IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

CIVIL CASE NO. 25 OF 2020

SAID SALIM BAKHRESA & COMPANY LIMITED..... PLAINTIFF

VERSUS

BRITAM INSURANCE (T) LTD..... 1ST DEFENDANT

LAKE TRANS LIMITED..... 2ND DEFENDANT

Date of Last Order:16/05/2023

Date of Judgement:23/05/2023

JUDGEMENT

MAGOIGA, J.

The plaintiff, **SAID SALIM BAKHRESA & COMPANY LIMITED** instituted the instant suit against the herein above defendants claiming judgement and decree in the following orders: -

i. Payment of the sum of TZS 501,609,521.55 being value of the motor vehicles with Registration No. T. 946 CFQ, T161 DLQ, T166 DLQ, T178 DLQ, and T947 CFQ damaged by fire on 19th August 2018;

ii. Interest on the above at the rate of 18% from the date of accident [19.8.2018] to the date of Judgment;

iii. Interest on the decretal amount at the rate of 7% from the date of Judgment until full and final payment;

iv. Costs of the suit;

v. Any other relief(s) this honourable court may deem fit.

Upon being served with the plaint, the first defendant through Mr. Nereus B. Mutongore, learned advocate and the second defendant through Mr.Jerome Joseph Msemwa, learned advocate each filed written statement of defence disputing the plaintiff's claims and prayed that the instant suit be dismissed with costs.

The facts of the instant suit as gathered from the plaint are that on 19th August 2018 at Rusumo, Ngara District in Kagera region, motor vehicle [Scania R 470] with registration number T.251 CMY with its trailer number T.578 CPM, the property of the 2nd defendant, driven by Abdallah Seleman [deceased], loaded with fuel heading to Rwanda knocked the plaintiff's motor vehicles which were parked waiting for permits to proceed to Rwanda.

Further facts were that, in that collision, fire broke which consequently burnt down the plaintiff's motor vehicles and trailers with registration No. T. 946 CFQ, T161 DLQ, T166 DLQ, T178 DLQ, and T947 CFQ. It was further alleged in the plaint that those trailers were purchased from Krone Trailers Ltd and Serin Trailers Ltd. The matter was reported to police for investigations and other authorities for assessment and

subsequently the plaintiff notified the 1st and 2nd defendants by lodging a claim of Tshs.501,609,521.55 being the value of the five trailers which were completely gutted down by fire.

The plaintiff's claims were directed to the 1st defendant because of what she alleged that, during the period of accident, the 1st defendant's motor vehicle was insured by the 2nd defendant under third party policy.

Facts went on that, on 23rd May, 2019 a meeting was held between the plaintiff and the defendants and as result such meeting, on 24 June, 2019, the 1st defendant wrote the plaintiff a letter intimating to pay a compensation of Tshs. 7,498,268.69 as the sum payable under the insurance claim as per policy limitation. Dissatisfied with the assessment and gestured amount to be paid, the plaintiff instituted the instant suit claiming the reliefs as contained in the plaint.

The plaintiff at all material time has been enjoying the legal services of Mr. Daimu Kambo, learned advocate whereas the 1st defendant has been enjoying the legal services of Mr. Heriel Munisi, learned advocate and the 2nd defendant has been enjoying the legal services of Mr. Jerome Msemwa, learned advocate.

Before hearing started, the following issues were proposed by parties and adopted by this Court for the determination of this suit, namely:

1. Whether the 2nd defendant's car knocked and caused accident to the plaintiff's car and if so, whether the 2nd defendant acted negligently.
2. Whether the plaintiff is entitled to any compensation from the 1st defendant for the insured motor vehicles as per insurance policy? And if so, whether the amount of compensation of Tshs. 7,000,000/=assessed by the 1st defendant was proper.
3. Whether the 2nd defendant is liable to pay the plaintiff a sum of Tshs. 501,609,521.55 being loss of the plaintiff's motor vehicles which is over and above the 2nd defendants' Insurance contact limit.
4. To what relief(s) are the parties entitled to?

