

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**  
**CIVIL APPEAL NO 341 OF 2021**

*(Arising from the Judgment and Decree of the District Court of Bagamoyo at Bagamoyo in Civil Case No 28 of 2020 delivered on 24<sup>th</sup> day of August 2021 by Hon M.B Mmanya-RM)*

**JUMA IDD ALLY (as Administrator of the Estate  
of the late MWATANGA TUMAI KIBWANA) ----- APPELLANT**

*VERSUS*

**ALLY ISMAIL----- RESPONDENT**

*Date of last Order: 24/03/2023*  
*Date of Judgement: 06/06/2023*

**J U D G M E N T**

**MGONYA, J.**

Juma Idd Ally (Administrator of the estate of the late Mwatanga Tumai Kibwana) hereinafter referred as an Appellant and Ally Ismail denoted as Respondent had a Civil suit before the District Court of Bagamoyo at Bagamoyo where the former was the Plaintiff whereas the latter was Defendant. In a twenty four (24) paragraphed Amended Plaint covering seven (7) typed pages, the

Plaintiff's cause of action against Defendant was the claim of the sum of amount of **Tsh. 135,260,000/=** being specific as well as general damages for causing the death of one Mwatanga Tumai Kibwana as result of an accident caused due to his negligent, careless and reckless driving.

Following that accident, the Appellant inaugurated a suit against Respondent as introduced above and claimed for the following reliefs, which for clarity I quote as follows:

- (i) Payment of Tsh 123,936,000/= as per paragraph 19 and 20;*
- (ii) Payment of general damages to be assessed by this Court;*
- (iii) The interest of 25% from the decretal sum from the time of filing this suit till the date of judgment,*
- (iv) Interest at 12% from the date of Judgment till full Settlement;*
- (v) Costs of this suit be provided for and;*
- (vi) Any other reliefs this Honourable Court may deem just and equitable to grant.*

At the end of the trial of the suit, the trial court Magistrate having heard the parties at page 9 of the typed judgment ordered the Respondent to pay the claimed sum of **Tsh. 3,600,000/=** as

specific damages and **Tsh. 500,000/=** as general damages plus the costs of the suit to the Plaintiff (Appellant). Aggrieved by the fruits of the decision of the trial court, the appellant has presented before me the following grounds of appeal:

- 1. That the trial Magistrate grossly failed to make actual assessing of the quantum of damages payable to the appellant; and*
- 2. That had the trial Magistrate taken into consideration the number of children left behind by the deceased Mwatanga Tumai Kibwana she would have found that the family greatly need support to cater for the welfare of the children before they are self-reliant.*

In view of the above quoted complaints, the Appellant argued me to allow the appeal with costs and consequently quashed the quantum of damages awarded by the trial magistrate and the Court set appropriate damages.

When the matter came up for hearing on 19/10/2022, the Appellant was represented by **Mr. Ambrose Malamsha** stationed at the firm going by the name of Plateau Attorneys situated Ground Floor Pegasus House, Gerezani Street/Nkurmah Road, whereas the Respondent enjoyed the legal service Mr. Edwin Lasteck Mushi

stationed at the firm going by the name LevelUp Attorney, 3<sup>rd</sup> Floor, Ibacon House, Ikungi Stree/ Kinondoni B.

The Appeal was argued by way of written submissions. Of course the schedule was compiled by the parties accordingly save for the right to file rejoinder which was deliberately or accidentally waived for the best reasons known to the Appellant himself.

Mr. Malamsha commenced his submission by putting the Court and Respondent on notice that the grounds of appeal will be argued jointly. The learned advocate argued that the general damages are as awarded by the Court on consideration and deliberation of the evidence on record able to justify the award. He made reference to the decision of the Court of Appeal of Tanzania in the case of Anthony Ngoo and ***ANOTHER VERSUS KITINDA KIMARO CIVIL APPEAL NO 25 OF 2014.***

The learned advocate contended that the weight of the evidence testified by ***PW2, PW3, PW4 and PW5*** were credible and sufficient to warrant the trial Court to award the adequate general damages to the Appellant. Mr. Malamsha was of the view that the assessment and quantum issued by the trial court was contrary to the principle of awarding general damages hence he thus prayed for this Court to interfere the same. To buttress his argument, the case of ***COOPER MOTORS CORPORATION LTD***

***VS MOSHI/ ARUSHA OCCUPATIONAL HEALTH SERVICE  
(1990) TLR 96.***

Finally, Mr. Malamsha prayed for an appeal be allowed with costs, the Judgment of the trial court be quashed and set aside and the Court to award the Appellant the tune of **Tsh. 60,000,000/= (sixty Million Shilings)** as general damages.

