

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI.
CIVIL CASE No. 6 of 2021**

SARAPIA M. VERULI..... PLAINTIFF

VERSUS

MULTICHOICE TANZANIA LIMITED.....DEFENDANT

JUDGMENT

29/03/2023 & 24/05/2023

SIMFUKWE, J.

The plaintiff Sarapia M. Veruli has instituted this suit against the defendant claiming that the defendant has infringed her copyright by disseminating, broadcasting, exhibition and airing her film titled "**AHAVA**" without her consent. Believing that her copyright has been infringed, the plaintiff filed the instant matter praying for judgment and decree against the defendant with the following reliefs:

- 1. That, this Honorable court be pleased to declare that, by airing the cinematography work of art being a film titled 'AHAVA', the Defendant infringed the Plaintiff's copyrights to the said work;*
- 2. A permanent injunction compelling the Defendant to cease and desist from airing, broadcasting, distribution and dissemination of the Plaintiff's film 'AHAVA' or in the*

- alternative, order that the Defendant to pay 50% of royalties emanating from airing of the said film;*
- 3. An order for payment of sum of Tanzania Shillings One Billion (1,000,000,000.00) as damages for infringement of Plaintiff's Copyright by means unauthorized airing of the Plaintiff's Film 'AHAVA' vide the Defendant's Channel, Maisha Magic Bongo on diverse dates in year 2019;*
 - 4. An order compelling the Defendants to pay 70% of royalties arising out of the benefits gained as a result of airing the Plaintiff's Film 'AHAVA' as of from (sic) August 2019 when the film was first discovered to being aired by the Defendant to the date of judgment;*
 - 5. An Order for interest at 20% on (3) and (4) per annum from the date in which the cause of action arose to the date of full payment;*
 - 6. Aggravating damages;*
 - 7. Court Interest on the decretal amount on (3), (4) and (5) above at the court rate of 7% per annum from the date of judgment to the date of final payment and satisfaction in full.*
 - 8. Costs of the suit and any other relief this Honourable court deems fit and just to grant.*

Contesting the claim, the defendant filed a Written Statement of Defence. Among other things, the defendant stated that the authorisation and approval to air the film were obtained by the responsible entity who is not the defendant, from the authorized party. That, prior to any alleged broadcast, if at all, the responsible party procured the relevant licence

agreement duly signed and dated by the authorised party thus granting authorisation to broadcast the film and any relevant licences fees were paid by the responsible party to the authorized party and representative of the registered owner. That, there are no particulars of the said copyright infringement on part of the plaintiff as alleged have been provided as required.

At the trial, the plaintiff was represented by Mr. Wilbard Massawe and Mr. Melchizedek Hekima, learned counsels while Mr. Simon Barlow Lyimo and Mr. Jovinson Kagirwa learned counsels appeared for the defendant. Prior to commencement of the hearing, the following issues were framed and agreed on:

- 1. Whether the plaintiff is the owner of the copyright work titled "Ahava"*
- 2. Whether the defendant aired the said work of art via its DSTV channel Maisha Magic Bongo.*
- 3. Whether the Defendant secured the Plaintiff's consent before doing so.*
- 4. Whether the broadcasting of the motion picture titled Ahava was legal and justified.*
- 5. To what reliefs parties are entitled?*

The plaintiff in proving her claim relied on her own testimony and a total of 14 exhibits. The Defendant had two witnesses namely: **DW1 Mr. Astrid Mapunda** and **DW2 Fadhili Bruno Mandepe**.

The Plaintiff (**PW1**) **Ms. Sarapia Mallya Veruli**, a business woman her evidence adduced in Court was to the effect that, she went to Dar es

Salaam and joined Artistic Group after graduating in 2014. That, in the said group they were being taught how to act and production of movies. She said that in the said group she met one Livingston Ntasugura as her fellow actor, who told her that he had a script which he had written and that he was looking for a sponsor who would buy the same so that it could be developed to be a movie. After being shown the said script, PW1 decided to buy it. Thus, she entered into a written agreement and purchased the script to be her property. PW1 tendered the said agreement and the certified copy of the driving licence which were admitted as **Exhibit P1** and **P2** respectively.

