

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**[ARUSHA SUB-REGISTRY]
AT ARUSHA**

CIVIL APPEAL NO. 01 OF 2022

(Originating from the Residents Magistrates' Court of Arusha, Civil Case No. 15 of 2020)

TRUST ST. PATRICK SCHOOL APPELLANT

Versus

PAXTON PASCAL (A Minor suing through Janeth Reuben,
a Next Friend) **1ST RESPONDENT**

JANETH REUBEN **2ND RESPONDENT**

JUDGMENT

22nd February & 21st April 2023

Masara, J

The Respondents herein successfully sued one Lucy Remen and the Appellant at the Resident Magistrates' Court of Arusha ("the trial court"). The reliefs sought at the trial court were, *inter alia* for A declaration that the said Lucy Remen (1st defendant at the trial) acted negligently while in the cause of employment of the 2nd defendant and that the court declares that the 2nd defendant was vicariously liable for the negligence done by her servant. The Respondent claimed for payment of Specific damages to the tune of TZS 32,000,000/= and payment of general damages.

In its judgment, the trial court held that Lucy Remen was negligent for assaulting the 1st Respondent herein, causing him to suffer mental trauma

and bodily injuries. Further, that her acts occasioned financial loss on the part of his parents. The Appellant was held vicariously liable for the negligent acts committed by the said Lucy Remen, since they were done in the course of her employment. The Appellant and the said Lucy Remen were ordered to pay the Respondents specific damages to the tune of TZS 2,300,000/= and general damages to the tune of TZS 15,000,000/=. They were also ordered to pay costs of the suit.

The Appellant was aggrieved by the quantum of damages awarded to the Respondents, hence this appeal. The appeal is on the following grounds:

- a) That the trial Magistrate erred in law and fact in awarding unjustifiable reliefs;*
- b) That the trial Magistrate erred in law and fact in holding the Appellant liable to pay damages to the Respondent; and*
- c) That the case for special damages was not proved at all, leave alone on a balance of probabilities as required by law.*

At the hearing of the appeal, the Appellant was represented by Mr James George, learned advocate, while the Respondents were represented by Mr Asubuhi John Yoyo, learned advocate. Hearing of the appeal proceeded by way of written submissions. Before dealing with the substance of the appeal, I deem it appropriate to provide a brief background culminating to this appeal.

The 2nd Respondent herein is the mother of the 1st Respondent, a child of tender age. The 1st Respondent was enrolled as a pupil at the Appellant's nursery school in January, 2019. While in the Appellant's custody and care, he was subjected to abuse by Lucy Remen (the 1st defendant at the trial court) who was his class teacher. According to the proceedings, Lucy Remen assaulted the 1st Respondent by hitting him with a club on the head, causing him to suffer bodily injury and psychological torture. He also sustained mental trauma, lost confidence and had frequent headaches. The 2nd Respondent took him to various local hospitals for medication. She also took her to Nairobi, Kenya for further treatments. According to the evidence on record, the 1st Respondent was transferred to Prime School, where he also failed to study due to trauma. His mother was compelled to teach him at home. Lucy Remen was prosecuted for the offence of assault at Arusha Urban Primary Court vide Criminal Case No. 421 of 2019. She was found guilty, convicted and sentenced to pay a fine of TZS 500,000/= or to serve six months imprisonment. She paid the fine. Thereafter, a civil case subject of this appeal was instituted.

As earlier stated, the Appellant was impleaded in the case as the employer of Lucy Remen as the tortious act committed by Lucy Remen was done in the course of her employment. The case was heard ex-parte against Lucy

Remen because despite being dully served, she did not appear to defend the case against her. The Appellant denied liability but did not dispute that the 1st Respondent was enrolled at her school. According to the Appellant, the 1st Respondent was not assaulted as such claim was not presented to the school management. The Appellant added that what the 2nd Respondent complained of was that the boy was being overfed and that he was made to stand on the table for a long time as a punishment. The Appellant further accounted that his class teacher made him to stand on the table, as a teaching technique, to make him understand better as he was a slow learner.

As pointed out earlier on, the Appellant herein was held vicariously liable for the negligent acts done by Lucy Remen in the course of her employment which caused the 1st Respondent permanent disability. The trial court's decision was partly influenced by the judgment in respect of Criminal Case No. 421 of 2019 which found Lucy Remen guilty of assaulting the 1st Respondent herein.

