THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

AT DAR ES SALAAM

PC CIVIL APPEAL NO. 1 OF 2023

(Originating from Judgment and Decree in Civil Appeal No.122 of 2022 at Kinondoni District Court delivered on 28th June 2022 as per Hon. H.S. Msongo SRM)

Between

ABDULKARIMU MUWANYA.....APPELLANT

VERSUS

RASHDA AZIZ MGAYA.....RESPONDENT

JUDGMENT

Date of last Order: 26/10/2023
Date of Judgment: 10/11/ 2023

HON.GONZI,J.;

The genesis of the case is in the Primary Court of Kinondoni where the Respondent was the Plaintiff and the Appellant was the Defendant. The Respondent sued the Appellant claiming for payment of Tshs.15,000,000/= (Tshs. Fifteen Million only) being contractual sums for breach of contract. From the letter addressed to the Resident Magistrate Incharge of the Primary Court of Kinondoni when filing her civil case in the Primary Court, the Respondent wrote the following words constituting her claims against the Appellant herein:

"Mnamo mwaka 2013 nilimpatia Mdaiwa Gari aina ya IST kwa ajili ya kuiuza Tshs.8,500,000/= lakini mpaka leo amekuwa akinipa ahadi zisizotimizika. Kuhusu ulipaji wa gari au kiasi kilichopatikana kwenye uuzaji wa gari hilo. Na Mpaka sasa ni takribani miaka saba. Pamoja na riba ni Tshs.15,000,000/="

The above words can be translated into English to mean " In 2013 I gave my Motor Vehicle make IST to the Defendant for him to sell it at Tshs.8,500,000/= but todate he has been giving me empty promises about returning the car or the amount realized from the sale of the car. It is about seven years now and the principal sum plus interest is Tshs.15,000,000/=.

The same words were written down by the Primary Court in the Claim Form which she signed and therefore her case was officially instituted in the Primary Court.

During the trial it was testified that the parties were related whereby the Appellant is a friend of the father of the Respondent and that the Respondent and the Appellant had an agreement for sale and importation of motor vehicles for re-sale wherein the Respondent allegedly had given

the Applicant a motor vehicle (Toyota IST) to sell on her behalf at Tshs. 9 or 8 million but this car was eventually sold by the Appellant at Tshs.7,500,000/= because the Appellant had inspected the car and had found that it was worn out in some parts. It was alleged by the Respondent that she was not paid her money in full whereby the Appellant wanted to give her land at Kigamboni instead, but that the Respondent had not accepted. Therefore, the sum remained unpaid.

The Respondent in her testimony in the Primary Court stated that the parties herein had yet other commercial transactions involving sell of motor vehicles. That the Respondent subsequently sent to the Appellant USD 3000 for him to import a car with a view to reselling it upon its arrival in Tanzania where they had agreed to share the proceeds thereof. The Respondent testified that, the imported car was seized at Zanzibar Port as there was a problem of increased import taxes and fees for clearing the car at the Zanzibar Port. As a result, the imported car was auctioned by Government in Zanzibar in 2020 and therefore she suffered yet another loss. In the Primary Court, the Respondent as the Plaintiff, in her testimonies therefore claimed for Tshs.10 million as the outstanding

balance after saying that she had been paid Tshs.5 million. I quote the testimony of the Respondent who testified as PW1 in the Primary Court:

"***2020 alienda kwa wakili ili wabalance juu ya kumpatia gari alimwambia kuwa ampatie kiwanja Kigamboni na alimwambia kuwa anahitaji pesa ila alikaa kimya tena mpaka sasa deni lake na alishamlipa milioni 5 bado milioni 10 kuwa ndio waliyokubaliana***
."

(in 2020 she went to an advocate so that they could balance about giving her a car. He told her that he would give her a piece of land at Kigamboni while she told him that she needed money. Yet again he did not do anything till todate. He has already paid her Tshs 5 million and the balance is Tshs.10 million and that is what they have agreed).

