 12,600,000/= and no reasons were given for disparity. Referred this court to page 4 of the trial court's judgment and argued that, the trial magistrate failed to determine a major issue of who damaged that vehicle if at all.

In respect to ground four, Prof. Binamungu submitted that, the appellant was found liable to the properties of the respondent, while in paragraph 10 of the plaint negligent occupiers' liability was pleaded. He crystalized to 3 elements of negligence that is: - duty of care; breach of such duty; and damage as was founded in the case of **Donoghue Vs. Stephenson [1932] ALL ER 562.** Went further that to establish a duty the plaintiff must establish relationship and duty of care; the risk must be foreseeable by the occupier.

In the case there was proximate relationship between the disputants, but not the respondent with his money in his car, which was not disclosed to the appellant. Prof. Binamungu argued that the

reasonable man's test applied, the appellant could not foresee the respondent having that amount of money in his car. Navigated further to **Tinsley Vs. Dudley [1951] 2QB. 18** where the motorcycle was stolen and sued the occupier, but the court held at page 30 that the occupier was not liable. The doctrine of negligence could not apply in the situation at hand. Also referred to **R. A. Buckley page 211** on theft by third parties.

Added that the evidence on record indicates that there was no evidence of any theft incident occurred previously at the premises. He concluded this ground that the trial magistrate failed to reason on the negligence of the appellant.

Arguing on ground five, prof. Binamungu challenged exhibit P2 which was admitted without following the **Stamp Duty Act,** which requires payment of stamp duty and hence the document ought not to be admitted for lack of stamp duty. He then prayed that all the grounds be sustained, appeal be allowed with costs.

In response, the learned advocate Jovin Manyama replied by following the same trend. He commenced his submission by opposing the contention that the pleading was not proved. He argued that the judgment was based on pleadings and issues so raised by both parties, which were supported by evidence adduced by the witnesses. Covering issue 2 and 3 he referred to PW1's evidence claiming that the same proved possession of that money by respondent in his car. Exhibit PE1 and PE2 proved the ownership of that money and that he remained with Tsh.13. 5 million in his car where Tsh. 12. 5 million was stolen per DW1.

In **Paulina Samson** the court established Standard of proof in civil cases at page 14 – 15. In his view, the respondent's evidence was

more credible than the appellant's evidence, so the trial court was right in its decision.

Countering ground 3 the learned counsel defended the impugned judgment that it did not contravene any law as all issues were properly determined in line with the available evidences prior to its conclusion.

Submitting on ground 4, on the issue of negligence, conceding to its elements as the appellant's counsel so submitted, he resolved that this appeal fits on the duty of care over the respondent's properties. Mr. Manyama argues that, the appellant's failure to exercise her duty of care resulted into sufferings of the respondent. Cited the case of **NIKO Aged @ Ng'umbi Vs. Simon Bunyake Kitana, Civil Appeal No. 5 of 2019,** that negligence covered injury to a person and his property. In the absence of the statement that the respondent should take care of his vehicle, it meant that the appellant was responsible. Mr. Manyama attempted to distinguish the cases cited by Prof. Binamungu with the case at hand. Proceeded that, in those cases the defendant was not aware of the presence of the properties, but in this case the respondent was aware that the appellant had parked his vehicle in the parking lot.

Dealing with the fifth ground, the counsel pointed out that exhibit P2 emanated from court settlement agreement and there was no need to have a stamp duty. He concluded that the appeal lacks merits and prayed same be dismissed with costs.

In his brief rejoinder, Prof. Binamungu reiterated that mismatch between pleading and evidence is clear and the same has not been addressed by the respondent's counsel. Maintained that the decision was not rationalised as per ground three. Proceeded on ground four that

the case of **Heaven Vs. Pender** was overruled by **Donoghue's** case. He added, negligence does not apply to the acts of the third party. Actions by third parties are not covered by duty of care. Regarding the issue of stamp duty in ground five, Prof. Binamungu left it to the court to decide.

Having recapped the facts as above, this court is well aware of its duty as the first appellate court. The principle on duties of the first appellate court was reiterated in **Bushangila Ng'oga Vs. Manyanda Maige [2002] T.L.R. 335** and **Japan International Cooperation Agency (JICA) Vs. Khaki Complex Ltd, Civil Appeal No. 107 of 2004 (unreported)** among others. That the first appellate court should re - evaluate the evidence and reach to its findings of whether the trial court properly analyse the evidence. Considering their nature, ground 3 and 5 will be dealt with separatelt, while ground 1, 2 and 4 will be considered jointly.

