

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA REGISTRY

AT IRINGA

CIVIL CASE NO. 28 OF 2022

TANZANIA NATIONAL ROADS AGENCY1ST PLAINTIFF

ATTORNEY GENERAL 2ND PLAINTIFF

VERSUS

FRANCESCO C. SOGLIA.....DEFENDANT

SUMMARY JUDGMENT

Date of Last Order: 25.05.2023

Date of Judgment: 23.06.2023

A.E. Mwipopo, J.

Tanzania National Roads Agency (TANROADS) and Attorney General, the plaintiffs herein, filed a plaint by way of summary procedure under Order XXXV Rule 1 (e) of the Civil Procedure Code Act, Cap. 33 R.E 2019, and Section 54 of the Road Act, No.13 of 2007, against Francesco C. Soglia, the defendant herein. The plaintiffs jointly pray for judgment and decree against the defendant on the following reliefs:-

- 1. Payment of Tanzania shillings seven million nine hundred thirty thousand only (Tshs. 7,930,000/=) being costs for repair of the damaged galvanised steel guardrail and paved section;*
- 2. Interest at a Court rate of 40% from the date the cause of action arose to the date of judgment;*
- 3. Decretal sum be paid with interest at the Court rate from the date of judgment until full payment by the defendant;*
- 4. Costs of this suit; and*
- 5. Ant other relief(s) as this Court deems fit to grant.*

The plaintiffs' efforts to serve the defendant with summons through their address failed, and the Court granted their prayer to serve the defendant through substituted service in Swahili and English newspapers. The plaintiffs' successfully served the summons to the defendant through publication in the Mwananchi newspaper dated 16.03.2023 on page 23 and the Dailynews newspaper dated 16.03.2023 on page 17. The defendant did not appear on the hearing date, and the Court ordered the hearing to proceed in the absence of the defendant.

On the hearing date, the plaintiffs were represented by Ms Neema Sarakikya and Mr. Peter Sengelema, state attorneys. In his submission, Mr. Sengerema, state attorney, said that the suit was instituted seeking claims against the defendant for the reimbursement cost of Tanzania shillings

7,930,000/= which was incurred by the 1st plaintiff for repairing Galvanised steel guardrail which was damaged by the defendant's vehicle. The defendant's vehicle with registration No. T 456 DEF was involved in an accident at the Kichakani area along Tanzania Zambia highway and knocked the galvanised steel guardrail causing damage to the galvanised steel guardrail for 36.9 metres, as shown in the plaint. The defendant was notified about the damage through a letter which stipulated the cost of such damage. He said despite several reminders and notices to call the defendant to settle the matter, the defendant did not show any response. The counsel prayed for the Court to consider the evidence in the plaint and grant them the prayers.

The facts deposed in the plaint and its annexures reveal that on 29.10.2017, the defendant's vehicle with registration No. T 456 DEF was involved in an accident at the Kichakani area along Tanzania Zambia Highway and knocked the galvanised steel guardrail causing damage to the galvanised steel guardrail length of 36.9 metres. Annexure TRD 2 shows photos of the damaged galvanised guard rail, the vehicle number and the owner's address clinched in the vehicle. The facts in the plaint show that the 1st plaintiff notified the defendant of the damage caused through a letter

with reference number TRD/RM/IR/R.10/2/46 dated 07.11.2017 (Annexure TRD 1). Annexure TRD 1 was attached with a report showing a cost estimate for repairing the damage caused by the defendant's vehicle, which the 1st plaintiff demanded the defendant to pay within 28 days to be Tanzania shillings seven million nine hundred thirty thousand only (Tshs. 7,930,000/=). Despite the notification calling for the settlement of the matter, the defendant failed to heed the demand.

Following the failure of the defendant to repair the damage, the 1st plaintiff repaired the damaged galvanised steel guard rail for the total cost of Tanzania shillings seven million nine hundred thirty thousand only (Tshs. 7,930,000/=). The plaintiff claim for the defendant to reimburse Tanzania shillings seven million nine hundred thirty thousand only (Tshs. 7,930,000/=) being the cost incurred for repairing the galvanised steel guard rail of 36.9 metres damaged by the defendant's vehicle.