The appellant alleged that he had already paid the Respondent the amount in respect of sale of the IST motor vehicle. His evidence is recorded by the Hon.Magistrate thus:

"kesho yake alileta gari IST alianza kuitangaza kuiuza na matarajio ni kupata milioni 9 alikagua na kukuta chini imeharibika

na alifanyia marekebisho na alisafiri na Kwenda na alipasa mteja wa milioni 7 na nusu lengo ilikuwa kumsaidia yeye alimtumia 7500000"

(the next day she brought the IST car and he started to advertise it with the aim of fetching 9 million shillings. He inspected it and found the car was worn-out underneath the body so he made some repairs. She had travelled, and he got a customer for Tshs.7.5 million shillings. With the aim of helping her, he sent to her Tshs.7,500,000/=)

The appellant further denounced the claim of USD 3000 for failure to import the second car and he raised a defence that the contract for importation of the car from abroad was frustrated by the government act of selling the confiscated car by auction for failure to clear it at Zanzibar port.

The Primary Court after hearing the parties evidence, delivered its Judgment dated 22nd September 2021, where it dismissed the case for lack of proof by the Respondent who was then the Plaintiff.

Upon dismissal of her case, the Respondent lodged an appeal to the District Court of Kinondoni to challenge the Judgment and Decree of the Primary Court. This appeal was registered as Civil Appeal No.122 of 2021. After hearing the parties, the District Court delivered its Judgment on 28th June 2022. In its Judgment the District Court overturned the Judgment and Decree of the Primary Court and therefore the Respondent won the appeal. The Appellant was ordered to pay the Respondent Tshs.15 million shillings as both specific and general damages.

The District Court made two major holdings as can be seen at pages 6 and 7 of the Judgment. Firstly, the District Court found that there was a valid contract between the parties despite some uncertainties in their agreement. The District Court held that section 29 of the Law of Contract Act was not offended by the contract in question. The second holding by the District Court was that the losses relating to the confiscation and auctioning of the second car at Zanzibar Port for failure to pay government taxes, solely related to the Appellant herein who was the Respondent in the District Court. The District Court held that the Appellant was the one who had ordered the second car which was auctioned at the Port in

Zanzibar and not the Respondent. If the Appellant had ordered the car for the Respondent, it was a private arrangement between them.

The District Court, therefore, entered Judgment and Decree in favour of the Respondent for the Appellant to pay her Tshs.15 million as specific and general damages suffered for breach of contract. This sum was not quantified as to which contractual claim out of the two, it related to. Also, it did not specify how much of it was specific and how much thereof was general damages.

Aggrieved with the decision of the District Court against him, the appellant has filed the present appeal with two grounds of appeal which can be reproduced from his Petition of Appeal as follows:

1.That the Magistrate erred in law and facts in holding that there was a valid contract between the Appellant and the Respondent.

2. That the Magistrate erred in law and fact by awarding the Respondent Tanzania shillings Fifteen Million (Tshs.15,000,000/=) without specific legal justification on that.

The appellant therefore prayed for this court to quash and set aside the Judgment of the District court and uphold the Judgment of the Primary Court and with costs.

The hearing of the appeal proceeded by way of written submissions as directed by the court. In his Written submissions in support of the Appeal, the Appellant's Advocate Mr.Tumaini Mfinanga argued as follows:

Regarding the 1st ground of appeal, the Appellant submitted that there was no legally acceptable agreement between the parties due to lack of certainty. He submitted that under section 29 of the Law of Contract Act, Cap. 345 (RE 2019) an agreement the meaning of which is not certain, or capable of being made certain, is void". The Appellant relied on the case of **Nitin Coffee Estate Ltd and 4 Others versus United Engineering Works Ltd** and another (1988)TLR 203 where the Court of Appeal held that: **"as the price was not agreed, and there was no means of ascertaining such price in a sale of individual shares, there was no agreement due to uncertainty, in the circumstances, there was no valid contract between the Appellant and the Respondent."**

Mr.Mfinanga argued that, in the case at hand, the intended business between the Appellant and the Respondent did not reach its maturity as it was frustrated by an act of the Government of Zanzibar changing tax rates and the car was auctioned by the Government and the Respondent knows about this.

On the second ground of appeal, the Appellant argued that in law specific damages must be proved strictly. He relied on the case of **Masole General Agencies Versus African Inland Church of Tanzania** (1994) TLR 192. He submitted that the Respondent failed to prove in the trial court as to how she arrived at Tshs.15 million while the business was not done at all. The Appellant submitted that during the trial in the Primary Court, there was evidence that the Appellant had paid the Respondent Tshs.6million and it was not disputed. Therefore, he submitted, the Court should have reduced the Respondent's claim accordingly.