In his written submissions, counsel for the Appellant opted to combine all grounds of appeal. He contended that the trial magistrate erred in awarding TZS 2,300,000/= as specific damages without showing the quantification that led her to arrive at that amount. He indicated that in

the plaintiff, the Respondents herein claimed for TZS 32,000,000/= as specific damages but they failed to prove them. Relying on **Zuberi Augustino vs Aniceth Mugabe [1992] TLR**, he conferred that specific damages must be specifically pleaded and strictly proved. That awarding TZS 2,300,000/= as specific damages by the trial magistrate was not backed up by any proof.

With respect to the award of TZS 15,000,000/= as general damages, Mr George averred that general damages must be direct, natural or a probable consequence of the act complained of. He made reference to the case of **Tanzania Saruji Cooperation vs African Marble Limited [2004] TLR 155** on that account. He further stated that although general damages are discretionary, such discretion must be exercised judicially. According to him, there was no medical proof proving that the 1st Respondent suffered mental trauma and bodily injury as a result of the Appellant's negligent acts. That, there being no evidence by a doctor or any medical proof from any hospital that the 1st Respondent suffered permanent disability, there was no basis upon which the award of general damages could be based. He relied on the decisions of **Wire Futakamba vs Felix Boniface Chacha & 4 Others, Civil Appeal No. 2 of 2021** and **Njombe Community Bank & Another vs Jane Mganwa, Civil**

Appeal No. 3 of 2015 (Both unreported). He urged the Court to allow the appeal.

Resisting the appeal, Mr Yoyo joined issues with counsel for the Appellant contending that the trial court was justified in its decision to award both general and specific damages. In his view, the Respondents pleaded under paragraph 11 of the Plaint that she suffered financial loss due to the school fees paid to various schools, including the Appellant. He added that the costs incurred in paying school fees was proved by the receipts which were admitted as exhibits P2 collectively. It was his view that the award of TZS 2,300,000/= as specific damages was backed up by proof.

On the award of general damages, Mr Yoyo asserted that there was independent evidence, which is the judgment in Criminal Case No. 421 of 2019. He accounted that the said judgment proved that the 1st Respondent was assaulted by Lucy Remen and sustained injuries on the head. He relied on section 43A of the Evidence Act, Cap. 6 [R.E 2019] which takes cognizance of a court judgment as conclusive evidence of either guilty or innocence of a party. That, general damages have no precise quantification; therefore, taking into account the injury sustained, general damages awarded are in order. Mr Yoyo also referred to the oral evidence adduced by the 2nd Respondent which, in his view, was of a high

evidential value. It was his position that each case must be determined on its peculiar facts and circumstances.

Considering the injury sustained by the 1st Respondent and the amount awarded, also, relying on the Court of Appeal decision in **Reliance Insurance Company (T) Ltd & 2 Others vs Festo Mgomapayo, Civil Appeal No. 23 of 2019** (unreported), Mr Yoyo maintained that the amount awarded as general damages was proper. He urged the Court to dismiss the appeal with costs.

In a brief rejoinder submission, Mr George maintained that the trial court's decision was erroneous. That even if exhibit P2 was to be relied upon, the amount awarded as specific damages would fall short of the amount awarded. That the said exhibit shows that the amount paid as school fees in the two schools does not make a total of TZS 2,300,000/= awarded by the trial court. Regarding general damages, he insisted that the amount awarded was too excessive since there was no expert evidence to prove the alleged injuries suffered by the 1st Respondent.

Having considered the grounds of appeal, the trial court records and the rival submissions by counsel for the parties, the issue for determination is whether damages awarded to the Respondents are justifiable.

Both counsel locked horns on the TZS 2,300,000/= awarded to the Respondents as specific damages. At the outset, I do agree with the submissions by both counsel that specific damages must be specifically pleaded and strictly proved. There is a plethora of authorities endorsing this principle. See for example: **Zuberi Augustino vs Anicet Mugabe** (supra), **Harith Said Brothers Company vs Martin Ngao [1981] T.L.R. 327, Stanbic Bank Tanzania Limited vs Abercrombie & Kent (T) Limited, Civil Appeal No. 21 of 2001** and **Nyakato Soap Industries Ltd vs Consolidated Holding Corporation, Civil Appeal No. 54 of 2009** (both unreported). In **Harith Said Brothers Company** (supra), it was held:

"Unlike general damages, special damages must be strictly proved. I cannot allow the claim for special damages on the basis of the defendant's bare assertion, when he could, if his claim was well founded easily corroborate his assertion with some documentary evidence The claim for special damages must be, and is dismissed."