PW1 told the court further that, after purchasing and handing over of the said script, they started pre-production arrangements which included reading over the script and preparing props (equipment for preparing a movie, like clothes, traditional weapons, etc). That, in their case, they had planned to use animal skins. Thus, they went to the abattoir and bought 75 skins of goats and sheep. They found an experienced person for processing the same. Also, they found ornaments and sea shells, spears, arrows and swords. Thereafter, they started to find the artists who could act in the movie. That, pastor Miamba assisted them to talk to Thea and Bibi Tecla Mjata. That, they had to find actors from other groups who could fit in their movie. That, they had to find professional characters who could cope easily.

PW1 narrated further that after they had gathered about 55 actors as the movie involved soldiers, kings and it was like a village community; then they started practising for about two weeks. They had a camp at Dar es Salaam for practicing. As their movie was traditional, they intended it to

be very natural. Their location manager found places at Dar es salaam, Kisarawe and Liwale in Lindi Region. They were satisfied with the location at Liwale. After being satisfied with their practice, they travelled to Lindi Region for the purpose of production of the movie. They hired the bus which carried a production crew and 55 actors. They spent a night at Liwale town. Next day, they hired another bus and headed to the village. It was early 2016. When they reached there, they started shooting the movie. They spent 12 days and after they had finished, they went back to Dar es Salaam where they did the editing. That, the editing was done by the editor who added sub-titles and handed over the movie to PW1 in two original CDs.

It was PW1's further evidence that she went to COSOTA to inquire the process of registration where she was directed that the registration is done by using original copies of the CDs. She made copies of the said CDs by duplicating. She requested 100 copies and they verified that they had not remained with any copy. Thereafter, PW1 published covers of AHAVA CD and became a complete copy ready for business. In the said movie there is Ndumbango (Thea) and Bibi Tecla. She said that there is an affidavit deponed by her certifying Authenticity which she tendered and the court admitted it as **Exhibit P3**. She also tendered compact Disc Cover Titled A-HAVA which was admitted as **Exhibit P4** and two compact Discs tilted A-HAVA which were admitted as **Exhibit P5** collectively.

PW1 narrated further that after completing the above process, she took her movie to BASATA for inspection where she was required to go back on another day to check whether the movie was approved. Next day, she went there and found that the movie had been approved to be shown in

Tanzania and it was stamped and signed. She tendered Films and Stage Plays Permit dated 11th November 2015, which was admitted as **Exhibit P6**.

After she had finished with BASATA, PW1 went back to COSOTA for the sake of registration and obtaining trademark. She was required to produce the sale agreement, a script and the author of the script in order to satisfy themselves that the said property was sold to her. Also, she was required to give them the original CD. That, PW1 went to COSOTA in the company of Mr. Ntasugura, thus, COSOTA interrogated Mr. Ntasugura and satisfied themselves that the script was owned by PW1. PW1 and Mr. Ntasugura gave them their pictures, and the script was registered as PW1's property. Thereafter, PW1 was given a letter and certificate acknowledging that she was the owner of A-HAVA movie. She tendered acknowledgement letter from COSOTA dated 4th January 2016 and Copyright Clearance Certificate dated 4th January 2016 which were admitted as **Exhibit P7** and **P8** respectively.

PW1 went on to narrate that, after registration of her copyright, she started looking for market of her work. That, she consulted STEPS entertainment and PILIPILI entertainment who gave a small offer to her and she refused. She decided to deal with her copyright personally. Thus, she went to TRA and she was given a letter of acknowledgment and control number for payment. After payment, she was issued with stickers to be posted on her CDs. She tendered a letter from TRA which was admitted as **Exhibit P9**.

PW1 asserted further that she took the samples of her movie to big shops for distribution where she was advised to change the cover which she had

already registered. That could involve re-calling the actors and take the photos afresh and hire a professional designer of covers so that her film could be more marketable. She found it to be a long process and cumbersome. Thus, she postponed that exercise of releasing her movie and decided to come back to Moshi with her movie and continued with her normal life.