The Appellant submitted that there were no reasonable grounds for the 1st appellate Court to depart from the findings of the Trial Court because the trial court had not omitted to consider or to have misconstrued material evidence. Neither did the trial court act on wrong principles or made an

error in its approach to evaluate the evidence. The appellant prayed for this court to allow the appeal with costs.

The Respondent, through her Advocate Wilson Mafie, submitted as follows in response to the grounds of appeal:

In respect of the first ground of appeal, he submitted that there was no any uncertainty in the agreement. He quoted Black's Law Dictionary, 2nd Edition which has defined certain to mean "capable of being identified or made known, without liability to make mistake or ambiguity, from data already given".

The Respondent's counsel submitted that from the Judgment of the Primary Court at page 2, it is clear that the terms of the contract were clear as the Appellant had sold the first car, Toyota IST at Tshs.7,500,000/= and later he imported another car which was auctioned at Zanzibar port for failure to pay government taxes. The Respondent argued that the NITIN COFFEE ESTATES CASE is distinguishable as it was based on sale of shares at a consideration, while in the present case the contract was for importation of car and selling the same to 3rd parties and then the Appellant and Respondent would share profits. The Counsel cited

the case of **Philipo Joseph Lukonde Versus Faraji Ally Saidi,** Civil Appeal No.74 of 2019 to the effect that parties have a duty to honour their contractual obligations.

On the contract for importation of the motor vehicle being frustrated by the act of Government in Zanzibar, the Respondent submitted that there was no proof tendered to that effect during the trial. Under section 110 (1) of the Law of Evidence Act, the Appellant was duty bound to prove that allegation by tendering an exhibit. The Respondent argued that the Appellant had a burden of proving his allegations in terms of section 110(1) and section 11 of the Law of Evidence Act, Cap 6 of the Laws of Tanzania.

On the allegation of part payment in respect of the purchase price for the IST car, the Respondent argued that there is no proof in the records of the trial Court. He argued that Counsel cannot introduce new evidence during the hearing of the appeal and by way of submissions. For this he relied on **JOAO OLIVEIRA VS SOUL OF TANZANIA LTD,** Civil Appeal No.186 of 2020.

By way of rejoinder, the appellant submitted that the agreement at hand had uncertainty on the way of sharing the profits proceeds. Hence void under section 29 of the Law of Contract Act.

After going through the records of the 2 courts below and the submissions by the parties, one issue which promptly comes into question is as to what kind of agreement did the parties have. This is crucial because the kind of agreement would have helped the court to determine the essential ingredients thereof and its peculiar features. This in turn would have helped in determining its validity and, in case a valid agreement is established thereby, would have helped to identify the rights and obligations of the parties under it. Unfortunately, the agreement between the parties herein is not in writing and was not evidenced in writing during the hearing at the trial Court. No exhibit was tendered by either party in the trial Court. Worse still, the way the testimonies of the parties and witnesses was recorded in the Primary Court, and in particular the evidence of the Respondent and Appellant, was ambiguous. Hence needed a lot of thinking to discern what was recorded by the primary court. The entire evidence of the Respondent who testified as PW1 in the Primary Court, for

example, was recorded in Kiswahili in one paragraph and a single unpunctuated sentence as follows:

"***SM1,RASHIDA AZIZ MGAYA, aliapa na kueleza kuwa mnamo mwaka 2013 alimpatia mdaiwa ambaye ni rafiki wa baba yake gari IST ili aiuze kwa makubaliano alikuwa anatafuta milioni 9, ilitokea alisafiri kabla ya gari haijauzwa walipatikana wateja ila walikuwa na 8,500,00/= alitumiwa pesa na kuja na gari nyingine na hakufahamishwa juu ya gari aliyokuja nayo alikuwa anamfatilia alisema gari ya muda na ilipofika mwaka 2015 alimkumbusha tena alimwambia anaomba amsaidie ada alilipa milioni moja na alimuuliza kaka yake na alikuwa anamletea gari na kumpa mwaka 2020 alienda kwa wakili ili wabalance juu ya kumpatia gari alimwambia kuwa ampatie kiwanja Kigamboni na alimwambia kuwa anahitaji pesa ila alikaa kimya tena mpaka sasa deni lake na alishamlipa milioni 5 bado milioni 10 kuwa ndio waliyokubaliana".***