The Road Act in sections 54 (1), (2), (3), and (4) gives mandates to the Road Authority to recover from the owner of the vehicle the costs for damages attributed to a vehicle. The law requires the Road Authority to serve a written demand to the vehicle owner who damaged the road requiring him to pay the costs incurred by the Road Authority to reconstruct

or repair the damaged road. The Road Authority may recover the costs for repair by filing in Court the application for recovery of the costs for repairing the damaged road affected by the summary procedure under the Civil Procedure Code Act.

The Civil Procedure Code Act, Cap. 33 R.E. 2019 provides in Order XXXV rule 1 (e) that summary suits apply where the plaintiff desires to proceed in the suits to recover rent, interest or other debts due to the Republic, the Government or any local government authority. Tanzania National Roads Agency (TANROAD), being the Executive Agency established by the Executive Agencies (The Tanzania National Roads Agency) (Establishment) Order, G.N. No. 293 of 2000, is the Road Authority established to manage and supervise some highways including the Tanzania Zambia Highway, which was damaged by the defendant's vehicle. The facts deposed in the plaint and Annexure TRD1 proved that the 1st plaintiff notified the defendant of the damage caused through a letter with reference number TRD/RM/IR/R.10/2/46 dated 07.11.2017 and demanded the recovery of Tanzania shillings seven million nine hundred thirty thousand only (Tshs. 7,930,000/=) being the costs for repairing the damaged galvanised steel guard rail. Thus, the facts deposed by the plaintiffs in the plaint proved the

plaintiffs' claims under Order XXXV rule 1 (e) of the Civil Procedure Code Act, Cap. 33 R.E. 2019 read together with section 54 (1), (2), (3) and (4) of the Road Act, 2007.

On the relief available to the plaintiffs, the law is settled that reliefs prayed for in a summary suit must be reliefs available under summary procedure. See. **Paul Massawe and two Others vs. Access Bank Tanzania Limited**, Civil Appeal No. 39 of 2014, Court of Appeal of Tanzania at Dar Es Salaam, (Unreported); and **Hamisi Mganga Kilongozi vs. Bahati Mushi Masabila T/A Ngoro Filling Station**, Civil Case No. 26 of 2021, High Court of Tanzania Mwanza Registry, (unreported).

The Civil Procedure Code Act provides in Order XXXV rule 2 (2) (a) for the reliefs available in summary suit for bills of exchange (including cheques) or promissory notes, suits for the recovery of income tax, and suits by the Tanzania Electric Supply Company Limited for the recovery of rents, charges, any tax connected with or incidental to the supply of electricity to any consumer, or suit for recovery of money under a mortgage. The law says nothing for the suits to recover other debts due to the Government, as in the present case. In rule 2 (2) (a) of the Order XXXV of the Civil Procedure Code Act, the Court is allowed to make a decree for any sum not exceeding

the sum mentioned in the summons, together with interest at the rate specified (if any) and such sum for costs as may be prescribed in which case the costs shall be ascertained ordinarily, and such decree may be executed immediately. I find it prudent to apply the rule in the present case as the claims in this case resembles to the reliefs available to TANESCO in recovering money for rent, charges or tax connected with or incidental to TANESCO services. For that reason, the 1st plaintiff is entitled to recover the cost incurred in repairing the damages to the tune of Tanzania shillings seven million nine hundred thirty thousand only (Tshs. 7,930,000/=). The 1st plaintiff is entitled to the Court interest rate of 12% per annum under Order XX, rule 21 (1) of the Civil Procedure Code Act, from the date of delivery of the judgment until satisfaction of the recovery cost. The prayer for the Court interest rate at 40% is not granted as the Courts interest rate is between 7% and 12%. The plaintiffs are also entitled to the costs of the suit.

Consequently, this Court grants the plaintiffs the following reliefs:-

- i. The defendant is ordered to pay the 1st plaintiff Tanzania shillings seven million nine hundred thirty thousand only (Tshs. 7,930,000/=) being the costs for repair of the damaged galvanised guard rail and paved section of the road;

- ii. The defendant is to pay interest of 12% per annum on the repair costs in (i) above from the date of delivery of this judgment until satisfaction thereof; and
- iii. The defendant bears the costs of the suit.

It is so ordered accordingly.



A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

A.E. MWIPOPO

JUDGE

23/06/2023