The plaintiff to proof her claims called one witness, **Mr. AMMAR YUNUS TAHERALI- PW1** (to be referred in these proceedings as **'PW1'**). PW1 under affirmation told the court that he is the Finance Manager of Said Salim Bakhresa & Company Limited heading the Transport Unit since 2005. Through the accident subject of this suit, PW1 knew the 1st defendant as insurance company and the 2nd defendant as the transporter of petroleum and deals with petroleum products. It was the testimony of PW1 that, in 2018, one motor vehicle

owned by the second defendant knocked their 4 motor vehicles and 5 trailers causing fire to break and gutted down all the said motor vehicles. PW1 mentioned the trailers involved as T.178 DLQ, T.166 DLQ, T.161 DLQ, T.946 CFQ, and T.947 CFQ the properties of the plaintiff. In proof of ownership, PW1 tendered in evidence the Motor Vehicle Registration Cards collectively and marked **exhibit P1 a-e.**

PW1 further testimony was that, the accident occurred at Rusumo Ngara on 19/8/2018 caused by the motor vehicle of the 2nd defendant with registration No. T.251 CYM and its trailer with registration number T.578 CPM.

Further testimony of PW1 was that, according to police report, the motor vehicle of the 2nd defendant had break defects. And that, immediately after knocking the motor vehicles fire broke gutting down 4 trucks and 5 trailers to ashes. That after the accident, inspectors went on site to make an assessment and police issued a report in Police Form 90, drew a sketch map and Final Report in Police Form No. 115. PW1 stated that these three documents from police were in photocopy as the original were submitted for claim with the Zanzibar Insurance where the trucks were insured. Police Form No.90, Police Form No.F115 and sketch

map were collectively admitted in evidence and marked as **exhibit P2 a-c**.

It was further testimony of PW1 that, after the accident, assessors from Zanzibar Insurance Company and the 1st defendant went to the scene of crime for assessing the loss incurred but they found all five trailers were gutted down to ashes. PW1 told the court that, in the circumstances, no assessment was done because all were gutted to zero and the only option to establish value was by cost of buying the trailers.

PW1 went on telling the court that, based on buying costs, they presented their claim to Britam Insurance (the 1st defendant) and the 2nd defendant because the 1st defendant was the insurer of the 2nd defendant under motor vehicle third party insurance policy. PW1 tendered in evidence third motor vehicle policy as **exhibit P3.**

According to PW1, the cost of buying the five trailers was Tshs. 501,609,521.55 In proof of this amount PW1 tendered in evidence two commercial invoices from Krone and Serin Companies Limited as **exhibit P5a-b.**

PW1 pointed out further that, the 1st defendant wrote the plaintiff rejecting the plaintiff's claim but offered to pay apportioned amount of Tshs.7,498,268.69 as per the insurance contract in accordance with the

policy between the defendants. PW1 tendered the reply from Britam Insurance (T) Ltd, a letter dated 24/6/2019 as **exhibit P4.**

Upon receipt of the reply from the 1st defendant, PW1 told the court that, the plaintiff's management reaction to that letter resolved that this case be instituted to claim the actual costs of the trailers gutted down, whose value of 5 trailers is Tshs. 501,609,521.55 being the cost of purchase and importing motor vehicles in the country plus taxes i.e all applicable taxes in the country.

Explaining the contents of exhibits P1 and P5, PW1 stated that, before the motor vehicle is imported, the supplier must mention chassis number in the commercial invoices. He referred to exhibit P1 where he stated that in **P1a** motor vehicle T.178 DLQ from Krone with Chassis numbers WKesd000000782526, T.166DLQ from Krone-Chassis No. WKesd000000782529, T.161DLQ from Krone with Chassis No. WKesd000000782522, T.946CF from Serin with Chassis No. NLSS01HK812016285, and T.947 CFQ, from Serin-Chassis No. NLSS01HK812016302.

It was further evidence by PW1 that the figures in **exhibit P5a** shows that FOB of trailers, values of Freight, insurance, custom agent fees of supplier and cost of license plate of supplier, the figures in **exhibit P5a-**

each trailer from Krone was costing Euro 32, 428 CIF in Euro. The cost of Serin was 34,500 Euro for each trailer CIF value. The exchange rate was by then Tshs. 2895 per Euro which brings a total of Tshs. 481,392, 180.00. PW1 stated that these figure plus miscellaneous costs of importing motor vehicle was the one making a total of Tshs. 501,609,521.55 which includes port charges, handling charges.