In respect of ground three, the appellant's counsel holds fast that the trial court contravened **Order XX Rule 5** of the **Civil Procedure code**, while the adverse party insisted that there was no contravention at all. For clarity and for easy of reference, Order XX, Rule 5 is quoted hereunder: -

> *"In suits in which issues has been framed, the court shall state its finding or decision, with the reason therefore, upon each separate issue unless the finding upon any on or more of the issues is sufficient for the decision of the suit."*

The records of this appeal indicates that six issues were framed, though all other issues were determined, I accept the observation by

Prof. Binamungu that part of the first issue was not determined. It had two questions; First whether the respondent's car was broken and second, who broke the respondent's car. While the trial court answered the first question in affirmative, it did not at all resolve the second question of who broke the window of the respondent's car. Equally correct that, the law is settled as above, all issues framed or pleaded must be decided, and that failure to decide the said issues by the trial court is a serious omission whose effect, unless any other permissible circumstance suggests otherwise, may render the decision defective. In the case of **Sosthenes Bruno & Another Vs. Flora Shauri [2020] 1 T.L.R. 614 [CA]** and in **Alisum Properties Limited Vs. Salum Selenda Msangi, Civil Appeal 39 of 2018, (CAT – Dar)** the Court held: -

> *"It is an elementary principle of law that an issue raised by the parties should be resolved. Therefore, the trial court is required and expected to decide on each and every issue before it, hence failure to do so renders the judgment defective."*

But applying the overall study of the proceeding, I have failed to see how did such issue arise. The plaintiff did not suggest even by inference that some particular person was involved in breaking the car window, neither in pleadings nor in the testimonies of witnesses. The case was one of tort, in the dimension of Negligence and Occupiers liability. Much as I agree that such question was not determined, in my considered view such question was redundant. Even if it would be determined, yet considering the nature of the case itself, it would remain sterile.

Therefore, although this ground was based on valid observations, it would not suffice to fault the decision of trial court. The rationale of quashing the judgment when an issue was not determined, is to let the trial court make finding of that issue on the available evidence. But in this case the trial would have no material upon which to determine the issue and as earlier stated, the issue was not necessary and such failure had no effect.

On complaint related to exhibit P2 (Ground 5) that was improperly admitted contrary to **the Stamp Duty Act,** it is evident that this issue was raised as an objection during trial, but the trial court overruled that objection and admitted a copy of what looked to be an amicable settlement between the respondent and 5Star Meet Processing Ltd. In considering this ground, I find inevitable to refer to section 5 of **the Stamp Duty Act Cap 189 RE 2019,** the same is quoted hereunder: -

> **Section 5 (1)** *"Every instrument specified in the Schedule to this Act and which–*
> *(a) is executed in Tanzania Mainland; or*
> *(b) if executed outside Mainland Tanzania, relates to any property in Mainland Tanzania or to any matter or thing to be performed or done in Mainland Tanzania, shall be chargeable with duty of the amount specified or calculated in the manner specified in that Schedule in relation to such instrument:"*

Having referred to the schedule, there was nothing included which relates to Deed of Settlement as per this suit. Further reasoned that, if the Deed of Settlement was made in the course of a suit, it would qualify to be part of court record not otherwise. Despite all the above, upon a visit to the trial court's record, I found that the said exhibit had stamp

Duty worth Tsh. 2000 and there was no explanation in the proceedings. Thus, making this ground lack merit.

Back to the contention by the appellant in grounds 1, 2 and 4 that the trial court did not give finding and reason on each of the issues decided. Advocate Manyama insisted that the trial court made clear finding on all issues raised. The question of whether the court was correct to decide in favour of the respondent, Prof. Binamungu raised some contentions that the trial court did not consider the variation between plaint and evidence, it ruled that the appellant breached a duty of care in terms of keeping safe the money and car of the plaintiff, while such a duty did not exist. To the professor's argument, the respondent's case was not proved to the standard of balance of probability.