It happened that on 18/8/2019 in the evening while PW1 was with her siblings watching TV, she was surprised to see her movie being aired in the DSTV channel namely Maisha Magic Bongo. She brought a DSTV card as proof. It was admitted as **Exhibit P10**. PW1 stated further that she got an idea of recording what was going on. Thus, she recorded a video of what was being aired on the channel of Maisha Magic Bongo using her cell phone make Samsung which was admitted in court as **Exhibit P11**. Thereafter, she copied the said clip to her laptop, then to her flash drive make digirich. The said flash after being played was tendered and admitted as **Exhibit P12**.

PW1 elaborated that the video in the flash which was played before the court was a segment only which she recorded from DSTV as Maisha Magic Bongo has an emblem of DSTV. She elaborated further that; she got an idea of recording the movie when it was about to finish. Thus, the segment is from the last part of A-HAVA part II. Also, PW1 screenshot some of the pictures which were being played by using her phone which she later on printed out at the stationary. Copy of pictures of the film were admitted as **exhibit P13**.

Thereafter, PW1 narrated that she sought an advocate for legal advice so that she could get her right. Her advocate advised her that since she had

registered her work, they should start at COSOTA. Assisted by her advocate, they sent a complaint to COSOTA who made a phone call to the defendant and asked them as to whether they were authorised to air the movie. That, DSTV replied that they had an agreement which they entered with PW1 and that they had the exhibit. DSTV sent a picture of the said agreement purported to have been signed by Sarapia Veruli. The agreement had pictures of the so called Sarapia Veruli. When the said agreement was shown to PW1, she discovered that the alleged pictures were not hers. Thus, COSOTA allowed her to report the matter and take legal actions.

Subsequently, her advocate sent a demand letter to the defendant. However, the said letter was not replied despite being received and signed. The demand letter was admitted as **exhibit P14**. PW1 explained that, since the defendant did not reply the Demand Letter, she decided to file the present case claiming the following; *First*, the court to declare that the defendant had infringed her rights; *second*, this court to permanently restrain the defendant from showing her movie; *third*, the court to order compensation of one billion Tanzanian shillings to be paid to her by the defendant for showing her movie. Moreover, she prayed a punitive damage to be ordered against the defendant in order to be a lesson to other companies for oppressing and sabotage against young artists. Lastly, she prayed to be paid costs paid to her counsels. She concluded that the costs of producing her film was not less than 45,000,000/- (forty-five million only) Tzs.

During cross examination, PW1 stated among other things that at paragraph 12 of the plaint, she stated that her movie was aired at DSTV

Maisha Magic Bongo and she is suing Multichoice Tanzania Limited because Maisha Magic Bongo is the property of DSTV. She said, the relationship between Multichoice Tanzania Limited, Maisha Magic Bongo (Channel 160) and DSTV is that Multichoice Tanzania Limited is the owner of the channel called Maisha Magic Bongo and DSTV. Although, she stated that she had no documentary evidence but she had DSTV decoder and she used to see their advertisement which reveals that they are the owners of the channel.

When cross examined further, PW1 said that she sent a demand notice to Fadhili Mandepo because he had forged her name and signature in the said agreement between him and DSTV to show A-HAVA movie and that she is planning to sue Fadhili Mandepo with an offence of impersonating her by using her name. She denied to have issued to anyone Power of Attorney but admitted that she was working with Fadhili very closely.

That marked the end of the plaintiff's case.

The Defendant called two witnesses. **DW1 Mr. Astrid Mapunda** stated that he is the principal officer employed by the defendant in 2020 and currently working as Head of Regulatory. That, his responsibilities include to ensure regulatory compliance. He informed the court that the defendant was registered in Tanzania in 2007 and its office is located at Kinondoni in Dar es Salaam Region. That, TCRA issued to the defendant a licence called Subscriber Management Services (SMS Licence) which enable the defendant to render its service to customers subscribed to DSTV services. That, the services include sales of DSTV decoders, management of call centre and technical assistance thus, installation and repair of decoders to customers. Also, the licence authorises Multichoice

Tanzania Ltd to collect subscription fees from DSTV customers. DW1 proclaimed that there are no other principal business activities done by the defendant.

