

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

APPELLATE JURISDICTION

(DC) CIVIL APPEAL NO. 06 OF 2022

**(Originating from Civil Case No. 04 of 2021 of the District Court of Kasulu
before I. D. Batenzi, RM, dated 23/03/2022)**

ULIMWENGU JUMANNE APPELLANT

VERSUS

OSCA WILLIAM SANAGARA..... RESPONDENT

J U D G M E N T

30/09/2022 & 08/02/2023

MANYANDA, J.

The Appellant, **Ulimwengu Jumanne**, has found himself appealing to this Court after been dissatisfied with the decision of the District Court of Kasulu, hereafter referred to as "the trial Court", which disfavoured him. The Appellant sued **Oscas William Sanagara**, the Respondent, in the trial court for claim of a total of TZS 34,000,000/= being payments for offering transport services to him. After considering the evidence adduced by the Appellant through two witnesses and the defence evidence held that the Appellant's evidence was in variance with

the pleadings in the plaint, hence dismissed the suit with costs. The Appellant claimed from the Respondent TZS 34,000,000/= as specific claims and TZS 20,000,000/= as general damages in the plaint. However, he led evidence that he provided transport services valued at TZS 24,200,000/= The Respondent admitted a debt of TZS 24,200,000/= of which he paid TZS 10,000,000/= during mediation, remaining a claim of TZS 14,200,000/= which the Respondent admitted and prayed for time to repay the same. However, the trial court got in dilemma about the claims pleaded and the evidence adduced in court, hence in order to avoid embarrassment to the parties, it decided to dismiss the whole suit.

It is that finding of the trial court which made the Appellant to come to this Court armed with four grounds namely: -

- 1. That, the trial magistrate erred in law and facts for dismissing the whole suit while the respondent admitted some claims against him to the tune of 14,200,000/= out of contract entered between the Appellant and the Respondent for transportation of timber, wood and sand at Nyarugusu, Nduta and Mtendeli Refugees Camps in Kasulu and Kakonko Districts in Kigoma Region;*

2. *That, the trial magistrate erred in law and facts by dismissing the whole suit while the Appellant proved the claims on the balance of probabilities, a standard required in civil cases;*
3. *That, the trial magistrate erred in law and facts by ignoring the evidence of PW1 and PW2 which proved the existence of the debt and the same was admitted by the Defendant to the tune of TZS 14,200,000/=; and*
4. *That, the trial magistrate failed as well to consider Exhibit P1 which was tendered by PW1 without objection by the Respondent.*

Hearing of the appeal was oral, whereas the Appellant was represented by Mr. Abdulkheri Ahmad, learned Advocate, the Respondent was represented by Ms. Doto Banka, learned Advocate, holding the brief of Mr. Edwin Bantulaki, learned Advocate, with instructions to proceed with hearing.

Mr. Abdulkheri submitted on grounds one and four of appeal seriatim and combined grounds two and three. In ground one where the complaint is that the trial magistrate erred in law and facts for dismissing the whole suit while the respondent admitted part of the claim the Counsel submitted that the Appellant proved a claim of TZS 24,200,000/=. He failed to prove the TZS 10,000,000/= out of the total

claim of TZS 34,000,000/=. Also, the Respondent admitted to have repaid TZS 10,000,000/= out of the TZS 24,200,000/=. The Counsel was of the views that the authority in the case of **Makoli JB Wasaa vs Joshua Mwaikambo and Another** [1987] TLR 88 was misapplied by the trial court.

As regard to grounds two and three, Mr. Abdulkheri submitted that the Appellant proved his case to the requirement in civil cases as provided under section 110 of the **Evidence Act**, [Cap. 6 R. E. 2019] through the two witnesses and the Exhibit P1, which is an agreement between the Respondent and the Appellant acknowledging the claim by the Appellant and promise by the Respondent to repay the same.

As regard to ground four, the Counsel basically reiterated his submissions in grounds two and three.

Opposing the appeal, Ms. Banka responded in the same way the Appellant had submitted in support of the Appeal. Arguing for ground one, the Counsel submitted that the trial court was correct in finding that the trial court Appellant failed to prove his claim because there was no proof of the claim of TZS 34,000,000/= as pleaded in the plaint. The Counsel was of the view that since the Appellant claimed for specific damages, he was obliged to prove the same.

As regard to grounds two and three, Ms. Banka submitted that the claims were not proved per section 110 of the Evidence Act, which require a party who alleges to prove its allegation. The Counsel was of the views that the trial court adequately evaluated the evidence of PW1 and PW2 and the Exhibit P1 and properly found that the same did not support the Appellant's claims.