In this point I think, the trite law is that the person who brings the suit to court bears the burden of proving the claims. The provision of sections 110 and 111 of **The Evidence Act, [Cap 6 RE 2019]** are quoted hereunder: -

> **Section 110** *"Whoever desires any court to give judgment as to any legal right or liability dependent on existence of facts which he asserts must prove that those facts exist"*
>
> **Section 111**, *"The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side"*

It is also clear that the standard of proof in civil cases is on preponderance of probability as provided for in section 3 (2)(b) of **The Evidence Act**. In numerous decisions of this court and the Court of Appeal, efforts have been devoted to construe what entails proof on

balance of probability. The core fact is to satisfy the court that the facts constituting the claim really happened. In the case of **Mathias Erasto Manga Vs. M/S Simon Group (T) Limited [2014] T.L.R. 518** the Court of Appeal, having referred to an English decision in **Re Minor (1966) AC 563**, among others it gave a brief interpretation to the effect that: -

> *"The balance of probability standard means that the court must be satisfied that the event in question is more likely than not to have occurred."*

In the case before me, as earlier alluded, the claim was based on the Law of Tort, negligence and specifically occupier's liability. It seems that the trial court was of the position that the appellant had a duty of care towards the respondent, his car and the money said to have been in the car and that the respondent was negligent as the result, two sad things happened to the respondent; one damage of the respondent's car by breaking the car window; two, stealing of his monies said to be Tshs. 12,500,000/= from his car.

Generally, people who occupy land and premises, have a duty towards the safety of others who come onto the land (See Elliot & Quinn **Tort Law**, 7th edition, page 162). This was developed through the common law and in our jurisdiction, it is legislated by **the Occupiers Liability Act [Cap 64 R.E 2002]** which among others, provides for occupier's common duty of care to all the visitors. Section 3 which I have no other option than to reproduce it as it provides for the extent of occupier's liability: -

"Section 3.— (1) An occupier of premises owes the same duty, the "common duty of care", to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises; for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for; the present purpose includes the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases —

(a) an occupier must be prepared for children to be less careful than adults; and

(b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so."

Also, under section 2 of **the Occupier's Liability Act [Cap 64 RE 2002]**, application of the Common Law Principles of occupier's duty towards the invitees or licencees (visitors). From this section the extent of occupier's liability and duty of care in our jurisdiction is among others connected to reasonability and foreseeability. I refer to subsection 2 which states that the duty of care is such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose which he is invited by the occupier to be there.

The case of **Tinsley Vs. Dudley,** the occupier was held not liable for theft of the (visitor)'s property committed by a third party. The work by **Prof. Buckley** in ***Occupiers Liability in England and Canada***, among others, demonstrates the rule of reasonability; foreseeability and knowledge of the presence of the plaintiff (with the property). This one correlates with section 3 of **The Occupier's Liability Act** (supra) in Tanzania. Further, rightly as Prof. Binamungu submitted, the occupier can be held liable in case of theft by third parties where such theft has been frequently at his premises, but did not take measure to prevent and did not warn his visitors about that fact. This spirit stands with a sort of universality attribute as it takes after other jurisdictions like India, Australia, England and other Common Law Jurisdictions.

The Act therefore, clearly covers both the duty of care and the standard of care. When the damage is caused or attributed to the occupier's omission or negligence to secure the place, common standard will be referred, in other cases, it suggests reasonability which will include foreseeability.

In the case at hand, the respondent before the trial court claimed that he visited the appellant's premises as a customer using a motor vehicle make Toyota Land Cruiser registered as T556 EAZB, which he parked at the parking lot and proceeded to the services offered by the respondent. Spent about an hour, state of his mind in the course was unknown, but it was established that when he wanted to leave, he found his car's window broken.

This I think needs no more scrutiny as it falls within established facts. The evidence by PW1 and PW2 proves the same. From the above synopsis, the main questions breeding from the serious contention

between the parties I find to be three; *One* - whether the respondent had a huge sum of money, to wit Tshs. 13,500,000/= in his motor vehicle? *Two* – whether out of that money Tshs. 12,500,000/= was stolen after the breaking of the car's window. *Three* - the extent of the appellant's duty of care towards the respondent.

Under the circumstance, the appellant, being an occupier had the common duty of care towards the respondent who was a visitor under section 3 (1)(2) of **the Occupiers Liability Act [Cap 64 RE 2002].** This duty, in my understanding of the law, extended to the respondent himself, the safety of his body and mind then to his property which were by fact seen by the appellant and others that would reasonably be inferred under the circumstance, this would include the motor vehicle with its all constituents, attachments and facilities for its use for the natural purpose. I would agree to what Mr. Manyama submitted that this case is distinct from the facts in **Tinsley Vs. Dudley,** there would be no sense why the security guard of the occupier inspected the respondent's vehicle and instruct him to a proper parking lot if they had nothing to do with its security.