PW1 concluded his testimony by urging this court to grant the prayers as contained in the plaint.

Under cross examination by Mr. Munisi, PW1 told the court that their first claim on the plaint is payment of Tshs.501,609,521.55 being value of motor vehicles damaged on 19/08/2018. Under further cross examination, PW1 admitted that nowhere in the plaint the miscellaneous costs were pleaded and that no receipt was tendered to prove those claims.

Asked who the makers of the trailers in question are, PW1 replied that the maker is Krone and Serin imported in 2017 and 2012 respectively. Pressed on devaluation, PW1 acceded that, motor vehicles depreciates when in use and that same have been in use all the material time bought but was quick to point out that they used importation costs to

arrive at the claimed figure because the management decided so. PW1 said that no TRA assessment was produced.

Under further cross examination, PW1 admittedly to know the meaning of third-party policy is a claim that is paid to the affected by accident and is limited to the contract policy. Shown exhibit P3 and asked what was the limitation, PW1 told the court that, limitation of motor vehicle was Tshs.30 million and that other claims of trucks were paid by Zanzibar Insurance under comprehensive policy.

Shown exhibit P2, and asked if accident was due to negligence of the driver, PW1 responded that there is nowhere in P2 showing that the driver was negligent. On the five trailers, PW1 said were insured by Zanzibar Insurance under the third party policy but tendered no evidence of their cover. Pressed further PW1 admitted that other people's properties were also involved in the accident.

PW1 further explained that he can't claim third party insurance from Zanzibar insurance because they are eligible to claim from the cause of accident. PW1 agreed that in the third-party policy nowhere it is stated that one has to be paid importation costs.

Under cross examined by Mr. Msemwa for the 2nd Defendant, PW1 admitted that no Board resolution to institute this suit was tendered in

this court. He refuted the allegations that, the trailers were not insured though he gave no documentary evidence. PW1 under serious cross examination told the court that each trailer had its own value and the amount claimed if divided by 5 each one gets Tshs.100, 321,904.31. Pressed with cross examination, PW1 told the court that miscellaneous costs was Tshs.19,000,000/=.

Asked to explain how he arrived at the figures claimed in this court, PW1 testified that same was proved by commercial invoices which was for T.946 CFQ and T.947 CFQ was costing Tshs 77,500,000/= each while the rest were each costing Tshs.114,230,000/= which brings a total of Tshs.501,609,521.55 and that 19,000,000/= was miscellaneous costs though he admitted that there was no documentary proof on that.

When asked to show if in the exhibit **P2c** whether T947 was therein mentioned, PW1 stated that it was not among the motor vehicle involved in the accident.

On exhibit P2b PW1 stated that it shows no one with an offence. About insurance, PW1 said the assessment of the accident was done by Zanzibar Insurance though he admitted to have no the report to tender. When referred to para 9 of the plaint about the assessor, PW1 changed

the story and said that assessment was done by the plaintiff and maintained that it was not wrong to do so.

Under re-examination by Mr. Kambo, PW1 told the court that trailers' registration cards refers as motor vehicle registration , so it is correct to refer as motor vehicle.

This marked the end of the plaintiffs' case and same was marked closed.

The 1st and 2nd defendants were fended by one witness each, namely; **Neema Mathayo and Salim Shaibu Salim (**to be referred to in these proceedings as **'DW1'** and **'DW2'** respectively).

Under oath, DW1 testified and told the court that, she has been working with the 1st defendant for 13 years at first as Claims officer from 16th February 2010 to 1st April 2013, as Assistant Claim Manager from 1st April, 2013 to December 2017 and in 2018 was promoted to Claims Manager the position she is holding to date. DW1 went on telling the court that her duties are to receive insurance claims, examine and analyses them by looking the consistence of the information, the contract, to represent the company in court in all claims, to pay all approved claims and gives the position of the company in consideration of the contract in issue.

