

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL CASE NO. 113 OF 2020

TANZANIA NATIONAL ROADS AGENCY(TANROADS).....1ST PLAINTIFF

THE ATTORNEY GENERAL.....2ND PLAINTIFF

VERSUS

CAMEL CONCRETE (T) LTD.....DEFENDANT

SUMMARY JUDGMENT

31st March 2022 & 29th April 2022

E.E. KAKOLAKI J.

On 19th August 2020, the plaintiff herein filed a summary suit against the defendant claiming among other things for payment of Tanzanian shillings two hundred and fifty-four million, five hundred thousand (254,500,000.00/= being costs used for reconstruction of the damaged Mabey Bridge situated along Banana-Kinyerezi Tabata Road. It was deposed by the plaintiffs in their plaint that, on 7th March, 2014 the defendant's truck with registration No. T 366 CMZ, loaded with concrete forced to pass on the Mabey Bridge, situated along temporary diversion installed to allow construction of permanent bridge along Banana-Kinyerezi Tabata Road Dar es Salaam, destroyed it hence caused breakdown of communication and

inconvenience to other road users. It was plaintiffs contention that, following that caused damage of the bridge and upon being notified the defendant apologized and agreed to reconstruct it according to the specifications issued by the plaintiffs, but she failed to heed to her promise even after being issued with the bill of quantities (BoQ). Given the importance of the said road the 1st plaintiff had to reconstruct it and demanded the costs incurred from the defendant but in vain. Despite of issuing her with a demand notice for payments of Tshs. 254,500,000.00 incurred in the reconstruction of the damaged bridge hence the present suit.

Upon filing this summary suit and having effected service to the defendant, the defendant vide Misc. Civil Application No. 675 of 2020 applied for leave to appear and defend the suit as per the requirement of Order XXXV Rule 2(2) of the Civil Procedure Code Cap 33 R.E 2019. However the same was rejected for the reasons that, defendant failed to demonstrate that there were bonafide triable issues to warrant this court grant him leave to appear and defend this suit hence ex-parte proof by the plaintiffs.

Following plaintiffs' claims and averments as alluded to in the plaint, three issues were framed by court for determination of the suit. These are:

- (1) Whether the defendant's truck with registration No T366 CMZ destroyed Mabey bridge situated along Banana-Kinyerezi Tabata Road,
- (2) If the first issue is answered in affirmative, whether the plaintiff is entitled to Tsh.254,500,000/=.
- (3) To what reliefs are the parties entitled.

When the matter was called for hearing plaintiff was represented by Mr. Stanley Mahenge assisted by Mr. Luka Shishila both State Attorneys. It is the law under section 110(1) and (2) and 111 of the Evidence Act, [Cap. 6 R.E 2019] that, he who alleges must prove and the onus of so proving lies on him. On the onus of proof the Court of Appeal in the case of **Abdul Karim Haji Vs. Raymond Nchimbi Alois and Another**, Civil Appeal No. 99 of 2004 (CAT-unreported) held thus:

"...it is an elementary principle that he who alleges is the one responsible to prove his allegations."

It is also a settled law that the standard of proof in civil suit is on the balance of probabilities as the court has to satisfy itself that on the evidence adduced the event was more likely to occur than not. This stance is found in the Court of Appeal decision of **Mathias Erasto Manga Vs. M/S Simon Group (T)**

Limited, Civil Appeal No. 43 of 2013 (CAT-unreported) while making reference to the case of **Re Minor** (1996) AC 563 where it was held that:

“The balance of probability standard means a court is satisfied an event occurred if the court considers that, on the evidence the occurrence of the event was more likely than not.”

In this case in discharging their noble duties of proving the case, they summoned one witness and tendered six (6) exhibits. In his testimony PW1 (Mr. Elson Mweladsi), an Engineer, who is working as head of planning section at TANROADS Dar es salaam, stated that on 7th March, 2014 the Tabata Kinyerezi bridge was destroyed by the Truck owned by CAMEL Company (defendant). He tendered some pictures (exh.P1) showing the destruction of the said bridge and the motor vehicle involved in causing that destruction. He said having been made aware of the damage caused by her truck the defendant apologized and promised to repair it under 1st plaintiff's supervision the promise which she failed to heed to instead requested for repair costs in which the bill of quantities valued at Tshs. Tsh.254,500,000/=, was availed to her. To prove communication between parties PW1 tendered in court a series of documents including a letter wrote by Camel to TANROADS on 17/03/2015, apologizing for destruction of the bridge caused

by her vehicle with Reg. Non 366 CMZ requesting to repair it (exh.PE2), a letter by TANRODS responding to the defendant's letter of 17/03/2015 (exh. PE3), a letter from defendant requesting for estimation of repair costs, methodology and materials to be used (exh. PE 4), and a letter from plaintiff to defendant dated 17/03/2015 showing estimated cost for repairing of damaged bridge with its BOQ annexed to the tune of Tshs. Tsh.254,500,000/= (exh. PE5). He stated PE5 was never responded to.

