

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**PC. CIVIL APPEAL NO. 2 OF 2021**

(C/O PC Civil Appeal No.20 of 2020 Nkasi District Court, Original Civil Case No. 27 of  
2020 – Kirando Primary Court)

(Benedict B. Nkomola, RM)

**ANJELINA ROBERT KALYATA ..... APPELLANT**

**VERSUS**

**ANANIA MSALANGI ..... 1<sup>st</sup> RESPONDENT**

**EMILIANA KISIMBA ..... 2<sup>nd</sup> RESPONDENT**

**JUDGMENT**

Date: 10/03 & 08/04/2022

**NKWABI, J.:**

The District Court overturned the decision of the trial court which decided in favour of the appellant. The district Court differed with the trial court in its findings that the claim had been proved on the balance of probabilities and ordered the appellant be paid her costs and the expected income therefrom. The trial court had decided that the parties had a contract for supply of choir uniforms and it was the respondents who breached the contract. The respondents were not satisfied by the decision of the trial court. They successfully appealed to the District Court.

The appellant was aggrieved with the decision of the District Court hence this appeal.

The appellant is faulting the decision of the District Court on grounds that (1) the District Court erred in deciding against her favor while she had proved the claim (2) the District Court had decided that there was breach of contract and wrongfully determined that specific damages were not proved while what was claimed for was general damages and (3) It was wrongful for the District Court to deny her recovery of damages despite of its finding of breach of contract.

It is for the above grounds the appellant is praying this court to allow her appeal, quash the decision of the District Court and set aside its orders while upholding the decision of the trial court. She also prayed for costs from the trial court to this court. The respondents resisted the appeal. They argued that there was no contract between the parties hence no breach of contract. No proof of receipts and prayed it be dismissed with costs.

During the hearing of this appeal, the appellant was represented by Mr. Baltazar Chambi, learned advocate, while the Respondents appeared in person, unrepresented.

Arguing the appeal, Mr. Chambi submitting on the 1<sup>st</sup> and 3<sup>rd</sup> grounds together maintained that it is incorrect that the appellant failed to prove specific damages. She proved loss of expectation which is allowable as per **Abrogast Christopher Warioba v National Microfinance Bank Ltd & Another**, Civil Case No. 229 of 2014, HC at DSM (unreported), section 73(1) of the Law of Contract Act and **H. H. Hillal & Co. Ltd v Medical Store Department & A.G.**, Civil Case No. 105 of 2015, HC at DSM (unreported) to the effect that:

*"There cannot be a wrong without a remedy."*

On the 2<sup>nd</sup> ground Mr. Chambi advanced that since there was damage then there ought to be an order of general damages. He thus prayed the appeal be allowed with costs.

In their submissions, the respondents argued that there was no proof of contract, no exhibit was tendered. They did not make the order and no proof

as to who received the consignment. They insisted the appeal be dismissed with costs.

In rejoinder, Mr. Chambi urged that the appellants received the samples of the uniform but the transaction was not put into writing. The respondents did not dispute there was breach of contract. The appellant suffered a loss and prayed for compensation. He insisted the appeal be allowed with costs.

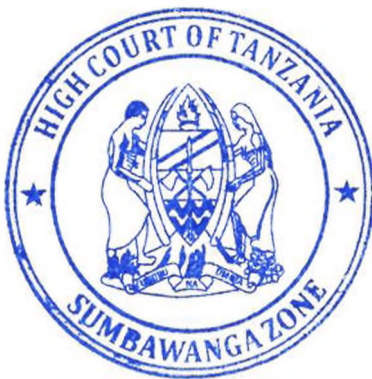
With the intense respect to Mr. Chambi, I am not persuaded that the appellant proved the existence of the contract or damages. The appellant ought to have proved that the respondents had the capacity to execute a contract for the group (choir). That she miserably failed to prove. How could the respondents be held responsible for the group's engagements if any? Is there any constitution of the group or memorandum that empowers the respondents to act on behalf of the group (choir)? If not, then how could the respondents be held responsible in the circumstances? It is for that reason I find that the appellant's case was not proved on the balance of probabilities. No wonder the respondents questioned the existence of the contract and properly so. For avoidance of doubt, the case laws that were cited by Mr.

Chambi to back up the appeal, are with the greatest respect to Mr. Chambi, found to be distinguishable with the case under my consideration.

The culmination of the above deliberation, I hold that the appellant failed to prove her case on the balance of probabilities. The District Court was as well justified to allow the appeal of the respondents though on a different ground. This appeal, in this court, is as well dismissed with costs for want of merits.

It is so ordered.

**DATED at SUMBAWANGA** this 8<sup>th</sup> day of April, 2022



**J. F. NKWABI**  
**JUDGE**