DW1 told the court that, the relationship between the defendants is that the 2nd defendant is their client by a third-party insurance contract on several motor vehicles. She further stated that the contract between them started in June 2018 to 19th June 2019. Referred to exhibit P3 DW1 told the court that, the contract between her company and the 2nd defendant was for third-party insurance including motor vehicle No. T251 CMY the property of the 2nd defendant involved in the accident. That, the terms of the contract were for third party insurance covering accidents which may be caused by their client against third party to the limit stated in the contract for the entire period of the contract.

According to DW1, the limit in the contract with the 2nd defendant was 30 million for motor vehicles, Tshs. 20 million for person injury and general limit was Tshs 60 million. These monies, testified DW1, were only to be paid upon proof of legal liability to the insured.

It was her further testimony that the difference between comprehensive cover and third party cover is that the former covers all claims including to the client and third parties while the latter insurance cover is only for third party on the property or person and is limited to the amount stated thereon subject to prove.

Further testimony of DW1 was that, on 29/4/2019 her office received a claim from Maseto Auction Mart who were said to be appointed by Zanzibar Insurance claiming that Zanzibar Insurance has paid the plaintiff in this suit a sum of Tshs.1,234,000,000/= for an accident which was caused by the second defendant motor vehicle because the 2nd defendant was their client and caused damage to the plaintiff. The Demand Notice from Maseto to the 1st defendant dated 24/4/2019 and its annextures was admitted in evidence and marked as exhibit **D1a-c**.

Following that, DW1 testified that they replied them in writing telling them that after assessing their claim they are ready to pay Tshs. 20,000,000/= and the rest will be a set off. To support her argument DW1 tendered in evidence a letter from Britam which was admitted as exhibit **D2.** In that said letter, it is said that they explained they can pay according to the limit much as there are other claims which were Tshs 1,732,800,000/=, then proportion of his claims and the contract they have, they told them that they were entitled to Tshs. 20,299,342.99 which DW1 says that they were ready to pay with the condition of the principle of subrogation that means according to the contract they can only settle the amount of 20 million and no more. DW1 said that money was to be paid subject to Zanzibar insurance paying their respective

claim which they paid their clients amounting to Tshs 42,827,950.00/= and eventually this claim was set off by implication because Zanzibar Insurance never came back.

DW1 stated further that other claimants were paid as follows; Pantaleo who was paid Tshs.190,445.21/=, Biliv Company Limited was paid Tshs.943,559.55/=. DW1 tendered in court two discharge and indemnity voucher for Mbago and Biliv Company Limited and their annextures which were admitted and marked exhibit **D3 a-b.**

DW1 went on telling the court that after that, they received another claim direct from the plaintiff of Tshs. 501,609,521.55 but they processed that claim and came up with the amount of Tshs.7,498,268.69/=which they were ready to pay to the plaintiff as evidenced in exhibit P4 but the plaintiff denied the offer. DW1 strongly resisted the payment of Tshs. 501,609,521.55 to the plaintiff basing on third party cover which is limited and told the court that, the policy in issue was limited to Tshs.30,000,000/=for the whole claim. She finally concluded by saying that the claims of the plaintiff are without proof, baseless for being outside the contract they have with the 2nd defendant. DW1, thus, prayed the suit be dismissed with costs and in

the alternative, they are ready to pay Tshs. 7,498,268.69/= as per the contract.

Under cross examined by Mr. Msemwa learned DW1 replied that the claim in the plaint was over and above outside the insurance contract. It was wrong for the plaintiff to claim the whole amount in one basket. On Exhibit D1, DW1 said that the motor vehicle mentioned is T251 CMY with its trailer T578 CPN the property of Lake Transport but the trailer is not listed in that exhibit.

About exhibit D2, DW1 replied that there was no list of motor vehicles mentioned therein. When shown exhibit P2 DW1 stated that in the said PF Nos. 90 and 115 it was stated that the file was under investigation and even in the final report PF 115 it was written that no further legal liability, no mention of motor vehicle and no mention of the 2nd defendant.