In respect of ground four, like for the Appellant's Counsel, the Counsel for the Respondent also reiterated the submissions in grounds two and three. Since they are related. She added that it is wrong to rely on the admission by the Respondent of the claim, rather, it was a duty of the Appellant to prove the same.

In rejoinder Mr. Abdulkheri basically reiterated what he had submitted in chief.

Those were the submissions by the Counsel for both sides, it is my duty now to determine the case. The main issue is whether this appeal is meritorious.

As submitted by the Counsel for the Appellant, in his plaint claimed for the Respondent for payment of TZS 34,000,000/= being special damages for breach of a contract of supplying transport services

between the Appellant and the Respondent. In addition, he prayed for general damages of TZS 20,000,000/=.

It is a principal of law that special damages must be specifically pleaded and proved. I am fortified by the authority in the case of **Charles Christopher Humphrey Richard Kombe t/a Humphrey Building Materials vs Kinondoni Municipal Council**, Civil Appeal No. 125 of 2016 (unreported) where the Court of Appeal of Tanzania said among other things as follows: -

*"There is no doubt that the claim for TZS. 2,145,000,000.00 was in the form of specific damages which ought to have been specifically pleaded and strictly proved. The law is so settled on this that one need not cite any authority but if any will be required, the cases referred to us by the learned State Attorney, to wit: **Director Moshi Municipal Council vs Stanleanard Mnesi & Another** Civil Appeal No. 246 of 2017 and **Director Moshi Municipal Council vs John Ambrose Mwase** Civil Appeal No. 245 of 2017, cannot be more apt. The two cases are relevant to the appeal despite Mr. Kalolo Bundala's submission suggesting that they are distinguishable. Others include: **Zuberi Augustino vs Anicet Mugabe** [1992] T.L.R 137, **Stanbic Bank Tanzania Ltd vs Abercrombie & Kent (T) Ltd**, Civil Appeal No. 21 of 2001 and **Nyakato Soap Industries***

Ltd vs Consolidated Holding Corporation, Civil Appeal No. 54 of 2009 (both unreported). In the latter decision, we quoted with approval a passage in **Bolag v. Hutchison** [1950] AC 515 in the judgment of Lord Me Naughten thus:

'Special damages are.... such as the law will not infer from the nature o f the act. They do not flow in the ordinary course. They are exceptional in their character and, therefore, they must be claimed specially and proved strictly...'

A question is whether the Appellant proved his claim which is in a nature of special damages. The Appellant's Counsel answered this issue in affirmative relying of the testimonies of PW1, PW2 (the Appellant) and Exhibit P1 and admission of part of the claim by the Respondent.

Briefly the testimony of PW1 was that PW2 entered into agreement with the Respondent supply of transport services for transporting of building materials to various destinations in Kasulu and Kakonko Districts. That the service was offered which amounted to TZS 24,200,000/=. This is what was also stated by PW2. Exhibit P1 is an agreement which was entered between the Appellant and the Respondent admitting the debt.

It is on record that when hearing of the case was still going on in court the Respondent admitted the debt of TZS 24,200,000/= and partly repaid the same to the tune of TZS 10,000,000/= This is what the Respondent clearly stated in his defence and this piece of evidence was not controverted by the Respondent in his defence. Acknowledging the debt, the Respondent stated in his defence as follows: -

"I have already paid TSh. 10,000,000/= I am still indebted a total of TSh. 14,200,000/=:, just pray the court to give me time so that I pay the remaining amount of TSh. 14,200,000/=. That is all".

The Counsel for the Respondent submitted that it was a duty of the Appellant to prove the claim not to rely on the admission by the Respondent. With due respect, I think the Respondent's Counsel runs away from the proper position of the law. In my understanding, admission of a fact makes part of proof of that fact. The Appellant according to the circumstances of this case proved his claim by admission of the Respondent that the claim was of TZS 24,200,000/= and since TZS 10,000,000/= was paid on admission, then the remaining amount of TZS 14,200,000/= was also proved. Ground one has merit.

While I was discussing ground one, I have also discussed grounds two, three and four since all concern the same issue of re-evaluation of evidence.


In the event, I find that the appeal has merit. I allow it and make the following consequential orders: -

1. The appeal is allowed;
2. The trial court's judgement is quashed and the decree thereof set aside;
3. The Respondent is to pay the remaining mount of TZS 14,200,000/=
4. Due to the circumstances of this case in which the Respondent did not desist the case except been forced by the Appellant to do so, I make no order as to costs.

Order accordingly

Dated at Kigoma this 08th day of February, 2023




F. K. MANYANDA
JUDGE