DW1 made it clear that after the customer has effected payment, he will be able to view different channels depending on the payment package. That, at the moment DSTV has six packages of payment: DSTV Poa, DSTV Bomba, DSTV Shangwe, DSTV Compact, DSTV Compact Plus and Premium packages. The packages have local channels like ITV, EATV, Channel Ten, Clouds, Star TV, Upendo TV and Iman the Islamic channel. The defendant has no licence of broadcasting. He insisted that they have never been sued for contents broadcasted on local channels. DW1 specified that according to the plaint, it seems the plaintiff sues the defendant for broadcasting her film called AHAVA while the defendant has no broadcasting licence. DW1 told the court that he cannot know to whom the claim of the plaintiff should be addressed since Multichoice Tanzania Ltd does not broadcast content. DW1's was of the opinion that the plaintiff has sued the wrong party.

DW1 narrated further that, there is no relationship between Multichoice Tanzania Ltd and Maisha Magic Bongo (channel 160) on the reason that Multichoice Tanzania Ltd is not answerable to the content broadcasted by Channel 160. He added that Maisha Magic Bongo is a channel like any other channel like ITV, Channel Ten, etc. while Multichoice Tanzania Ltd is not a channel. Also, Multichoice Tanzania Ltd does not enter into agreement with any channel viewed via DSTV.

Elaborating on **exhibit P14** (demand note), DW1 said that in the demand notice, the claims were directed to Multichoice Tanzania Ltd and Fadhili

Mandepa a natural person. After reading the said demand notice, they satisfied themselves that the author of the claims had erred to direct the same to Multichoice Tanzania Ltd, thus, they did not see any reason to reply the same believing that they had erred.

During cross examination, among other things DW1 explained that Maisha Magic Bongo like any other channels is visible through all packages but it is issued by DSTV not Multichoice Tanzania Ltd. While being cross examined by Mr. Melchizedek, DW1 stated inter alia that they don't supervise DSTV, they supervise customers who subscribe to DSTV.

DW2 Mr. Fadhili Bruno Mandepa, testified inter alia that he is a film maker. That, the plaintiff was her fellow student in a lower class at Tanzania Film Training Centre and they met in 2015. He said that the plaintiff together with one Livingstone Pius Ntasugura followed him as a film maker so that he could make for them a film called AHAVA. They discussed and agreed that the costs of making the said film were Tshs 1,200,000/= (one million and two hundred shillings only). The costs included costs of cameraman, director and editor. That, the three tasks were done by DW2. After they had agreed, they started preparation including preparation of props, actors and transport. The said work was done in Lindi at Liwale district due to the theme of the work and the fact that Lindi is his home place thus it was easier to work there. They had two experienced actors whom they had to pay in advance. At Lindi, they found location and started work. That, the work was successfully done within two weeks. Then, they went back to Dar es Salaam for post-production/editing. After they had finished, DW2 handed over the work and was paid the remaining payment. Thereafter, they started looking for

a market of the said work and they depended on televisions and DVDs. They also searched for market at Kariakoo for DVD production and East Africa Television. He went to enquire at M-Net in 2018 but prior to that he talked to the plaintiff that there was a place where they could take their work since they struggled a lot because by then Tanzanian films had no market.

DW2 continued to tell the court that, in 2018 he received information that M-NET was receiving films. He shared such information to the plaintiff who agreed that he should take the film to M-NET. Thus, DW2 took the said film to M-NET agent one Akim Ijembe. After several months he was informed that the movie was accepted thus they required documentation from COSOTA and Film Board. The same were to be issued by the owner of the film Sarapia Veruli. DW2 communicated with the plaintiff who by then was at Moshi and she agreed that the said documents should be sent to him via email. Thus, she sent the same through email. That, since the documents could not be delivered in time, they suggested another urgent means of sending the same which was through Facebook Messenger. DW2 received the documents and handed over the same to the agent who issued a contract/an agreement to DW2. The plaintiff was not there but DW2 informed her the terms of the said agreement and she allowed DW2 to sign the said agreement for handing over the movie to DSTV. DW2 said that he signed as a representative of Sarapia Veruli (the plaintiff). After submitting the same, they waited for a while then he received a phone call from the agent that there were some payments of Tshs 200,000/= (two hundred thousand only) which were effected to them. The plaintiff told DW2 that he should send to her Tshs 150,000/=

(one hundred and fifty thousand) and he remained with Tshs 50,000/= . The said money was sent to the plaintiff through Tigo pesa.