Under cross examination by Mr. Kambo, DW1 admitted that they received the plaintiff's claims, processed them accordingly and were valid but they were entitled to be paid only 7,498,268.69 in accordance with the contract and were read to pay that amount if the plaintiff agrees.

Next was DW2. Under affirmation, DW2 told the court that, he is the Breakdown Manager with Lake Transport Limited since 2014 and his duties is to make a following ups of motor vehicles and their movements and follow up any breakdown with the company. He said that on 19/8/2018 occurred an accident at Rusumo which involved their motor vehicle. The motor vehicle in question was T.251 CMY with its trailer which DW2 could not remember its registration numbers. DW2 testified that the accident involved other motor vehicles which caused fire which caused more damage. DW2 mentioned the driver of the motor vehicle in question was Abdallah Abdallah who died instantly.

DW2 further testified that, their motor vehicle had insurance with Britam Insurance Ltd. DW2 was of the view that the claim by the plaintiff should be dismissed because they have never received any notice of claim against them since then. DW2 asserted that if the plaintiff had claim she should have taken it to them and then it was them who could take it to the 1st defendant. Referred to Exhibit P2b the final report, DW2 replied that there are no names of the 2nd defendant or the name of the driver. Further testimony was that the report does not say who was with fault and no copy of the report was given to them but the plaintiff got it. DW2 went further lamenting that in exhibits D1-D3 there

was no mention of the motor vehicles of the plaintiff though no copies were availed to the 2nd defendant. He conclusively prayed this court to dismiss the suit with costs.

Under cross examination by Mr. Kambo, DW2 replied that after the accident, he performs all his duties to the insurer. DW2 insisted other issues of insurance were handled by someone else. Referred to exhibit P4, DW2 answered that their insurer is Britam Insurance Ltd. He insisted that he did not see the letter in office but admitted that the whole place was gutted down with fire and all vehicles around were gutted down with fire.

Under re-examination by Mr. Msemwa by being referred to exhibit P4, DW2 maintained that no name of the person from the 2nd defendant was mentioned nor written and there was no copy availed to them.

This marked the end of hearing of defence case and the same was marked closed.

The noble task of this court now is to determine the merits or otherwise of this suit. However, it should be noted that it is a cardinal principle of law that he who alleges must prove. And in civil cases, the standard of proof is that of balance of probabilities. This principle is enshrined under

provisions of sections 110 and 111 of the Evidence Act, [Cap.6 R.E. 2022].

Section 110 reads as follows;

> *"110(1) whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist"*
>
> "(2) *when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person"*

Section 111 of the same law reads;

> *"The burden of proof in a suit lies on the person who would fail if no evidence at all were given on either side"*

The burden of proving facts rests on the party who substantially assets the affirmation of the issue and not upon the party who desire it, for a negative is usually incapable of proof.

Before embarking to answer the issues framed, I have noted after hearing both sides of this suit that, there are facts which are not

disputed in this case which will assist this court in solving this legal dispute. These are: **One**, that on19/8/2018 at Rusumo Ngara, occurred motor vehicle accident caused by the motor vehicle owned by the 2nd defendant involving various motor vehicles which as a result were gutted down by fire to ashes. **Two**, that the plaintiff's Motor vehicles were among those motor vehicles that were involved in that accident. **Three,** the plaintiff was paid Tshs.1,234,000,000/= by Zanzibar Insurance against some of his gutted motor vehicles and the 1st defendant is ready to pay the plaintiff Tshs.7,498.286.69 in accordance with the approved and apportioned claims under third party policy between defendants.

Now back to the instant suit and starting with the first issue which was couched that **"whether the 2nd defendant's car knocked and caused accident to the plaintiff's cars and if so, whether the 2nd defendant acted negligently.**

Having careful considered the pleadings, the evidence and exhibits tendered by the parties, in particular, exhibits **P2 a-c** which were the Police Forms No. 90 and PF No.115 and a sketch map all from the Police Force, it is without dispute that an accident occurred and some motor vehicles involved in that accident were completely gutted down by fire on 19/8/2018 at Rusumo-Ngara. And the motor vehicle which caused

that accident belonged to the 2nd defendant. This is supported by the evidence of DW2 and exhibit P2 in which it was clearly stated that:

