IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

CIVIL APPEAL NO. 87 OF 2022

(Arising from the judgement and Decree of the District Court of Kinondoni at Kinondoni in Civil Case No. 39 of 2020 dated 28th June, 2022 (Mtega, PRM).)

ATLAS SCHOOL..... APPELLANT

VERSUS

STELLA BENEDICT CHUWA..... RESPONDENT

JUDGMENT

8th December,2022 & 27th February, 2023

POMO, J.

The respondent herein had entered into a contract with the appellant under which, she was obliged to provide transportation services to the appellant vide her motor vehicles bearing registration numbers T. 120 CUA and T. 826 DEA. The consideration for the service was TZS. 120,000/= and 100,000/= per day and it was agreed to be for a period of 1 year from 23rd April 2018 and 22nd April, 2019 respectively. The mode of payment was agreed to be by way of depositing such amount in the respondent's CRDB bank account in every term. It was alleged that, the appellant had failed to honour the contract for not depositing the same in a period of two years, for

that reason, the original suit was instituted by the respondent to seek among other things a redress of TZS. 38,320,000/= being the payment of for school bus transportation service for two years and she successfully got awarded the following: -

(a) TZS. 38,320,000/= being payment for school bus transportation service.

(b) TZS. 5,000,000/= being a compensation for breach of contract

(c) TZS. 5,000,000/= as general damages

(d) Costs of the suit.

Aggrieved by the decision, the appellant has appealed against both the judgment and decree on the following grounds:

1. *That, the trial Court erred in law and fact awarding special damages in contravention of the required standard of law*
2. *That the trial Court erred in law and fact for reaching the decision while contravening the required standard of law.*

On the other hand the respondent, preferred a cross appeal armed with the following grounds:-

1. *That the trial Court erred in fact and law by failure to award special damages even though they were specifically proved by the appellant.*
2. *That, the trial Court erred in fact and law by failure to show reasoning of how it arrived at the decided amount in the award.*

The hearing of appeal was conducted by way of written submissions to which the parties have filed their respective submissions however, I have observed a fascinating aspect to which I see it apt to take it into board before even proceeding with determination of this appeal. Basing on the Court's record, when the matter stood for determination on 27th October, 2022, it was the parties' consensus prayer that the matter be disposed by way of written submissions. Upon the Court sanctification of their prayer, it made an order to which, both parties were to file their submissions in chief on or before 11th November 2022, Their reply's submission on or before 25th November 2022, and rejoinder (if any) on or before 01st December 2023. However, the parties have opted only to lodge their submissions in chief.

This Court and the Apex Court have time without number underscored compliance to Court orders that, a court order is binding and Court orders are made in order to be implemented. See; **Tanzania Harbours Authority v. Mohamed R.** [2002] TLR 76; **Patson Matonya v. Registrar**

Industrial Court of Tanzania & Another, CAT-Civil Application No. 90 of 2011; and **Geofrey Kimbe v. Peter Ngonyani**, CAT-Civil Appeal No. 41 of 2014 (DSM-unreported).

Starting with the appeal itself, on the 1st ground Ms. Julieth Komba for the appellant submitted that, there was no sufficient evidence in record to support the award of specific damages which were awarded. According to her, special damages which were awarded were to a tune of TZS. 10,000,000/= but the respondent did not prove such specific damages as required. She cited the case of **Zuberi Augustino vs. Ancent Mugabe [1992] T.L.R 137** in which the Court of Appeal made a requirement for specific damages to be specifically pleaded and proved. To buttress, she added the cases of **Finca Microfinance Bank Ltd vs. Mohamed Omary Magayu**, Civil Appeal No. 26 of 2020 and **Njombe Community Bank & Another vs. Jane Mganwa** DC. Civil Appeal No. 3 of 2015 (Both Unreported).

On the second ground it was Ms. Komba's submission that, the judgment violated the provisions of Order XX Rule 4 of the Civil Procedure Code, [Cap 33 R.E: 2019] as it did not evaluate the evidence by the parties. To bolster her argument, she cited the case of **VRB CONSTRUCTION COMPANY LTD vs. DEUSDEDITH JOHN LWAMLEMA @ D.J**

LWAMLEMA, Civil Appeal No. 05 of 2020 (Unreported) to which the High Court at Mbeya had stressed on the importance of evaluating the evidence of parties.

On cross appeal, Ms. Rose Nyatega on the first ground had this to say for the appellant on cross appeal, that the appellant had prayed for specific damages and proved them thus she must be awarded. To support for this, she cited the cases of **Eligius Kazimbaya vs. Philli Prisca Mutani and another**, Civil Appeal No. 169 of 2019 CAT at Dsm, **Stanbic Bank Tanzania Ltd vs. Abercrombie & Kente (T) Ltd**, Civil Appeal No. 21 of 2001 (CAT-Unreported). She submitted that specific damages were pleaded to a tune of TZS. 59,220,000/= as appearing under paragraphs 3 and 11 of the amended plaint. That, she had tendered her motor vehicle hire contract and was admitted as exhibit P1. The appellant also had tendered a letter which the respondent had acknowledged a debt of TZS. 42, 400,000/=. According to Ms. Rose, the prayers granted by the trial Court were not the ones pleaded in the amended plaint.