DW2 stated further that he had signed an agreement of Tshs 500,000/- (five hundred thousand only), thus, the remaining balance of Tshs 300,000/= (Three hundred thousand) was paid after three or four days. DW2 explained further that he knew the agent of M-NET and he did not know anything about Multichoice Tanzania Limited.

Testifying on the content of **Exhibit P14** (Demand Notice), DW2 said that he received the same but there were some attachments which were missing like the copyright from COSOTA and Film Board. Since the same was addressed to him and Multichoice Tanzania Ltd, DW2 called the plaintiff and asked her what had happened. The plaintiff told DW2 that her problem was not with him but Multichoice and that he should find an advocate to defend him. DW2 guessed that the problem was the said Tshs 300,000/= which he received and used so he begged the plaintiff that she should refrain from the option she had chosen. However, the plaintiff insisted that her problem was with Multichoice. DW2 said that he urged her wife and friends to ask the plaintiff that he was ready to pay the money he had used, but she refused. DW2 sent Jackson to urge the plaintiff, she replied that she wanted to make a lesson to Multichoice. Thus, DW2 did not pay the said amount to the plaintiff and the plaintiff had never sued DW2 anywhere neither in this case.

DW2 concluded that the plaintiff did not share with him her intention against Multichoice instead he has found himself involved in this case for the things he never expected.

During cross examination, DW2 admitted that he did not tender copy of the said agreement, messages, emails or Facebook Messenger before the court. When re-examined, DW2 elaborated that Maisha Magic Bongo is owned by M-Net.

That marked the end of the case of the plaintiff and the defendant. It was agreed and ordered that each party should file a final written submission within seven days from the date of the order (29/03/2023). The defendant filed their written submission timely, while the plaintiff for unknown reason could not file her final written submission in time.

In their final submission, Mr. Kagirwa for the defendant challenged **exhibit P14** (demand Notice) to the effect that there was an annexure which was not tendered during trial which was an agreement entered between the plaintiff and M-NET which could prove that the defendant was not liable and is not responsible entity to control Channel 160 Maisha Magic Bongo. That, the said agreement had an effect of proving that consent to air the said film was procured by M-NET from the plaintiff through her representative.

Moreover, the plaintiff reminded the court an established principle of law under **section 110(1) of the Law of Evidence Act, Cap 6 R.E 2019** that the standard of proof is on balance of probabilities. He also cited the case of **The Registered Trustees of Joy in the Harvest vs Hamza K. Sungura, Civil Appeal No. 149 of 2017** to that effect.

The learned counsel raised the issue as to whether the defendant was a proper party to answer the claim filed against them. He argued that though this issue was not framed by the court but this court is enjoined

to determine the same. He cemented the argument by the case of **Bahari Oilfield Services FPZ Ltd vs Peter Wilson, Civil Appeal No. 157 of 2020.**

The defendant's counsel did not dispute the issue as to whether the plaintiff is the owner of the copyright work titled A-HAVA.

Submitting in respect of the issue whether the defendant aired the said work of art via DSTV channel Maisha Magic Bongo, Mr. Kagirwa explained that the defendant through DW1 and DW2 testified that the defendant had no relationship of whatsoever nature with the alleged airing channel. That, DW2 confirmed to have licenced the motion picture to M-Net and that he had never dealt with the defendant. That, the plaintiff throughout her testimony and all her 14 exhibits did not manage to prove the existence of the fact that the defendant really owns or supervises DSTV channel No. 160 Maisha Magic Bongo.

On that basis, the learned counsel prayed the court to dismiss the suit with costs for being filed against the wrong party since the plaintiff failed to prove the fact that the defendant is the owner and supervisor of Channel 160 Maisha Magic Bongo pursuant to **section 110(1) of the Evidence Act** (supra). He also cited the case of **M/S Mkurugenzi Nowu Eng vs Godfrey M. Mpezya, Civil Appeal No. 188 of 2018, (CA)** to support the argument of suing the proper party.

