

UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IRINGA REGISTRY
AT IRINGA
CIVIL CASE NO. 24 OF 2022

TANZANIA NATIONAL ROADS AGENCY 1ST PLAINTIFF
ATTORNEY GENERAL 2ND PLAINTIFF
VERSUS
PETRONAS ENERGY (T) LTD.....DEFENDANT

SUMMARY JUDGMENT

Date of Last Order: 29.08.2023

Date of Judgment: 15.09.2023

A.E. Mwipopo, J.

This summary suit was filed by Tanzania National Roads Agency (TANROADS) and the Attorney General, the plaintiffs herein, under Order XXXV Rule 1 (e) of the Civil Procedure Code Act, Cap. 33 R.E. 2019, and Section 54 of the Road Act, Act No.13 of 2007. The plaintiffs are suing Petronas Energy (T) Ltd, the defendant, for recovery of thirty three million nine hundred thirty thousand shillings only (Tshs. 33,930,000/=) used to repair 11 pieces of Jersey barrier damaged by the defendant's car. The

plaintiffs pray for judgment and decree against the defendant on the following reliefs:-

- 1. Payment of shillings thirty three million nine hundred thirty thousand shillings only (Tshs. 33,930,000/=) being cost for repair of the damaged jersey barriers;*
- 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. Any other relief(s) as this Court deems fit to grant.*

On the hearing date, the plaintiffs was represented by Ms. Neema Sarakikya, State Attorney, while the defendant failed to appear. The state attorney appearing for the plaintiffs informed the Court that the efforts to serve the defendant with summons through her address failed, and she prayed to serve the summons to the defendant through substituted service. The Court granted the prayer and ordered the plaintiffs to serve the defendant by substituting service in Swahili and English newspapers. The plaintiffs successfully served the summons to the defendant through publication in the Mwananchi Newspaper dated 17.05.2023 on page 25 and the Citizen Newspaper dated 18.05.2023 on page 5. On the following hearing

date, Ms. Neema Sarakikya, the state attorney, represented the plaintiffs, and the defendant failed to appear again. The Court ordered the hearing to proceed in the defendant's absence.

In her submission, Ms. Neema Sarakikya said that the summary suit was instituted for the reimbursement of thirty three million nine hundred thirty thousand shillings only (Tshs. 33,930,000/=) being costs for repair of the 11 pieces of Jersey barrier damaged by the defendant's vehicle. The defendant is the registered owner of the vehicle with registration number T 300 BPR with a trailer with registration number T 923 AYH, which was involved in an accident at Kitonga escarpment along Tanzania Zambia Highway. The vehicle knocked and damaged eleven (11) jersey barriers worth thirty three million nine hundred thirty thousand shillings (Tshs. 33,930,000/=). Annexure TRD 1 shows the accident photos. The 1st defendant repaired the damaged jersey barriers for thirty three million nine hundred thirty thousand shillings only (Tshs. 33,930,000/=) and demanded the defendants to pay for the repair cost of the damaged access culvert, but the defendant failed to heed to the demand. The plaintiff is now claiming for recovery of the costs for repair to the defendants to the tune of thirty three million nine hundred thirty thousand shillings only (Tshs. 33,930,000/=),

interest at a court rate of 40% from the date the cause of action arose to the date of judgment, decretal sum with interest at court rate from the date of judgment until full payment by the defendant, the costs of the suit and any other relief this Court deems fit to grant.

The issue for determination is whether the plaintiffs' claims were proved on balance of probabilities.

The plaintiffs have deposed in the plaint that on 01.08.2019, the defendant's vehicle with registration number T 300 BPR with a trailer with registration number T 923 AYH was involved in an accident at the Kitonga Escarpment along Tanzania Zambia Highway and knocked and damaged 11 jersey barriers. Annexure TRD 1, attached to the plaint, shows photos of the accident, the vehicle and the damaged jersey barriers. Further, the facts show that the 1st plaintiff repaired the damaged jersey barriers and notified the defendant to pay for the repair cost through a letter with reference number TRD/RM/IR/R.10/2/89 dated 05.08.2019 (see. Annexure TRD2). Annexure TRD 2 attached to the plaint is the letter dated 05.08.2019 from the 1st plaintiff to the defendant claiming for payment of thirty three million nine hundred thirty thousand shillings only (Tshs. 33,930,000/=) used to repair 11 pieces of Jersey barrier damaged be paid to the 1st plaintiff within

28 days. Despite the notification calling for the settlement of the matter, the defendant failed to heed the demand.

Sections 54 (1), (2), (3), and (4) of the Road Act provide for mandates of the road authority to recover from the owner of the vehicle the costs for damages attributed to a vehicle. The road authority has a duty 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 law provides for means of recovering the costs for repair, including by filing in Court the application for recovery of the costs for repairing the damaged road affected by way of the summary procedure under the Civil Procedure Code Act.

Order XXXV rule 1 (e) of the Civil Procedure Code Act, Cap. 33 R.E. 2019 provides 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, where defendant's vehicle damaged 11 jersey barriers at Kitonga escarpment. The facts deposed in the plaint and Annexure TRD1 proved that the vehicle owned by the defendant had an accident and damaged 11 jersey barriers. The deposed facts also prove that the 1st plaintiff repaired the damaged jersey barriers and claimed to be refunded the repair cost through a letter with reference number TRD/RM/IR/R.10/2/89 dated 05.08.2019 to the sum thirty three million nine hundred thirty thousand shillings only (Tshs. 33,930,000/=). These 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.

The reliefs available under the law to the plaintiffs are those available under the summary procedure. The position was stated in **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).

Order XXXV rule 2 (2) (a) of the Civil Procedure Code Act provides for the available reliefs 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 for recovery of 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 law allows the Court 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. The circumstances allow the application of rule 2(2) (a) Order XXXV of the Civil Procedure Code Act, Cap. 33 R.E. 2019 in the present case.

For that reason, the 1st plaintiff is entitled to recover the cost incurred in repairing the damages, the costs of the suit, and the Court interest rate of 12% per annum from the date of delivery of the judgment until satisfaction of the recovery cost. The prayer for the Court's interest rate at

40% is not granted for the reason that under Order XX, rule 21 (1) of the Civil Procedure Code Act, the Court's interest rate is between 7% and 12%. The Court has granted the interest rate at 12%.

Consequently, the plaintiffs are granted the following reliefs:-

- i. The defendant is ordered to pay the 1st plaintiff thirty three million nine hundred thirty thousand shillings only (Tshs. 33,930,000/=) being the costs used to repair 11 pieces of Jersey barrier damaged by the defendant's vehicle;
- ii. The defendant has 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.E. MWIPOPO

JUDGE

15/09/2023