IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

RM. CIVIL APPEAL NO. 3 OF 2021

JACKLINE MICHAEL .... APPELLANT

VERSUS

JOYCE NKOSWE .... RESPONDENT

(Appeal from the decision of the Resident Magistrates' Court of Sumbawanga at Sumbawanga)

(M. S. Kasonde, SRM)

Dated 21st day of December, 2020

In

RM Civil Case No. 2 of 2019

JUDGMENT

04/04 & 30/05/2022

NKWABI, J.:

This is an appeal against the judgment and decree of the Resident Magistrates' Court of Sumbawanga, at Sumbawanga in Civil Case No. 2 of 2019. Therein, the appellant was the defendant while the respondent was the plaintiff.

In the trial court, the respondent successfully sued the appellant for general damages for pain and suffering she sustained, to the tune of T.shs 10,000,000/= (Ten million only). She was also awarded interests at the Court rate of 12% per annum on the decretal sum from the date of

judgment to the date of full payment. Costs were ordered to follow the event.

The appellant assaulted the respondent on 25th day of July 2018. The Republic obtained judgment in its favour in the District Court of Kalambo on 19/06/2019 in which the appellant was sentenced to twelve months conditional discharge and pay compensation at T.shs 100,000/= to the respondent. The appellant did not appeal against the criminal judgment.

On 10th day of July, 2019, the respondent instituted Civil Case No. 2 of 2019 to get redress for what she found to be a civil wrong. She claimed for recovery of all the treatment costs, aggravated/exemplary damages for assault to the tune of 100,000,000/=, general damages for pains and suffering inconvenience and annoyance at T.shs. 80,000,000/= among other reliefs. The respondent was successful as I have demonstrated above.

The appellant is now, in this court, challenging the judgment and decree of the trial court. She has come with four grounds of appeal which are:

1. That the Trial Resident Magistrate erred in law and fact in awarding general damages to the Respondent T.shs 10,000,000/= while the allegation by the Respondent that she lost such income was not proved on a required standard.
2. That the Trial Resident Magistrate erred in law and in facts in awarding 10,000,000/= to the Respondent which is very excessive according to the station of life of the Appellant and the Respondent.
3. That the amount of compensation in its nature has been awarded as to punish the appellant while she was punished in criminal case No. 48/2018.
4. That the Trial Resident Magistrate erred in law and in fact in failing to consider the Appellant evidence that she paid T.sh. 100,000/= as compensation for to the plaintiff and that she incurred medical expenses to a tune of T.shs 106,000/= for the Respondent awarding again T.sh. 10,000,000/= is punishing the Appellant twice which is contrary to our legal principles that a person should not be punished twice for the same wrong.

The appellant thus prayed the appeal be allowed, declaration that the act of the Resident Magistrate awarding the Respondent to be paid T.shs

10,000,000/= amount to punishing the Appellant twice for the same wrong which is contrary to legal principles and is too excessive in accordance with the station of life of the Appellant and the Respondent. She also prayed the judgment of the Court of Resident Magistrate of Sumbawanga be quashed and or set aside and any other reliefs this Court may deem fit and just to grant.

The appeal was argued by way of written submissions. The appellant fended for herself while the respondent is represented by Mr. Bartazar Chambi, learned Advocate.

I should note at the outset that in reply submission, Mr. Chambi raised a preliminary objection to the effect that the submission was not drawn by a legally qualified person hence contravened section 43(1) of the Advocates Act, Cap. 341 R.E. 2019. He said it is not true that the appellant drew the written submission because she is known a lay woman without any knowledge of law whatever level may be. In my view, I this complaint by Mr. Chambi does not qualify to be a preliminary objection on a point of law since it requires proof that the appellant is a lay woman and that she does not know the law. It is thus dismissed in terms of **Mukisa**

Biscuit Manufacturing Co. Ltd vs West End Distributors Limited [1969] E.A. 696.

Going straight to considering the appeal, arguing the 1st and 2nd grounds together, the appellant contended that the award of T.shs 10,000,000/= as general damages was illegal as loss incurred by the respondent was not proved to the required standard. The respondent had recovered at the time she instituted the case and there is contradiction in that respect. She is of the view that the trial court held that the respondent failed to prove her allegation so it was a misdirection to award general damages without proof of loss and the award was excessive. Further, the general damages awarded are contrary to the real life of the parties and no proof of income. In addition, the respondent failed to prove her claim.