"gari lenye namba za usajili no. T251 CMY/T.578 CPM SCANIA mali ya LAKE TRANS LTD likitokea DSM Kwenda Nchi ya Jirani ya RWANDA likiwa limebeba shehena ya mafuta aina ya petrol.....liliacha njia na kugonga magari mengine yaliyokuwa yamepaki katika eneo hilo yakisubiri vibali na kusababisha kuwaka moto magari yafuatayo; T.773DLP/T.161 DLQM/BENZ,T.678 DLP/T.178DLQ, M/BENZI, T.683 CFD/T.946 CFQ, VOLVO na T. 676 DLP/T.166 DLQ M/BENZ mali ya DAID SALIM BAKHRESA."

Therefore, the first part of issue number one is answered in the positive. However, on the second part of the first issue which is whether the 2nd defendant acted negligently, my considered opinion that, all considered has to be answered in the negative. I will explain. **One,** PW1 never testified to that effect nor documentary exhibits tendered explicitly stating that the 1st defendant was negligent. In the absence of any iota of evidence on record that there was negligence, this court finds the second part of issue number one in the negative.

On that note and for the reasons stated hereinabove, I find the first part of the first issue in the affirmative that the motor vehicle of the 2nd defendant knocked and caused accident in question and the second part of the first issue is answered in the negative that no negligence was proved in this suit against the 2nd defendant.

Next and second issue was couched that **whether the plaintiff is entitled to any compensation from the 1st defendant for the insured motor vehicles as per insurance policy? And if so, whether the amount of compensation of Tshs 7,000,000/=assessed by the 1st defendant was proper**.

This issue will not detain me much because as shown in the evidence of both parties and not disputed the 2nd defendant's motor vehicle caused accident and was insured by the 1st defendant through third party policy cover. So long as the 2nd defendant caused the accident to the plaintiff's motor vehicles, it is evident that plaintiff is entitled to indemnification from the 1st defendant for the insured motor vehicles as per insurance policy.

It is pertinent and important to understand that third party insurance policy is a policy under which the insurance company agrees to indemnify the insured person if he is sued or legal liable for injuries or

damages done to a third party. The aim is to protect insured against the consequential exposure to the direct action of claimant. In the case of **Bailey vs. New South Wales Medical Defence Union Ltd (1995) HCA 28; 184 CLR**, it was held that; the insurance contract is between insurer and insured.

Basing on this principle, to my considered opinion the amount of compensation of Tshs.7,498,268.69 assessed by the 1st defendant was proper because of the relationship that existed between the 1st and 2nd defendants and was limited on the policy of third party and no more.

That said and done, this court finds the 2nd issue in the affirmative that the plaintiff is only entitled indemnification from the 1st defendant from the insurance motor vehicle as per insurance policy and indemnification without any evidence to the contrary is as assessed by the 1st defendant of Tshs.7,489,286.69 and no more.

This trickles this suit to the third issue which is couched that '**whether the 2nd defendant is liable to pay the plaintiff a sum of Tshs. 501,609,521.55 being loss of the plaintiff's motor vehicles which is over and above the 2nd defendant's insurance contract limit.**' The 1st defendant disputed this claim by the plaintiff on reasons that the third party policy cover in question was limited as per the policy

saying that the claims of the plaintiff are without proof, baseless for being outside the contract they have with the 2nd defendant.

As to the 2nd defendant, liability could extend to her if and only if negligence was proved. In the absence of any evidence on negligence no legal liability can stand. Not only that but also the plaintiff at any rate failed to prove this amount because PW1 admitted that some of the trailers were bought in 2012 and 2017 respectively and that have been in continue use obviously depreciated over time in value, hence, the commercial invoice do not reflect the true value of the trailers in dispute by the time accident occurred. Much as the usage period was not calculated from 2012 to 2018 when accident occurred to three trailers and from 2017 to 2018 when accident occurred leaves this issue not proved because they are specific claims in nature. In the case of **Reliance Insurance Company (T) Limited vs. Festo Mgomapayo, Civil Appeal No. 23 of 2019 CAT, Dodoma, (Unreported)** it was observed and held that the aim in insurance cases is to indemnify and not to benefit whenever one is affected by the act of insured.