Regarding the money that the respondent is said to have inside the motor vehicle, I have made my mind that, the appellant being manned by reasonable persons, must have foreseen that the visitors (customers) as they came for the purpose which involved sale and purchase of service may have had some money with them for the purpose which they are invited by the occupier to be there. However, by a foreseeability test I am hesitant to hold that the appellant would foresee that the respondent would have a huge amount of money to the extent of Tsh. 13,500,000 in his motor vehicle, which was left at the parking, while the

respondent himself was in the lobby or elsewhere in the occupier's premises. This is irrespective of the fact that, there were security guards and security lights. To establish the duty of care as per **Donoghue Vs. Stephenson,** foreseeability must be established. I understand that the verdict would have been different if, subject to the circumstances the same facts happened in the bank premises where the purpose of a visitor by inference may have been related to money transactions.

Much as I agree with the respondent's learned advocate correctly as the trial court ruled that the appellant had a duty of care towards the respondent as a visitor, I will not agree that such duty of care would extend to the amount of money said to have been in the car. I am of the view that the trial court was bound to test the foreseeability of the money in the motor vehicle under the circumstance. I have also considered that the breaking in and alleged theft are not related to any fault in connection to the faulty of construction or maintenance. PW1 testified that there were lights at the scene.

To address the question of whether the respondent had the said money and whether it was stolen, the testimony of PW1 endeavoured to establish before the trial court, that he had a number of money transactions, so he had Tshs. 17,100,000/= and after some payments he remained with Tshs. 13,500,000/=. Such evidence, I am of the view that it established the fact that the respondent owned some amount of money on that day. Also, a fact that there was money Tshs. 1,000,000 in the car would not *ipso facto* establish theft of Tshs. 12,500,000 from that car. The arithmetic conflict which Prof. Binamungu detected in PW1's testimony riddles the plaintiff's evidence further. It is evident that

the plaintiff has never been consistent on the amount of money he had in the car and there was no other evidence to clear that inconsistences.

The appellant raised some reasonable questions even before the trial court, some were; why the plaintiff changed his statement frequently on the amount of money he kept in the car? Why could he keep such huge amount of money in the car? How would a thief steal Tshs. 12,500,000/= in the vehicle and leave Tshs. 1,000,000 when all the money was in the same place? These questions are valid, the respondent did not resolve, the trial court did not even look at any. This court neither will discuss them because there is no clear answers from the evidences.

The trial court's finding was not supported by the available evidence, it seems that the trial magistrate did not pay serious scrutiny of the facts, did neither follow nor apply the legal principles governing the Occupiers liability and negligence in tort. Ample evidence demonstrates that, had the trial court analysed the evidence and followed the principles of law properly, it would have reached into a different finding. Even the general damages awarded, was not seriously reasoned.

The law is clear although general damages are in the court's discretion, reasons must be assigned. In **Alfred Fundi Vs. Geled Mango and 2 others, Civil Appeal No. 49 of 2017,** the Court of Appeal held that: -

> *"The judge has discretion in awarding general damages although the judge has to assign reasons in awarding the same"*

In total of the above, the appeal is partly allowed to the exhibited extent. This court, consequently vary the awards made by the trial court in the following manner; ***First:*** Specific damages of Tshs. 12,500,000/= awarded by the trial court on the basis that it was stolen in the car, is set aside. It was not foreseeable and not within the occupier's duty of care as above analysed, also no proof was attained to the required standard that such amount of money existed and let alone being stolen. In lieu thereof I award specific damage to the tune of Tshs. 100,000/= which was proved as repair for the damage which fell within the appellant's duty. ***Second:*** Though this court will not fault the trial court's reasoning that the respondent having seen his vehicle damaged must have suffered some stress, in this case the loss suffered by the respondent is only the damage of his car's window, the general damages of Tshs. 4,000,000/= awarded by the trial court is reduced to the tune of Tshs. 1,000,000/= which in my view is equitable. I order no costs in this appeal.

Order accordingly.

Dated at Morogoro this 29th day of November, 2022.

THE HIGH COURT OF TANZANIA

P. J. NGWEMBE

JUDGE

29/11/2022

Court: Judgment delivered at Morogoro in Chambers on this 29th day of November, 2022, **Before Hon. J.B. Manyama, AG/DR** in the presence of Mr. Jackson Liwewa, Advocate for the Appellant and the presence of Mr. Jovin Manyama for the Respondent.

Right to appeal to the Court of Appeal explained.

SGD. HON. J.B. MANYAMA

AG/DEPUTY REGISTRAR

29/11/2022