THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

IN THE HIGH COURT OF TANZANIA
(IRINGA DISTRICT REGISTRY)
AT IRINGA

CIVIL APPEAL NO. 16 OF 2019

UNILIVER TEA TANZANIA LIMITED ..... APPELLANT

VERSUS

MTAKI A. MTAKI ..... RESPONDENT

(Being an appeal from the decision of the Mufindi District Court at Mafinga dated the 01st day of November, 2019)

in

Civil Case No. 30 of 2018

JUDGMENT

Last Order: 30/11/2022 &
Ruling: 16/12/2022

S.M. KALUNDE, J.:

In this appeal the appellant is challenging the decision of the Mufindi District Court at Mafinga dated the 01.11.2019 in Civil Case No. 30 of 2018 (hereinafter "the trial court").

In that case the respondent had filed a suit against the appellant for payment of TZS. 200,000,000.00 and 205,490,000.00 as specific and general damages respectively for breach of contract and refusal to pay the contract sum. In addition to the above, the respondent prayed for interest on the decretal sum at the rate of 11%; costs of the suit and any other remedy as the Court may deem fit to grant.

To prove his case the respondent paraded four witnesses. The respondent, **Mtaki A. Mtaki (PW1)** recounted that the appellants offered a tender (**Exhibit P1**) for purchase of 214 eucalyptus trees in which he won the tender. After being issued with the contract he made payments into the appellants account at CRDB Bank. Upon conclusion of arrangements a contract (**Exhibit P3**)was signed between the two and later, through a site letter (**Exhibit P2**), he was shown the area in which to harvest the trees. PW1 stated that to run the operations of the contract he took a TZS. 20,000,000.00 loan from Grand Impact Limited. He used the loan to purchase machines, power sol, diesel and built temporary facilities.

He commenced logging in accordance with the arrangement. However, he was notified by Mr. Stephen Lyimo, a tree secretary, to stop logging the trees. Subsequently, he was ordered to vacate the site. According to PW1 no reason was provided for the suspension of the operations. Aggrieved by the decision to suspend operation on site, PW1 served a demand notice (**Exhibit P4**) to the appellants. Attempts to resolve the matter amicably through mediation (**Exhibit P5**) returned no positive outcomes. The respondent was left with no option but to file the alleged suit. PW1 stated that as a result of the alleged breach of contract he suffered loss of more that TZS. 200,000,000.00. In the end he prayed that all the prayers in the plaint to be granted.

PW2, Stephen Lyimo, a former employee of the appellants argued that in March 2014, upon completion of the required procedures, the respondent executed a tree purchase agreement from the appellants'

Lupeme estate. PW1 recounted that as legal officer he was the one who executed the logging agreement. In addition to that he stated that the respondent was stopped from continuing logging and ordered out of the site by the appellants. He added that the order came from the appellants headquarters thus he had no power to reconsider the same. despite several follow ups the appellants management refused to allow him to resume logging. The witness went on to state that by refusing to allow the respondent to harvest the trees, the appellant were in breach of contract.

During cross examination, PW2 stated that all the business of selling the tress was a responsibility imposed on the tree committee constituted by the appellants Director General. He argued that by virtual of being a secretary to the committee he was a signatory to the committee together with the chairperson. He also added the order to stop production came from the Director General. In a brief re-examination he contended that all communications were contained in official emails communications which he could no longer access after being retrenched.

PW3, Joseph Allim Ngoti was the respondents site manager. He was responsible for purchase of machines and supervise logging. He said that after commencement of operation at the site they entered into a contract with technician and provided him with TZS. 6,000,000.00 as advance payment. He contended that the logging process was ordered to stop by the estate manager. He said that as result of suspension of

operation they went into conflict with their customers and lost markets, on top of failing to repay the loans taken.

Ezekiel Lubida (PW4) a director at Grand Impact Investment Limited stated that around 14.03.2014 they entered into a contract for purchase of timber (Exhibit P6). The value of the contract was TZS. 20,000,000.00. PW4 contended that according to agreement a party in breach of the agreement was pay 30% of the value of contract in damages. He added that the purchased timber were to be sold to Dar es Salaam. According to him the respondent failed to honor the contract as a result he was made to pay 30% in damages as agreed in the contract.