Mr. Kagirwa submitted jointly on the issue of whether the defendant secured the Plaintiff's consent and whether the broadcasting of the motion picture titled A-HAVA was legal and justified. The learned counsel for the defendant stated among other things that the said fact was adopted under

paragraph 7 and 8 of the Written Statement of defence. Also, DW2 testified that the consent was secured between the Plaintiff and the entity named M-NET. That, DW2 testified that there was an agreement which is to the effect that PW1 through her agent entered into an agreement and the said agreement was among the annexures found in Exhibit P14 as reflected under **paragraph 3.6** of exhibit P14. However, the said agreement was deliberately not tendered by the plaintiff which could assist the court in answering the above two issues. He urged this court to draw adverse inference against the plaintiff for withholding a vital piece of evidence which would have exposed the agreement entered by the plaintiff authorising her film to be aired through Maisha Magic Bongo.

He contended that the defendant was not a party to such agreement; thus, she could not tender the document as she was neither custodian nor author or addressee of the said agreement. That, the agreement was in the hands of the plaintiff as referred in the demand note under paragraph 3.6. Thus, the adverse inference should be drawn against the plaintiff. He cited the case of **R vs Uberle (1938) 5 EACA 58** which was quoted with approval in the case of **Pascal Mwinuka vs Republic, Criminal Appeal No. 158 of 2019 (CA)** to buttress his argument.

The learned counsel for the defendant was of the view that the plaintiff's consent was secured by the responsible party who was mentioned as M-NET who is not a party to this case. Thus, broadcasting of the motion picture if any and if it was made by the responsible party of the motion picture named and titled AHAVA was legal and justified.

Furthermore, Mr. Kagirwa said that evidence of DW2 was supported by the evidence of DW1 who testified that the defendant was not responsible

entity who owns and supervises Channel 160 Maisha Magic Bongo and that the defendant does not own any channel in Tanzania as its principal business activities is Pay TV subscriber management services.

On the last aspect of the reliefs entitled to parties, Mr. Kagirwa stated that it is the discretion of the court to grant general damages although such discretion must be exercised judiciously. That, general damages are awarded by the trial court after consideration of the evidence on record. He referred to the case of **Tanzania Saruji Corporation vs African Marble Company Limited [2004] TLR 155** to support his argument.

He argued that in the instant case the plaintiff's testimony did not justify to be awarded general damages to a tune of one Billion or to be awarded 70% of royalties arising out of benefits gained as a result of airing her film. That, the only testimony on record was that she spent 45,000,000/= for making the film which was never proved. To justify that, Mr. Kagirwa referred the court to the case of **Maweni Limestone Limited vs Damatico General Supply, Civil Appeal No.28 of 2018; at page 39,** (Court of Appeal of Tanzania at Tanga), where it was held that:

*"In the circumstances, we are mindful of the settled position that in general damages, it is entirely on the discretion of the trial court to award any sum of money to the injured party, **yet we are of the settled view that discretion must be exercised judiciously and in accordance with the evidence in the record. The awarded amount therefore must be seen to be fair compensation in monetary terms to the suffered party.**"* [Emphasis supplied]

The learned counsel concluded that, the plaintiff is not entitled to any relief and this suit should be dismissed in its entirety with costs which should be awarded in favour of the Defendant as the plaintiff have failed to prove the case on balance of probabilities. In respect of costs, he prayed for costs to be provided for and interest on costs at the court rate of 12% per annum from the date of judgment until payment in full.

Having gone through the testimonies of both parties and the exhibits tendered as well as defendant's Final Submission; it is now the Court's task to resolve the framed issues.

It is the law under **Section 110 of the Evidence Act (supra)**, that he who alleges must prove. For ease reference, the provision reads:

"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."

