

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(CIVIL REGISTRY)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CIVIL APPEAL No. 4 OF 2021

(Arising from the District Court of Bunda at Bunda in Civil Case No. 3 of 2020)

TUMAINI RASHID MACHUMU ----- APPELLANT

Versus

S & C GINNING CO. LTD
M/S SPIDER AUCTION MART } ----- **RESPONDENT**

JUDGMENT

21.02.2022 & 14.03.2022

Mtulya, F.H., J.:

An appeal was registered in civil appeal registry of this court as number 4 of 2021 complaining on two (2) important issues which were resolved to their finality by the **District Court of Bunda at Bunda** (the district court) in **Civil Case No. 3 of 2020** (the case), *viz.* first, whether specific damages in the case were specifically pleaded and proved; and second, whether the district court failed to exercise its discretionary powers in awarding general damages.

The facts and evidences which were registered in the district court had made the parties and district court to formulate three (3) issues, which are reflected at page 3 of the judgment, namely: first, whether the plaintiff deserves special damages regarding the

renovation costs incurred; second, whether the plaintiff deserves general damages for loss of the house which its sell was nullified; and third, what reliefs are the parties entitled to. Replying the three (3) cited issues, the district court held that: first, the plaintiff failed to state specifically the costs incurred for renovation; the first defendant to pay the plaintiff general damages at the tune of Tanzanian Shillings Ten Million (10, 000,000.00/=); and finally, the first defendant to pay the plaintiff the amount of money he used to buy the said house.

The reasons in arriving to such determination are displayed at page 4 and 5 of the judgment of the district court. The reason of holding the first issue shows that:

*...the plaintiff did not state the condition of the house when he bought compared to the present state of the house...this court cannot grant specific damages...I am guided by decision of the Court of Appeal in **Zuberi Augustino v. Anicet Mugabe** [1992] TLR 136 that specific damages must be specifically pleaded and proved..*

On the second holding, the reason is reflected at page 5 of the judgment, which in brief, shows that the plaintiff incurred disturbances and costs in the whole process of moving from one

house to another and the district court cited the authority of the Court of Appeal in **Stanbic Bank Tanzania Limited v. Abercrombie & Kent (T) Limited**, Civil Appeal No. 21 of 2001; and finally, the court reasoned that the house was legally bought hence the first respondent has to pay the plaintiff the amount of money used in buying the house.

It is both the decisions and reasoning of the first and second issues which were brought in this appeal seeking intervention of this court. In this court, the parties agreed to argue the appeal by way of written submissions and accordingly complied with the scheduling order. In brief, the appellant submitted that the valuation report (exhibit P. 2) shows that the appellant had specifically pleaded and proved the amount of Tanzanian Shillings Fifty Eight Million Eighty Hundred Forty Eight Thousand Only (58, 848,000/=) as per precedent in **Bamprass Star Service Station Ltd v. Mrs. Fatuma Mwale** [2000] TLR 390, but the district court misdirected itself in assessing the evidences which were registered in the case.

On the second complaint, the appellant contended that the general damages granted by the trial court is too minimal compared to the damage suffered by the appellant following breach of contract caused by the first respondent, as the house was bought by the appellant legally. According to the appellant, the assessment

conducted by the district court was wrong as it did not consider renovation costs which were incurred by the appellant during the renovation of the house as per precedents in **Reliance Insurance Company Ltd & Two Others v. Festo Mgomapayo**, Civil Appeal No. 23 of 2019 and **Davies v. Powell** (1942) 1 All E. R. 67 as approved in **Nance v. British Columbia Electric Rally Co. Ltd** (1951) AC 601.

According to the appellant, this court, as the first appellate court, has the duty to re-valuate the entire evidences on record and come up with its own findings of facts or arrive at its own conclusion. To bolster his argument, the appellant cited the authority of the Court of Appeal in **Deemay Daati & Two Others v. Republic** [2005] TLR 132 and **Kurwa Mohamed Mwakabala & Another v. Republic**, Criminal Appeal No. 542 of 2007.

Replying the submissions of the appellant, the first respondent submitted briefly that the decision of the district court in the case is justified by the decision of the Court of Appeal in in **Bamprass Star Service Station Ltd v. Mrs. Fatuma Mwale** (supra), which held that specific damages must be strictly proved. In order to substantiate its submission, the first respondent submitted that the appellant did not itemised each material bought and its accompanied receipt to justify additional costs in renovation of the house. To the exhibit P.2, the

first respondent contended that it was a general valuation report without any specific additional costs.

On the second complaint of appeal, the first respondent submitted that the assessment of general damages was proper and in any case he was awarded more than what was necessary in law. According to the first respondent, the appellant was granted costs of the house and general damages of Tanzanian Shillings Ten Million (10,000,000/=), which is foreseeable in law. The second respondent on his part, declined appearance and no reasons were registered. In his brief rejoinder, the appellant reiterated his earlier position and authorities in precedents contending that the district court failed to assess the evidence on record in both specific and general damages.