In cross examination the witness stated that they entered into agreement with the respondent after he had confirmed of the existence and showed him a contract with the appellant. according to him an advance payment of TZS. 20,000,000.00 was made to the respondent. He also recounted that it was the respondent who informed him that the appellant stopped him from logging that is why he could no longer meet his contractual obligation.

In its defence the appellant called two witnesses namely; **Samwel Mrita (DW1)** and **Maria Jonathan (DW2)**. DW1 outlined the procedure employed by the appellants in selling the trees. He also conceded to be aware of the agreement between the respondent. He said he was not aware whether the appellant breached the said contract of the respondent suffered any losses. In cross examination the witness admitted that the agreement was entered between the respondent and the company secretary and board secretary (PW2) for and on behalf of

the company. The witness also admitted that the secretary to the committee was the coordinator and chief operator of the tender committee and thus his testimony was right. He added that in 2014 an accident occurred on site leading to death of one person. DW1 added that after the incident some buyers stopped logging and others were issued with a notice to stop logging. In further cross-examination the witness conceded that the respondent entered into a contract with the appellants and furnished consideration. He was not re-examined

On her part DW2, an estate manager from Lupeme estate narrated that she was a member of the tree committee between 2013 and 2015. She also stated that the respondent applied and was awarded a tender for logging trees. He later abandoned the site without assigning any reason. She added that no one prohibited the respondent from logging. During cross-examination the witness stated that she started working as an estate manager in 2016 prior to which she was a division estate. She also conceded that in the tree committee the secretary was the main coordinator and operator of the team. She also stated that she was not present when the contract was signed.

Before the trial court, three issues were framed namely; **first**, whether there was a valid contract; **second** whether there was breach of contract; and **third**, to what reliefs are the parties entitled to.

At the end of the trial, the trial court found that there was a valid contract between the respondent and appellant. In addition to that the trail court proceeded to make a finding that the appellant has breached

the said contract and proceeded to award specific damages, general damages as well as costs of the case.

Aggrieved, the appellant has preferred this appeal on the following seven grounds:

> *"1. That the trail court erred in holding that the appellant was in breach of contract;*
>
> *2. The trial erred in law and fact when it failed to properly analyze and consider the evidence presented before the court and arrive at a conclusion that the appellant breached the contract;*
>
> *3. That the trail court erred in holding that the respondent suffered damages for breach of contract;*
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> *4. The trial erred in law and fact when it failed to properly analyze and consider the evidence presented before the court and arrive at a conclusion that the respondent suffered damages for breach of contract;*
>
> *5. The trial erred in law when by failing to properly analyze and consider the legal arguments contained in closing submissions;*
>
> *6. The trial erred in law in granting special damages totaling TZS. 32,420,000.00 which were not proved;*
>
> *7. The trial erred in law in granting general damages amounting to TZS. 200,000,000.00 without considering evidence on record;*

Leave was granted for the appeal to be disposed by way of written submission. Submissions were dully filed in accordance with the schedule ordered by the Court and hence this judgment. Submissions of the appellant were drawn and filed by learned counsel **Mr. Emmanuel Kiashama** whilst those of the respondent were prepared and filed by **Mr. Shaba Mtung'e**, learned advocate.

I have gone through the records and considered the all the submissions made by the parties. I would like to state from the outset that the seven grounds of appeal raise the following three issues:

(a) Whether the appellant were in breach of contract;

(b) Whether the appellant were entitled to special damages for breach of contract;

(c) Whether the trial court was correct in granting TZS. 200,000,000.00 in general damages

This is the first appeal, therefore in its determination I will be guided by the principle of law that a first appeal is in the form of re-hearing where the appellate court is entitled to re-evaluate the evidence on record from both sides and if possible, to come up with its own conclusion. The above principle has been stated and applied by the Court of Appeal in a number of decisions, including in **Makubi Dogani v. Ndogongo Maganga**, Civil Appeal No. 78 of 2019; **Leopold Mutembei v. Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development and Another**, Civil Appeal No. 57 of 2017; and **Domina Kagaruki v. Farida F. Mbarak and Five**

Others, Civil Appeal No. 60 of 2016 (all unreported). Therefore, as this is a first appeal, we shall be guided in its determination by the stated principle of the law

Reverting to the instant appeal, Mr. Kiashama argued in respect of the first issue that, it was the respondent who were in breach of contract because they left the site without issuance of notice to the appellant. The counsel submitted that besides PW2 testimony there was no documentary evidence establishing that the appellant ordered the respondent to stop logging. In addition to that the counsel argued that since PW2 was terminated by the appellants, he had interests to serve when he testified against them. He implored that the trial should not have believed his testimony relating to breach of contract. He also contended that the procedure for issuance of Notice under clause 6 of the contract was not complied with before termination of the contract.