Guided by the above stance, in this suit nothing was proved by assessment of the loss in dispute after accident and using only pro forma invoice was uncalled for in this suit.

Having considered this issue and the rivaling claim in respect of the amount claimed, no doubt this claim is on special damages. It is a trite law in our jurisdiction that specific damages have to be specifically pleaded and strictly proved. There is plethora of decided cases on this principle including but not limited to the cases of ***Zuberi Augustino v. Anicet Mugabe [1992] TLR 137, Cooper Motors Corporation (T) Ltd v. Arusha International Conference Centre [1999] TLR 165, Harith Said Brothers Company v. Martin Ngao [1987] T.L.R. 12) and the case of Strabag International (GMBH) vs Adinani Sabuni, Civil Appeal No. 241 of 2018 CAT at Tanga (unreported). In the case of Strabag International (GMBH) (supra) the court held inter alia that;***

"In this jurisdiction, as it is in most commonwealth jurisdictions, the law on specific damages is settled. Special damages, in accord with the settled law, must be specially pleaded and strictly proved."

Further guided by the above legal stance, therefore, the commercial invoices tendered to prove the amount claimed, in my considered opinion, could be properly used if the cargo was lost on transit and not the situation we have here. Therefore, much as no other evidence was

tendered to prove the amount claimed at all. In other words, I am constrained and entitled to hold that, this limb of claim was not specifically pleaded and strictly proved in this suit. The plaintiff ought to have specifically pleaded the amount on two different kinds of trailers each and strictly prove one after the other. The two documents tendered, PW1 under cross examination boldly told the court that the amount in the commercial invoices was Tshs. 481,392,180.00 and a difference of Tshs.19,000,000.00 but which was not pleaded. In civil litigation, parties are bound by their own pleadings. The above stance was stated by the Court Appeal of Tanzania in **Civil Appeal No. 3 of 1988 between Peter Koranti & 48 others and The Attorney General & others [Unreported]** aptly stated;

> **"... It is trite law that the parties to a suit are bound by their pleadings."**

In a more elaborate way in the case of **Makori J.B. Wassaga and Joshua Mwaikambo & another [1987] TLR 88** the Court of Appeal of Tanzania said;

> **"In general, and this is, I think elementary, a party is bound by his pleadings and can only succeed according to what he has averred in his plaint and in evidence he is not**

permitted to set up a new case plaint and in evidence he is not permitted to set up a new case."

With due respect to PW1 and Mr. Kambo, in the instant suit, this figure was not pleaded nor strictly proved. The plaintiff, apart from merely throwing figures in exhibit P5 on how much were the alleged motor vehicles imported using commercial invoices, no other evidence was tendered with the exact value of the motor vehicles after being in use since 2012 and 2017 respectively when were bought and have been in use since then. In the absence of assessment of true value of the motor vehicles, is fatal to the plaintiff's case. No amount was specifically proved and the reason that vehicles were gutted down to ashes was not enough because the owner ought to have cooperates with the insurance assessor to establish an amount out of the period the vehicles have been in use. This was not done and makes this issue to crumble down. On that note, I find that, the plaintiff failed to prove his claim of Tshs 501,609,521.55.

In the circumstances, there are unanswered questions regarding to their depreciation value, hence, very difficult for this court to assess and understand the exact loss incurred by the plaintiff on the day of

incidence. Therefore, issue number three is answered in the negative in this suit.

The last issue to which I now turn regards reliefs available to the parties. Based on my finding in issues above, this issue is to be answered partially in the affirmative and partially negatively to the extent explained above. More so, no paragraph in the plaint stated why the plaintiff is to be paid interest but the issue of interest cropped only in the prayer clause. PW1 never testified on anything to do with interest as such, no interest is proved and is to be awarded in this suit.

That said and done save for where I have held in the affirmative, the rest of the plaintiff claims are hereby dismissed with no order as to costs because the suit is partially allowed and partially disallowed.

It is so ordered.

Dated at Dar es Salaam this 23rd day of May, 2023.

S. M. MAGOIGA
JUDGE
23/05/2023