

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

CIVIL APPEAL NO. 48 OF 2020

(Originating from the Decision of District Court of Kinondoni, Civil Case No. 131 of 2018, before Hon. F. MOSHI-SRM, Delivered on 12th February, 2020)

MOKU SECURITY..... APPELLANT

VERSUS

JUMA SABEYA JUMA..... RESPONDENT

Date of last order: 26/11/2021

Date of Ruling:22/03/2022

JUDGEMENT

MGONYA, J.

This is an Appeal from the Judgment and Decree of Kinondoni District Court in **Civil Case No. 131 of 2018**. The Respondent herein filed a suit against the Appellant on claims total amount of **Tshs. 60,000,000/=** being compensation for injuries sustained as he was involved in an accident which occurred at work place while he was on duty and hired by the Appellant herein.

The suit decided in the favour of the Respondent, the Appellant being ordered to pay the Respondent **Tshs 10,000,000/=**. The Appellant being dissatisfied with the whole

Judgement and Decree of the trial court, is now appealing at this Honourable Court on the following grounds:

- 1. That the trial Court erred in law and facts by giving the brief back ground of the case which never testified by the either part of this matter at the trial Court.***
- 2. That the trial court erred in law and facts by holding that the Respondent suffered injuries which caused dislocation of his left shoulder and his hand got disability and not working properly without any evidence testified and tendered by the Respondent to prove for the same.***
- 3. That the trial court erred in law and facts by holding that the Respondent after injuries he was incapable of discharging his duty because those facts never testified by the Respondent at the trial as after the accident where he got minor injuries, the Respondent herein continue working with the Appellant who was his employer.***
- 4. That the trial Court erred in law and facts by holding that the Appellant is liable to compensate the Respondent while according to the Law, the Respondent supposed to lodge his claim with the***

Director General of Workers Compensation Fund which is the compulsory Fund for any Employer to join for the same.

- 5. That the trial Court erred in law and facts by holding the award of the Compensation of the tune of Tshs. 10,000,000/= to the Respondent from the proved Medical Doctor to prove for the extent of the disabilities and the amount to be compensated according to the Law.***
- 6. That the trial Court erred in law and facts by entertaining this matter without jurisdiction despite the fact that the Appellant raised the preliminary objection from the instances of this matter.***
- 7. That the trial Court erred in law and facts by holding for the liability of the Appellant to compensate the Respondent without any proof of disablement to the Respondent.***
- 8. That the trial Court erred in law and facts by holding that the Appellant is liable to compensate the Respondent without any proof that the Appellant was negligence, branched any statutory duty or had done any wrongful act or omission which the***

Appellant is responsible to do towards the prevention of the injury or accident.

At the hearing of this appeal, both parties prayed to dispose off the Appeal by way of written submissions, the prayer which was granted by this court, hence this Judgement. The Appellant in this Appeal has been represented by Mr. Joseph Msengezi learned advocate while the Respondent appeared in person.

The Appellant submitted in support of appeal to the **first** and **second grounds** of appeal respectively, that the trial court produced historical background of the case which was never testified by either party in the trial.

However, the Respondent herein did not testify and tender any documentary evidence to prove that he suffered serious injuries which caused dislocation of his left shoulder and his hand got disability and led it not working properly as stated in the typed trial Court Judgement.

Hence the Respondent failed totally to prove his case as provided under **Section 110(1) of the Law of Evidence Act, Cap. 6 [R. E. 2019]**, which states that:

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of the

facts which he asserts must prove that those facts exists."

In submission for the **third** and **fourth grounds** of appeal, the Appellant stated that the Respondent at the trial never testified that after injuries he was incapable of discharging his duty, since the Respondent at the accident got minor injuries and there was no any disability. The Appellant averred that she was not liable to compensate the Respondent because according to the **Law of Workers Compensation Act, Cap 263 [R. E 2015]**, the Respondent was supposed to lodge his claim with the Director General of Workers Compensation Fund which is the Compulsory fund for every employer to join; where in case of any injury the Employee will sue his Employer like the matter at hand.

In respect of the **5th ground of appeal**, it was submitted that, the trial court did award the Respondent **Tshs. 10, 000,000/=** without any evidence to prove or assessment to the extent of the injuries and disabilities by medical report from approved Medical Doctor which was wrong and contrary to the law.

The Appellant further stated that, the **6th ground** was about the trial Court having no Jurisdiction in entertaining the matter before it, as the matter is under **the Workers**

Compensation Act, Cap. 263 [R. E. 2015] and its Regulations made thereunder, which has its forum and the trial Court was not among the Courts with Jurisdiction with this matter. It is the Appellant's assertion that, the law provides where to institute a claim for compensation as to the Director General of the Fund, Minister and High Court Labour Division. The commencement date of the said Law is on **1st July 2016** according to **GN No. 212A** dated **30th June 2016**. Further, compulsory contribution was set up and commenced as per **Sections 74(6) and 75(1) of the Workers' Compensation Act**.

Lastly, the Appellant stated that, there was no any negligence nor breach of the statutory duty by the Appellant for the occurred accident on **19th November 2016**, and that the Respondent was treated by the Appellant's costs until he was fine and resumed his work.

On the contrary the Respondent herein stated that, he got a car accident while he was going to his working station which caused him to suffer and sustain injury which caused dislocation of his left shoulder as from then up to the moment. Further that he has not recovered properly and that the Respondent attained disability hence his hand is not working properly as it has been

revealed by the medical report which was submitted at the trial court.