PW1 further testified that, since there was communication breakdown between banana and Kinyerezi area, a very important road, the 1st plaintiff directed a contractor named AFRIQ Engineering and Construction Co. Ltd to repair the bridge which its cost kicked Tsh.254,500,000/=. He told the court that, a demand letter was issued to the defendant (Exhibit) PE6) notifying her of the action taken by the 1st plaintiff to reconstruct the said bridge after her failure to do so, and requested for refund of Tsh.254,500,000/=. Nevertheless, defendant never paid the said amount despite of receiving the demand said demand letter, the act which prompt the plaintiff to institute the present case. PW1 requested the court to find merit in this suit and proceed to grant the reliefs as follows:

- (a) Payment of Tsh.254,500,000/= as costs for reconstruction of the destroyed bridge at Kinyerezi.
- (b) Interest to the claimed amount, from the date of judgment up to the time of full payment of the decreed amount.

In considering the plaintiffs' claims in line with the tendered evidence by PW1, I wish to start by responding to the first issue as to whether the defendant's truck with registration No. T366 CMZ destroyed Mabey bridge situated along Banana-Kinyerezi Tabata Road. From the outset, this issue need not detain this court. From the evidence of PW1, pictures of the bridge and the motor vehicle involved (exh. PE 1) as well as the defendant's letter to the 1st plaintiff (exh. PE2) apologizing for destruction of the bridge caused by her vehicle, it is no doubt that, the Mabey bridge was destroyed by the defendant's truck. Thus the first issue is answered in affirmative. Next for determination is the second issue as to whether the plaintiff is entitled to Tsh.254,500,000/=. This is specific damage in which the law requires that, the same must be specifically pleaded and strictly proved as such damages cannot be granted basing on mere reasonable of claims. The standard of proof of specific damages is stated in plethora of authorities. In the case of

Zuberi Augustino Vs. Anicet Mugabe (1992) TLR 137, the Court of Appeal when deliberating on how specific damages should be proved said:

"It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved."

In another case of **NBC Holding Corporation Vs. Hamson Mrecha**, Civil Appeal No. 35 of 1995 (2002) TLR 71 at page 77 the Court deliberating regarding proof of special damages said:

"We think reasonableness cannot be basis for awarding what amounted to special damages, but strict proof thereof."

In this case therefore the plaintiffs are not spared from discharging their duties of strictly proving that specific or special damage. It is evident as testified by PW1, the testimony which I have no reason to disbelieve that, the bridge was reconstructed by AFRIQ Engineering and construction Co. Ltd at the cost of Tshs. 254, 500,000/= since that unchallenged cost is reflected in exhibit PE5. That being the finding, the second issue is also answered in affirmative. Henceforth, judgment is entered in favour of the plaintiffs and it is hereby decreed that:-

- (i) The defendant shall pay the plaintiffs Tanzania Shillings Two hundred and fifty-four million five hundred thousand (Tshs.

254,500,000) being costs used for reconstruction of the damaged Mabey Bridge.

- (ii) The defendant shall pay interest of 20% per annum of the decreed amount in item (i) above from the date of filling this suit to the date of judgment.
- (iii) The defendant shall pay the plaintiffs interest at court's rate of 7% per annum of the decretal amount from the date of judgment to the date of full payment.
- (iv) Costs of this suit be covered by the defendant.

It is so ordered.

DATED at Dar es salaam this day of 29th Day of April, 2022



E. E. KAKOLAKI

JUDGE

29/04/2022.

The Judgment has been delivered at Dar es Salaam today on 29th day of April, 2022 in the presence of Mr. Stanley Mahenge for the plaintiffs and Ms. Asha Livanga, Court clerk and in the absence of the defendant.

Right of Appeal explained.



E. E. KAKOLAKI
JUDGE
29/04/2022