In the appeal under consideration, as submitted by counsel for both parties, the reliefs sought by the Respondents herein at the trial court included special damages to the tune of TZS 32,000,000/=. However, in their evidence, nothing was said on how they arrived at such figure. In the plaint, the Respondents also alleged to have suffered financial loss due to school fees paid in various schools, including the Appellant. That

claim was supported by the payment receipts, which were admitted as exhibit P2 collectively. The financial loss suffered was further linked to the costs incurred for medication both in Tanzania and in Kenya. Unfortunately, there was no documentary proof to support such expenses. The Respondents did not avail medical receipts or transport documents to show that the 1st Respondent was attended to in different hospitals here in Tanzania and abroad. Since specific damages are subject to proof, the only proof on record supporting that there was financial loss on the part of the Respondents is exhibit P2, the school fees paid to the Appellant and Prime schools.

Exhibit P2 shows that the Respondents paid TZS 1,180,000/= to the Appellant and TZS 690,000/= at Prime Schools. Those documents were not disputed by the Appellant. That being the case, the quantum to be awarded as specific damages is TZS 1,870,000/=, the school fees paid to the two schools. Like counsel for the Appellant, I am left with no clue on how the trial magistrate arrived at the amount of TZS 2,300,000/=. The award of specific damages by the trial magistrate is therefore altered from TZS 2,300,000/= to TZS 1,870,000/=.

I now turn to the next complaint which is in respect of general damages awarded. It is trite law that in awarding general damages, the

quantification of such damages remains at the discretion of the court. The Court of Appeal in the case of **Peter Joseph Kibilika and Another vs Patric Alloyce Mlingi, Civil Appeal No. 37 of 2009** (unreported) it was held:

*"It is the function of the Court to determine and quantify the damages to be awarded to the injured party. As Lord Dunedin stated in the case of **Admiralty Commissioners v SS Susquehanna** [1950] 1 ALL ER392. **If the damage be general, then it must be averred that such damage has been suffered, but the quantification of such damage is a jury question.**"* (Emphasis added)

The question is whether the award of TZS 15,000,000/= by the trial magistrate was justified. According to counsel for the Appellant, the trial magistrate did not state reasons for awarding such amount. On the other hand, Mr Yoyo contends that the trial magistrate took into account the injuries suffered by the 1st Respondent and dire consequences thereof. Mr George challenged the amount, stating that there was no medical proof that the 1st Respondent suffered the alleged mental trauma and physical injury complained of by his parents.

Whereas I am inclined to agree that the reasons were not succinctly expounded by the trial magistrate, learned counsel for the Appellant ought to take note that he did not dispute the decision of the trial court to the

effect that the 1st Respondent was assaulted by Lucy Remen. Similarly, the judgment of Arusha Urban Primary Court in Criminal Case No. 421 of 2019 which found Lucy Remen guilty of assaulting the victim was not challenged. Therefore, challenging damages awarded on the pretext that there was no proof of assault at this juncture remains to be an afterthought.

There being no dispute that the 1st Respondent was assaulted by Lucy Remen in the course of her employment, the Appellant cannot exonerate herself from the tortious liability levelled against it. In the same breath, there being no dispute that the 1st Respondent was assaulted, by reasonable prudence, he must have received medical care and treatment, the absence of documents or proof by a doctor notwithstanding. That being the case, his parents must have suffered both financial loss and shock. Taking into account the efforts employed by the 1st Respondent's parents in ensuring his safety, including cases filed and time spent, awarding TZS 15,000,000/= as general damages was fair and equitable. I do not find the said amount to be excessive as contended by counsel for the Appellant. I therefore confirm the award of general damages to the tune TZS 15,000,000/= as decided by the trial court.

Consequently, in light of what I have endeavoured to state, I find merits in the appeal with respect of the award of specific damages. I partly allow it to the extent above ascertained. The decision of the trial court is altered with respect to specific damages but maintained with respect to the award of general damages. Considering that the Appeal has partly succeeded, I direct that the Appellant pays half of the assessed costs at the trial court and for this appeal.




Y. B. Masara

JUDGE

21st April 2023