On the second ground of cross appeal, Ms. Rose arguments were such that the amount to which the appellant claimed were not exact that which was awarded, however there were no justification given by the trial court as to why it denied to give the prayed amount. It was her argument that, the

trial magistrate did not state why he arrived to such a decision of awarding less than the amount pleaded for. For these reasons, she prayed for cross appeal to be allowed.

Upon digesting the submissions of both parties, it is now my duty to determine the merit or otherwise of the appeal and cross-appeal respectively. I wish to make it certain at this juncture; that principally, this Court being the first appellate Court is vested with powers to intervene and re-assess the damages so awarded. In this I would like to be guided by the wisdom in the case of Privy Council **i**n **Nance vs. British Columbia Electric Rally Co. Ltd** (1951) AC 601 at page 613 with an approval of this Court in **Finca Microfinance Bank Ltd vs. Mohamed Omary Magayu**, Civil Appeal No. 26 of 2020, HCT at Mbeya (Unreported) and the Apex Court of the Land in **Peter Joseph Kilimbika & Another vs. Patric Aloyce Mlinga, Civil Appeal No. 37 of 2009, CAT at Tabora** (Unreported) where it was stated as here under:-

> *"Whether the assessment of damages be by a judge or jury, the appellate Court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case…before the appellate Court can properly intervene, it must be satisfied that the judge, **in***

assessing the damages, applied a wrong principle of law (as taking into account some irrelevant factor or leaving out of account some relevant one): or short of this that the amount awarded is so inordinately low or inordinately high that it must be a wholly erroneous estimate Of damage.." [Emphasis supplied]

Deducing from the above quotation, it is clear that in order for this Court to intervene and re-assess the damages it must be satisfied of the two elements, namely: -

1. The trial magistrate applied a wrong principle of law (as to taking into account some irrelevant factor or leaving out of account some relevant one)
2. The trial magistrate awarded amount which is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

Guided by the above, I will begin with the appeal itself. On the 1st ground, the appellant has claimed that the appellant had wrongly been awarded specific damages which she did not prove. However, looking at the trial Court Judgment and decree, neither of the two documents indicates

that the appellant respondent was awarded specific damages. Thus, the ground fall short and I hereby dismiss it in it's entirely.

On the second ground, the appellant contends that there was no evaluation of evidence by the trial magistrate. I have taken keen perusal to the judgment of the trial Court, at page 7 to 8 of the decision, the trial magistrate had analyzed the evidence of the respondent *vis-a-vis* the evidence of the appellant and came into a conclusion that there was a breach of contract by the appellant. I could only subscribe to the preposition by the appellant if the same could be vivid on record but it appears to be a myth from the content of the impugned judgment. Thus, this ground also fall short and I proceed to dismiss it.

On cross appeal; on ground one and two are intertwined which I opt to dispose them together. The appellant complains is that the amount awarded were never pleaded in the amended plaint but rather the original one. I have read the record and I agree with Ms. Rose that, the trial magistrate had erred to rely on the original plaint and awarding the amount pleaded in the original plaint instead of the amended one. From the record, on 27th October, 2020 the amended plaint was lodged in the trial Court upon leave and the prayers were respectively; (1) TZS. 59,220,000/= payment for school bus transportation service (2) TZS. 50,000,000 being general

damages for breach of contract (3) interest at the bank rate from the date of judgment (4) Costs of the suit (5) Any other reliefs the Court may deem fit to grant. However, the Court awarded the quite different figures and prayers which actually resembles to the ones appearing in the original plaint. This was an error.

From the record, the TZS. 59, 220,000/= was pleaded as a payment of school bus transportation service. The respondent vide her letter had acknowledged the debt to the appellant to a tune of TZS. 42,400,000/= and the said letter was admitted in evidence undisputedly. I believe, the specific amount to a tune of TZS. 42, 400,000/= was proved to the satisfaction.

As to the general damages, these are principally awarded at the discretion of the Court. The fact that the reason for awarding the general damages were not given by the trial magistrate, it goes without saying that the general damages was not just and fair. Stepping on its shoes, the appellant has not accessed her payment for a long period more than 2 years. She had some efforts to recover that amount. There were no satisfactory correspondences from the respondent which made him incur more costs in making follow ups. This situation does not need one to be genius to figure out the inconvenience, mental agony and uncertainties in the future of her

business. All these being considered, I find it TZS. 15,000,000/= reasonable as general damages.

In the event, I allow the cross-appeal with costs. The respondent in cross appeal is thus hereby ordered to pay the following to the appellant in cross appeal: -

(1) TZS. 42,400,000/= payment for school bus transportation service.

(2) TZS. 15,000,000 being general damages for breach of contract

(3) Interest at the bank rate of 7% from the date of the judgment until payment in full

(4) Costs of the original suit and this appeal

Order accordingly.

Rights of the parties have been duly explained.

DATED at **DAR ES SALAAM** this 27th day of February, 2023.

MUSA K. POMO

JUDGE

27.02.2023