In retort, Mr. Mushi reminded the Court the definition of the term general damages as defined by **Black Law Dictionary 7<sup>th</sup> Edition** and clarified at length by the Court of Appeal of Tanzania in the case of **TANZANIA SARUJI COOPERATION VS AFRICAN MARBLE COMPANY LTD (2004) TLR 155**. On how the appellate Court can properly intervene the general damages, the learned advocate referred the case of **Cooper motor Cooperation (supra)**.

Mr. Mushi contended that the assessment of the general damages made by the trial court Magistrate was properly and sound in law as the Appellant failed to prove his claim to the standard required by the law. Mr. Mushi reminded the Court that parties are bound by their pleading the activities which were conducted by Plaintiff were not pleaded in the plain save for Mama ntilie hence defeat the principle reflected in the case of **Ernest**

***Sebastian Mbele Vs Sebastian Sebastian Mbele And 2 Others.*** (Citation)

He argued that, since the Appellant did not discharged the burden of proving the case under the provision of **Section 110 and 111 of the Law of Evidence Act Cap. 6**, the general damages awarded was proper. The case of **Hamis Musa V Kilandi Koleta PC Civil Appeal No. 48 of 2019** was cited to bring the point home. Mr. Mushi retaliated and maintained that the trial court was correct to award the general damages on the reason reflected at page 9 of the Judgment.

Finally, he prayed for an Appeal be dismissed with costs and the decision of the trial court be upheld.

I have dispassionately considered the learned arguments submissions for both parties, grounds of appeal, the entire record of appeal and the law in general damages, I think the noble duty which calls for determination in this Judgment is of course on a single protracted issue, which the same is whether it was proper and justified in law for the trial court to award Appellant **Tsh. 500,000/=** as general damages.

As it is demonstrated above in the submission while Mr. Malamsha claimed that there was no proper assessment of the quantum of general damages by the trial Magistrate, on his part

Mr. Mushi argued that the assessment of general damages was proper and sound in law as per the evidence adduced by the Appellant in the trial. At page 9 of the Judgment, trial Magistrate while determining whether the claim of the general damages to the appellant had this to say:

*“ii The defendant shall pay the plaintiff the amount of Tshs 500,000/= as general damages”*

The above extract gives a clear picture that, first, the Respondent was ordered to pay the Appellant the tune of **Tshs. 500,000/** as general damages. Second, nothing has been stated by the trial Magistrate on how the Court took into account the consideration and deliberation of the evidence on record able to justify the said award of general damages and last but not least the reasons have not been given by the trial court Magistrate as to why the Court reached on such figure it awarded.

The position of the law in regard to an award of general damages is settled. There are plethora of unbroken chain of authorities of the Court of Appeal of Tanzania and this Court stating that the general damages are normally awarded at the Court discretion and need not be able specifically proved. It should also be on board that general damages are awarded after consideration and deliberation on the evidence on record able to justify the

award. Although the Court enjoys the discretion powers to award for the general damages but such powers goes in line with assign or giving reasons justify the award. See the decision of the Court of Appeal of Tanzania in the case of ***ALFRED FUNDI VS GELED MANGO AND TWO OTHERS Civil Appeal No 49 of 2017.***

A bit distress question one may pause and probe is whether the award of general damages can be interfered and if yes, under what circumstances. The answer to this issue will lead me to determine if there is justification at this stage to interfere with the trial court award of the general damages. I am mindful that it is trite law in our legal fraternity that interference of award of damages is only permissible if it will be seen the magistrate or judge assessed the said damages by using wrong principle of law. If it transpires so, the appellate Court has mandate to disturb the quantum of damages awarded by the trial court. See ***DAVIES VS POWEL (1942) 1 ALL 657*** which was approved by Privy Council as good and encyclopedic principle in ***NANCE VS BRITISH COLUMBIA ELECTRIC RAIL CO LTD (1951) AC 601*** at page 613.