The court has further advanced the above principle and emphasized that the burden of proof never shifts to the defendant until the plaintiff has discharged the same. In the case of **Jasson Samson Rweikiza vs Novatus Rwechungura Nkwama (Civil Appeal No. 305 of 2020) [2021] TZCA 699 [TANZLII]** at page 14, the Court of Appeal affirmed that:

"It is again elementary law that the burden of proof never shifts to the adverse party until the party on whom onus lies discharges his burden and that the burden of proof is not diluted on account of the weakness of the opposite party's case."

Applying the above principle on the instant case, on the first issue as to *whether the plaintiff is the owner of the copyright work titled AHAVA*, the plaintiff alleged that her movie titled A-HAVA” was aired by Maisha Magic Bongo on 18/08/2019 without her authorization. Thus, she claimed compensation. This issue will not detain me since the plaintiff through her evidence and exhibits sufficiently proved that indeed she is the owner of the said copyright. The same was admitted by Mr. Kagirwa learned counsel for the defendant in his final submission. The plaintiff’s rights to the said movie are protected under **section 5(2)(h) of the Copyright and Neighboring Rights Act,1999**.

On the second issue as to **whether the defendant aired the said work of art via DSTV Channel**, the plaintiff pleaded under paragraph 12 of the plaint that:

“That on 18th August 2019, approximately 02:00 am Our client was Watching DSTV Maisha Magic Bongo Channel 160, one of the channels available, disseminated, broadcasted and supervised by the Defendant where she discovered that the Film 'AHAVA' to which she possessed sole ownership and airing rights, was being aired.”

From the above quoted paragraph, the plaintiff was supposed to prove on balance of probabilities that the said channel which aired her film was controlled and supervised by the defendant herein and that the defendant has mandate to supervise what is aired by Maisha Magic Bongo.

From the evidence on record, apart from claiming that the said movie was aired by Maisha Magic Bongo Channel No. 160 which the plaintiff believed

that the said channel was the property of DSTV owned by the defendant herein. On the other hand, the defendant through her witness **DW1** (the Head of Regulatory) testified that the defendant was issued with the license called Subscriber Management Service which enables the defendant to render its services to customers subscribed to DSTV services. The services include sales of DSTV decoders, Management of call center, technical assistance and to collect subscription fees from DSTV customers. He insisted that the defendant has no license of broadcasting.

Weighing the above evidence, I am convinced that the plaintiff did not manage to prove as averred under para 12 that the defendant broadcasted her movie. She failed on balance of probabilities to tell this court the existence of the relationship between the defendant and Channel 160 which aired her movie. Also, she failed to prove how the defendant is responsible for the contents aired by Maisha Magic Bongo.

Having answered the above issue as such, the next issue *Whether the Defendant secured the Plaintiff's consent before doing so* and the fourth issue on *Whether the broadcasting of the motion picture titled AHAVA was legal and justified*, automatically collapse.

Without prejudice to what I have stated herein above, the defendant through her witness DW2 whom the plaintiff confessed to be her close friend, testified that as a representative of the plaintiff, the plaintiff authorized him to take her movie to M-NET and that the plaintiff received the first instalment of payment. However, the second instalment did not reach the plaintiff as DW2 alleged that he decided to use it as he had a problem. Therefore, even if it is assumed that the said movie was aired by the defendant herein, still the plaintiff's consent was secured through her

representative whom the plaintiff wrote to him a demand notice but opted not to sue him in this suit on the reason that she intends to sue him with another offence of impersonating.

Having answered the 1st, 2nd, 3rd, and 4th issues as such, the **5th issue on the reliefs entitled to the plaintiff** automatically ceases. Concerning the issue of costs as prayed by the defendant's counsel, that the court should order the costs and the interest on costs at the court rate of 12% per annum from the date of judgment until when the same is paid in full; I hesitate to order the interests on costs since the defendant's counsel did not establish reasons for this court to order interest.

Finally, based on the evidence on record as scrutinized above, this Court is satisfied that the plaintiff failed to prove her case on balance of probabilities. Consequently, I dismiss this suit with costs.

It is so ordered.

Dated and delivered at Moshi this 24th day of May, 2023.



X

S. H. SIMFUKWE
JUDGE
Signed by: S. H. SIMFUKWE

24/5/2023