The Respondent further stated that he filed the list of additional documents to be relied upon which was made under **Order XII Rule 1 of the Civil Procedure Code, [Cap 33, R. E. 2019]**, on 26th August 2019. The Respondent further referred to the provision of **section 112 of the Evidence Act, Cap. 6 1967** which provides:

"the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence,....."

From the above provision, it is the Respondent's view that the Appellant failed to prove his allegations to the trial court. Hence, the injuries suffered by the Respondent are entitled for compensation.

In regard of **4th, 5th, 6th, 7th, and 8th grounds of appeal** the Respondent stated that the Appellant did not submit any substantial evidence to move this Court to decide in his favour.

On the question of jurisdiction, the Respondent stated that the claims for compensations for Tort attributed by accident at workplace can also be entertained in Civil Courts. Failure to pursue the matter before Workers Compensation Board did not barred by law to bring the claim before the Magistrates Court.

Moreover, the award which was granted to the Respondent by the trial court being **Tshs 10,000,000/=** as compensation for the loss he suffered and caused permanent impairment of his left shoulder; the Respondent did produce evidence especially the medical report and other evidence whereas there were no doubt that the Respondent suffered injuries and deserves the compensation. Hence the Respondent prayed to this Honourable Court to dismiss the appeal with costs.

At the time of composing this judgement, I noticed that there are three major concerns to determine. Thus the competency of this appeal by determining the issues of jurisdiction of the trial court, the evidence brought to court and the reasons for its final findings for reaching such decision.

As the brief facts of this appeal depicted early that the trial court entertained this matter between the parties who were in an employment relationship and that the Respondent's claims arise from injuries alleged to have sustained while performing his duties in that employment. During hearing at the trial court, the Appellant herein raised the point of preliminary objection as to jurisdiction of the court. The record of trial court reveals that the said objection was overruled on page 3 of the typed proceedings. However, still at this stage of Appeal, the Appellant raised this point as one amongst the grounds of appeal.

The ground of jurisdiction ought to be considered first by this Court as suggested by the Appellant. Under paragraph 3, of the Respondent's plaint, alleges that the plaintiff's injury was caused by the Defendant's negligence where he was involved in an accident which occurred at his work place while on duty where he was hired by the Appellant.

It is the court's understanding that the **Workers Compensation Act, 2015** does not limit or in any way affect any civil liability of an employer or any other person in respect of an occupational injury or disease occurred at work places . This is provided under **Section 30 (1) of the Workers Compensation Act, 2015** which is couched in the following words:

"Nothing in this Act shall limit or in any way affect any civil liability of an employer or any other person in respect of an occupational injury or disease resulting in the disablement or death of an employee if the injury or disease was caused by negligence, breach of statutory duty or any other wrongful act or omission of the employer, or any person for whose act or omission the employer is responsible, or of any other person."

Further, as rightly observed in the Court of Appeal in the case of **THE NATIONAL BANK OF COMMERCE LIMITED VS NATIONAL CHICKS CORPORATION LIMITED AND 4**

OTHERS, Civil Appeal No. 129 of 2015 (Unreported), the court states that:

".....a High Court Division as a part of the High Court, it has jurisdiction to entertain any other matters because its substantive mandate is provided by the Constitution."

From the above observations, and from the fact that this Court has been established under **Article 108 of The Constitution of the United Republic of Tanzania, 1977** it is provided with jurisdiction and core functions of the Court, even to entertain the matter at hand. **This ground of appeal fails.**

In respect of the evidence brought to court, the lower court records is silence on what documents were tendered by the Respondent and admitted by the court rather than the list of documents to be produced before the court. After perusal of the pleadings and the list of documents submitted to the court by the Respondent herein, it is undeniable facts that the Respondent suffered injury while was on duty and got treatment from Muhimbili Hospital.

From that fact, the list of documents and medical reports attached to the plaint though not tendered as exhibits to the trial court form party of the pleadings which laid foundation of the

suit and that real explaining the claims and situation faced by the Respondent to prove his allegations on permanent disability.

The trial court's silence on records on what formula applied in assessing the Respondent injury and awarded the tune amount of **Tshs 10,000,000/=**; this Court is of the opinion that, the amount awarded by the trial court was partly unjustified though the Respondent had a right to be compensated by his former Employer for the injury suffered while working for his Employer.

From the above reasons, this Court considers the trial courts' records and pleadings where the list of documents annexed thereto as foundation though not tendered to the court due to whatever reason which I cannot allow to defeat the fact that the Respondent really suffered from injuries hence eligible for compensation. The said listed documents contains the medical reports and its assessments. Further, is the fact that the Appellant treated the Respondent after injury through **Exhibit D1.**

Therefore, the award of **Tshs 10,000,000/=** is faulted by this Court to the tune amount of **Tshs 5,000,000/=**, for the reasons of justifiable consideration of workers compensation, appreciation and fairness award, justifiable to both parties. **This ground is partly allowed.**

In the light of foregoing, the trial court decision faulted to the extent depicted above. Further, for the interest of justice and fairness, this Court is hereby awarding the Respondent herein to be compensated to the tune amount of **Tshs 5,000,000/=** (Five Million Shillings only) by the Appellant.

Each party to bear own costs.

Consequently, **this appeal is partly allowed** to the extent narrated above.

It is so ordered.

Right of Appeal Explained.




L. E. MGONYA

JUDGE

22/03/2022

COURT: Judgment delivered before Hon. Luambano, Deputy Registrar in the absence of Appellant and in the presence of the Respondent in person and Richard RMA.




L. E. MGONYA

JUDGE

22/03/2022