I perused the record on this appeal and found that on 25th March 2020, the case was filed in the district court. In his plaint, the appellant registered six (6) pages materials and the last paragraph prayed for judgment and decree in four (4) levels, *viz.* specific damages to the total Tshs. 58,000,000/=; general damages to the total of Tshs. 100, 000, 000/=; costs of the suit; and any other reliefs.

In order to substantiate the specific damages cited in the plaint as per section 3 (2) (b) of the **Law of Evidence Act** [Cap. 6 R.E.

2019] (the Evidence Act), the appellant had produced in the case at district court a **Valuation Report for Market Value Assessment Purposes on Plot. No. 66 Block J Kamunyonge Area Within Musoma Municipality in Mara Region**, prepared by Betho Luoga of Musoma Municipal Council in November 2016 (the report) displaying the value of land being Tanzanian Shillings Fifty Eight Million Eight Hundred Forty Eight Thousand Only (58, 848, 000/=). The report was admitted in the case and marked as exhibit P.2. However, exhibit P.2 is silent on the items which were added in the renovation to increase the costs to the stated sum, Tshs. 58, 848,000/=.

Following the silence on specific items bought and added to the house accompanied with receipts, the district court observed that:

*...the plaintiff is claiming 58, 848,000/= from the first defendant as a specific damages incurred for renovation of the house...toilets, finishing, plastering, [fixing] doors and windows...and tendered exhibit P.2...this court is of the view that the **exhibit P.2 is not enough evidence to make this court to believe that the plaintiff incurred the renovation costs of Tshs. 58, 848, 000/=.***

(Emphasis supplied).

I have already cited the holding and reasons of the district court on the subject, and need not to repeat. The established law in this court and Court of Appeal is that: *special damages must be specifically pleaded and proved*. This has been the practice of our courts of record since 1992 in the precedent of the full court of the Court of Appeal in **Zuberi Augustino v. Anicet Mugabe** (supra) and has been cherished by a number of precedents since then (see: **Reliance Insurance Company Ltd & Two Others v. Festo Mgomapayo** (supra); **Stanbic Bank Tanzania Limited v. Abercrombie & Kent (T) Limited** (supra); **Grace Ndeana v. Consolidated Holding Corporation**, Civil Appeal No. 76 of 1999; and *Judge In-Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni* [2004] TLR 44).

In the precedent of the full court of the Court of Appeal in **Zuberi Augustino v. Anicet Mugabe** (supra) the facts display that:

The Mr. Anicet Mugabe entrusted his mini-bus vehicle to the Zuberi Augustino with the ultimate intention of selling it. While in possession of Mr. Augustino, the engine of the bus was blown off. In a suit filed by Mr. Mugabe in this court, Mr. Augustino was found at fault and Mr. Mugabe was awarded special costs Tshs. 1,000,000/=.

Mr. Augustino was dissatisfied by the decision of this court hence preferred for full court of the Court of Appeal based in Mwanza

Region. The Court of Appeal finally held that: *it is trite law that special damages must be specifically pleaded and proved.*

In the present appeal, the appellant specifically pleaded on the amount sum of 58, 848, 000/=, without specific proof of the same during the hearing of the case at the district court. He cannot be rewarded against the established precedents of this court and Court of Appeal, even if there is sympathy on part of this court. The law knows no sympathy or equity (see: **Baclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016 and **Hezron Hudson Winani & Another v. North Mara Gold Mine Ltd**, Civil Application No. 2 of 2022).

I am aware of the position of law with regard to award of general damages. They are normally awarded at the discretion of the court. I am equally aware that the award must be arrived in consideration of correct principles of law (see: **Reliance Insurance Company Ltd & Two Others v. Festo Mgomapayo** (supra); **Davies v. Powell** (supra) and **Nance v. British Columbia Electric Rally Co. Ltd** (supra). In short, any award or change of the already granted award, in general damages, must be accompanied with reasons (see: **Reliance Insurance Company Ltd & Two Others v. Festo Mgomapayo** (supra). In the present appeal, record shows the district court awarded the general damages of Tanzanian Shillings

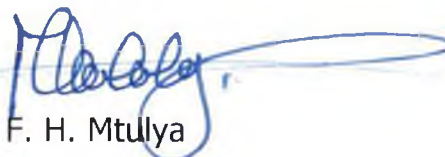
Ten Million with reasons, and I do not think I have to interfere with the decision on the award in absence of good reasons or any plausible explanations.

Having said so, and for the outlined reasons, I have decided to uphold the judgment of the district court in the case and hereby dismiss the appeal without costs. I have dismissed the appeal without costs for obvious reason that the fault which initiated the present case was caused by the third party, Mr. Samson Maswaga, a judgment debtor in **Civil Case No. 27 of 1998** decided by the district court, who is not party in the present suit.

Ordered accordingly.

Right of appeal explained.




F. H. Mtulya

Judge

14.03.2022

This Judgment was delivered in Chambers under the seal of this court in the presence of the appellant's learned counsel Ms. Maula Tweve and in the presence of the first respondent's learned counsel Mr. George Warioba.


F. H. Mtulya

Judge

14.03.2022