Now applying the general principle stated above on general damages, I wish to observe that from the judgment of the trial Court that the trial Magistrate while awarding general damages to

the Appellant did neither indicate the reasons nor consideration and deliberation of the evidence on record able to justify the award of general damages to the Appellant. Since the reasons were not stated and the Judgment is silent on what consideration and deliberation of the evidence on record able to justify the award, it is my finding that and I so hold that the general damages was awarded without observation of the guiding principle of the law which requires the trial court to show reasons and consideration and deliberation of the evidence on record able to justify the award of general damages.

The above discussion boils a conclusion that fist ground of an appeal tabled by Mr. Malamsha **has merit**.

The above stated and done, at this juncture, I have no any other option than interfere award of damages awarded to the Appellant by the trail Magistrate upon observed and seen that assessed of the general damages was awarded by using wrong principle of law. I think with buoyant I have mandate as first appellate court to disturb the quantum of damages awarded.

I now move on to consider what the Appellant deserves to be awarded as a general damages by taken into account consideration and deliberation of the evidence on record adduced by the Appellant at the trail court.

As per the evidence on record adduced by (PW1) there was no controversy that, **first**, Respondent was the one who caused death of one Mwatanga Tumaini Kibwana as result of an accident caused by Respondent careless driving. **Second**, Appellant is Administrator of estates of late Mwatanga Tumaini Kibwana appointed by the Court of competent jurisdiction to hear and determine probate matters (Exhibit P1 and P4). **Third**, Respondent was charged at Bagamoyo District Court in **Traffick Case No 27 of 2019** on four counts including causing death to one Mwatanga Tumaini Kibwana through careless driving and without insurance cover (Exhibit P3). **Fourth**, the deceased had left five children (infants) who were depending on her for food, shelter clothing and school fees (Exhibit P2).

In additional, following the death of Mwatanga Tumaini Kibwana there was funeral expenses incurred (Exhibit P7). **Sixth**, the death indeed caused pain psychologically torture to deceased children and close relatives. **Seventh**, the motor vehicle which caused the death of Mwatanga Tumaini Kibwana was owned by Respondent (Exhibit P5). Finally, the deceased was the one who was paying school fees of her children (Exhibit P6).

In the circumstance of this case, I must admit that general damages cannot easily be quantifiable in monetary terms due to

the nature of the loss suffered to the Appellant and children of the deceased following the death of Mwatanga Tumaini Kibwana. In consideration and deliberation of evidence on record adduced by PW1, PW2, PW3, PW4 and PW5 reading together with Exhibits P1, P2, P3, P4, P5, P6 and P7 and having taken into account uncontroverted piece of evidence stated above and the nature of the loss suffered which cannot be quantified in monetary terms, I find that for the interest of Justice, the Appellant is entitled the general damages of the tune of **Tsh. 30,000,000/=**. Therefore, I under my revisionary powers, hereby order Respondent to pay Appellant **Tsh. 30,000,000/=** as general damages.

The above said and done, in the walk, I thus partly allow this appeal. I hereby proceed to set aside an order of general damages awarded by the trial Court and order the Respondent to pay the Appellant **Tsh. 30,000,000/=** as general damages.

As regards to the question of costs, the law is settled that successfully party is entitled to be reimbursed the expenses spent in prosecuting or defending the case and where the courts decides otherwise, it is enjoined to assigns reasons for so doing. Steered by the principle, I have no sound reason whatsoever to deprive the appellant for an order of costs. Besides without flicker of doubt at all Mr. Malamsha obvious he had conducted research spent some

expenses and time preparation of grounds of appeal, written submission in support of an appeal and appeared in Court. As Mr. Malamsha would wish it to be done in this matter as far as the law relating to order of costs is concern, the above reasons I have stated justify for this Court to order and publicize that Respondent shall pay costs of the appeal to the Appellant.

In the final event, the appeal is allowed with costs. The general damages awarded by the trial Court is set aside and replaced by an order that the Respondent shall pay Appellant **Tsh. 30,000,000/=** as general damages.

Order accordingly.

Right of Appeal Explained.



**L. E. MGONYA**

**JUDGE**

**06/06/2023**