Mr. Chambi argued in counter-submission that, the 1st and 2nd grounds of appeal have no legal basis since damages awarded are not for loss of income but general damages for pains and suffering etc.

As to the argument that there were excessive damages awarded, Mr. Chambi stated that the ground of appeal is unreasonable as it does away with equality before the law. There cannot be discriminatory laws for the poor and the rich. The suit was based on tortuous liability which are actionable per se which no need to prove loss incurred. General damages are discretionary only that the magistrate should not act on wrong principles, he observed. He insisted since this suit involved battery, the victim was left with long time suffering, general damages at T.shs 10,000,000/= is quite proper and reasonable. The order for T.shs 100,000/= compensation ordered in the criminal case that is a criminal punishment for contravention of criminal law, so there is no double punishment.

With respect, I accept the argument of Mr. Chambi. The trial magistrate acted on correct principle. I further accept that the 1st and 2nd grounds of appeal have no basis. There is no double punishment as the reliefs are based on different courts, that is a criminal court and a civil court. There is no need of proof of loss. What was required was proof of suffering and pain which were clearly proved. As to whether the general damage assessed were excessive, I do not think so. The respondent proved her

suit on the balance of probabilities as required in civil litigation. The 1st and 2nd grounds of appeal have to crumble to the ground for being devoid of merits. I have to make a note that without doubt, the respondent when physically fit used to perform her home shores. The frustration has to be compensated albeit through general damages.

At page 4 of the typed judgment of the trial court, this is what the learned trial magistrate had to say in assessing the evidence on the record:

> *"From the available evidence it is beyond question that the Defendant is the one who caused the plaintiff to suffer a fracture of her left leg and actually the plaintiff suffered pains, inconveniences and even loss of income for a specific time due to the injuries sustained. It is beyond question that at a certain point in time the plaintiff, a farmer, was hospitalized and thus failed to attend shamba work. ..."*

There is nothing, in my view, to fault the trial Senior Resident Magistrate in his assessment of the evidence. Apart from that he is the one who had the opportunity to assess the credibility of witnesses based on demeanor.

Submitting on the 3rd ground of appeal, the appellant stated that she was already punished according to the law and the respondent agreed on that punishment as she was compensated for injury and treatment in the primary court in criminal case No. 48 of 2018 and the respondent seemed to have been satisfied. Instituting the civil case was not proper, else she ought to have appealed, she opined.

Responding to the submissions of the appellant on the 3rd ground of appeal, Mr. Chambi asserted that the claim that awarding compensation was a second punishment is not true and it is a total misconception of the law caused by poor knowledge of law the appellant ignores the existence of the law of torts arising out of a criminal conduct.

With respect to the appellant, I agree with Mr. Chambi, that is a misconception on part of the appellant and it is dismissed for lack of merits.

On the 4th ground of appeal, the appellant urged that since the appellant had paid the respondent T.shs. 100,000/= as compensation and the

appellant had made good the medical expenses to the tune of T.shs. 106,000/=, awarding the respondent T.shs. 10,000,000/= amounted to punishing the appellant twice contrary to the legal principle that a person should not be punished twice for the same wrong. She insisted, the trial magistrate did not consider her evidence that she had paid. She prayed the ground of appeal be found to have merits. She had learnt her lesson after being punished in the criminal case. She finally prayed the appeal be found to have merits, it be allowed with costs.

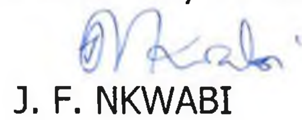
In reply Mr. Chambi argued that the 4th ground of appeal is wrong and bad perception of the law. In the criminal case, the matter was between the government (Republic) where she got punished. That did not shut the door to claim for compensation for such wrong under tort under general damages, he urged I find the appeal having no merits and it be dismissed with costs.

Again, I totally agree with the submission of Mr. Chambi that the respondent was entitled to bring a civil suit to get civil redress under tortious liability. There is no double punishment. The 4th ground of appeal is unmerited, it thus fails

In the premises, I find the appeal devoid of merit, I dismiss it. The judgment and decree of the trial court are upheld.

It is so ordered.

DATED at **SUMBAWANGA** this 30th day of May 2022.



J. F. NKWABI

JUDGE