Responding to the above allegations , Mr. Mtung'e contended that the testimony of PW1 and PW2 was sufficient to establish that there was breach of contract by the appellant. He referred to the testimony of PW1 where he reported to have been ordered to stop harvesting by PW2. He also referred to the testimony pf PW2, the legal officer and secretary of the appellants tree committee, where he stated that he was the one who ordered him to stop logging. The counsel argued that after breach by the appellants, the respondent issued a notice in the form of a demand notice (Exh. P4). Despite the said notice the appellant refused to remedy the situation. In his view, the appellant was in breach of contract and the trial court was correct it its finding.

For my part, I have carefully examined the records and considered the submissions in light pf the grounds of appeal and the raised issues. I would start by pointing out that there is no dispute on the existence or valid of the contract between the parties. However, parties are at logger heads on whether the appellant are in breach of the said contract.

To resolve the question of breach of contract, I propose to address my mind on facts and evidence alleged to constitute breach of contract. Looking at the records it appears clear to me that there is sufficient evidence on record confirming that the legal counsel and secretary to the tree committee (PW2) was the person responsible for coordination and operations of the committee. This is provided through the testimony of PW2 himself and confirmed by DW1 and DW2 who both testified that PW2 was responsible for the affairs of the committee. Both parties were in agreement that as far as the affairs of harvesting trees was concerned, the secretary to the tree committee, that is PW2, was an authority. On his part, PW2 informed the trial court that he was ordered by his superiors to inform the respondent to suspend operations on site. PW1 also testified that upon receipt of the orders from PW2 he procced to suspended operations on site and waited for directives from the appellants.

In his testimony the respondent stated that after the suspension of operations there was a meeting with senior officers from the appellant held at Lugoda offices. Even then he was not allowed into the site for logging. Thereafter, on 21.06.2016 the respondent issued a demand notice (Exh. P4) to the appellants. The respondent refused to let him

back into the site. The respondent did not settle he invited the appellants to have the matter resolved amicably. This was through a letter dated 15.02.2018 (Exh. P5). Still there was no response from the appellants.

On my part having carefully considered the above evidence on record I am content that the appellant were in breached the agreement with the respondent. I say so because it was established in evidence that the appellant had a valid contract with the respondent for lodgment of trees. I am also satisfied that, through evidence, the respondent was able to establish on the balance of probabilities that he was precluded by the appellant from executing the said contract. That was sufficient to constitute breach on the part of the appellant.

In his submissions, the counsel for the appellant raised a complaint that there was no notice from the respondent on why he left the site. I have carefully considered the above evidence. I have to say that this contract, like many others, had no specific form of a notice envisaged under clause 6 of the contract. In the circumstances any notice would suffice. In the present case the respondent issued a demand notice (Exh. P4) as well as invitation to amicable settled (Exh. P5) that, these documents were, in my view, sufficient to constitute a notice to the appellant that there were elements of breach by the appellants and as well as for termination of the contract. Both DW1 and DW2 did not refute that the said notices were not received by the appellants. Besides, the issue here in not whether or not the contract was terminated, which as I have indicated above was technically terminated, the issue here is

whether the appellant were in breach when they ordered the respondent to vacate the site and when they refused his return into the site. In my considered view, the appellant were in breach of the said contract.

I have also examined the records and noted that the respondent never alleged force majeure in his testimony as was alleged by the counsel for the appellant. I am aware that by raising these allegations the counsel for the appellants intended to argue that the procedure for issuance of notices relating to force majeure clause 7 of the contract was not complied with by the respondent. In my view this point the appellants own craftmanship. I will therefore not be detain much on this as I hereby do dismiss the unsubstantiated claim. As I have pointed out earlier, the appellants through a secretary to the tree committee ordered the respondent to suspend operation and refused re-entry into the site. This, in my view, was not an act of force majeure.

On another limb the counsel for the appellants contended that PW2 had interests to serve. In this contention, the counsel implored that the trial court could have treated the testimony of PW2 with caution. However, in his submissions related to this claim the counsel did not state what exactly were the interests PW2 serving in the circumstances of this case. In considered view, the fact that PW2 was terminated by the appellant was in no way an indication that he had interests to serve or that his testimony was unreliable. The point of the matter is that he testified before the trial court on oath and his evidence was not controverted. On the balance of probabilities, the trial court believed his testimony. I also see no reason of disbelieving him. As such I am

contented that the trial court was justified in trusting PW2. Besides, the trial court had the benefit in assessing his conduct before the court. This allegation is also baseless. Considering all of the above, I am convinced that the issue whether the appellants were in breach of the contract is answered in the affirmative. In the circumstance, I find no merit in the first and second ground of appeal.

I will now turn to consider the third, fourth and sixth grounds of appeal which are the subject of the second issue in this appeal. That is whether the trial court was correct in holding that the respondent suffered specific damages as a result of breach of contract by the appellants. The appellants faults the trial court in assessment and granting special damages totaling TZS. 32,420,000.00 which, according to him, were not proved. It is not in dispute that, at the trial court the respondent prayed for payment of TZS. 200,000,000.00 as specific damages. The trial court was satisfied that the respondent was able to establish TZS. 32,420,000.00. I have considered the submissions by the parties and came to a conclusion that there is no reason in disturbing the discretion and findings of the trial court in its assessment of special damages. I am therefore content that the trial court was justified in concluding that the respondent suffered damages and was thus entitled to the established specific damages. The second issue is answered in the affirmative to the extent explained above. In the circumstances, the third, fourth and sixth grounds of appeal are devoid of merits.

Having found that there was sufficient evidence to support breach of contract. I find no merit in the appellant contention that the trial court

did not consider the final submissions. The fifth issue is also devoid of merits and the same is hereby dismissed.

Lastly, I will consider the seventh ground of appeal which relates to general damages. On this the appellant main complaint is that the trial court erred in granting general damages amounting to TZS. 200,000,000.00 without considering evidence on record. The position of the law is well settled that general damages are that what the law presumes follow from the type of wrong complained of. They do not need to be specifically claimed or proved to have been sustained. In **Tanzania Sanyi Corporation v. African Marble Company Ltd** [2004] TLR 155 the Court held that: -

> *"The position is 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 wrongdoing must, therefore, have been cause, if not a sole or a particularly significant cause of damage"*

In the present case the trial court awarded TZS. 200,000,000.00 in general damages because the respondent was jobless for five years. However, there was no evidence on record to support that the respondent was jobless as contended by the trial court. In arriving at the above amount, the trial court estimated that in the five years of the alleged unemployment the respondent lost earnings of approximately TZS. 120,000,000.00 annually. That amount was multiplied by the five (5) years he was unemployed resulting to a total of TZS. 600,000,000.00. The court then pronounced that the respondent had

been awarded TZS. 200,000,000.00 in general damages. As I have pointed out above, there was no evidence to support or justify the amount awarded by the trial court. Whilst acknowledging that the trial court had a discretion in awarding general damages, that discretion was to be exercised with the rules of reason and justification and not from personal whims. All said and done, I find merit in the seventh ground of appeal. The third and final issue in this appeal is thus answered in the negative. Considering the above, I am content that the trial court was not correct in granting TZS. 200,000,000.00 in general damages. That said I reduce the general damages from the initial TZS. 200,000,000.00 to TZS. 10,000,000.00.

That said the appeal succeeds to the extent that, the amount of general damages is reduced from 200,000,000.00 to TZS. 10,000,000.00. Otherwise, the remaining grounds are dismissed for being devoid of merits. Having resolved that the appeal partly succeeds, each party shall cover their costs.

It is so ordered.

DATED at **IRINGA** this **16th** day of **DECEMBER, 2022.**

S. M. Kalunde

JUDGE