In response to the above evidence, the Appellant, who was the Defendant in the Primary Court, is recorded to have testified as follows:

"SM3, ABDULKARIM ALLY MUWANYA;

Aliapa na kueleza kuwa kweli alipigiwa simu na mdai na alimweleza alitaka waonane walikutana na kusema hawana haja na gari na alitaka kumuingiza kwenye biashara yake hivyo kesho yake alileta gari IST alianza kuitangaza kuiuza na matarajio ni kupata milioni 9 alikagua na kukuta chini imeharibika na alifanyia marekebisho na alisafiri na Kwenda na alipasa mteja wa milioni 7 na nusu lengo ilikuwa kumsaidia yeye alimtumia 7500000 na alinunua gari kwa USD 3000 kuwa wafanye 1600 aliileta kwa kutumia kontena lake na ilifika bandarini Zanzibar kulitokea mabadiliko ya kodi kwenye bandari na kontena zilipofika na ilipelekwa order ya loading list na kukaguliwa na kamishina wa kodi Zanzibar walipata kontena na offence ambayo moja ilikuwa USD 3000 walifatilia na baada ya miaka 2 walishindwa kutoa gari ziliishia kupigwa mnada ndio hapo tatizo lilipoanzia na alimwambia hali ya kibiashara ilivyo alimwambia kama anataka gari atoe fedha kidogo ili afanye hivyo biashara ya mzigo zote kuna loss na yeye alipata loss na kuanzia hapo hajasafiri tena kwa

sababu uchumi umeishia ndio na wameendelea kujitafuta kufanya biashara".

In essence, that is the evidence on record of the Primary Court. There is also a sketchy 3-lines long evidence of SM2 Hamis Omary Seif which reads as follows:

"SM2, HAMISI OMARY SEIF; aliapa na kueleza kuwa mdai alimkabidhi gari mdaiwa aina ya RAMNB na alikabidhiwa kwa ajili ya biashara na aliichukua ofisini hapo."

Given the absence of punctuation marks and the fact that the action verbs in kiswahili are gender-neutral, it is really a mind-boggling task to read and understand the records of the Primary Court. I have already stated the gist of the proceedings in the primary court at the beginning of this judgment which is obtained from contextual meaning of the records of the Primary Court.

I should better now proceed with determination of the two grounds of appeal.

In the first ground of appeal, the Appellant essentially is disputing to have entered into a valid contract with the Respondent at all. In the second

ground of appeal, the Appellant is challenging the amounts of Tshs.15 million he was ordered by the District Court to pay the Respondent. The two grounds of appeal are so intertwined that I will determine them simultaneously. In the course of determining one ground of appeal inevitably some elements of the other one pop-up.

Was there a valid and enforceable contract between the parties in the present case? The Appellant disputes and he says that their arrangement was uncertain hence not a contract in terms of section 29 of the Law of Contract Act. It is worth noting that in the case at hand there are two transactions which are alleged to have constituted contracts and which the Respondent alleges were breached by the Appellant. The first contract was with respect to sale of the IST motor vehicle brought by the Respondent to the Appellant for him to sell. The appellant submitted that the agreement was not valid because it was not certain in terms of sharing of proceeds thereof. In my view, the appellant is wrong. From the testimonies of both parties, it is clear that the contract for sale of the IST motor vehicle was an agency contract wherein the Appellant received the motor vehicle from the Respondent so as to sell it and indeed he sold the vehicle. According to himself, after selling it he sent Tshs.7.5million to the

Respondent. There was no agreement of sharing the proceeds thereof. The Appellant himself in his testimony did not say that after selling the said motor vehicle, he was to retain some of the purchase price as commission or otherwise. The terms of that agreement according to the respondent's testimony in the trial were that the Appellant was supposed to sell the car at around Tshs.9 million shillings and then give the purchase price to the Respondent. It is testified by the Appellant that indeed he sold the car at Tshs.7.5million shillings and sent the money to the Respondent. I find that the terms of that contract are certain. From another angle, the terms of this contract are capable of being ascertained. I accept the definition of the word "certain" as quoted by the Respondent from Black's Law Dictionary, which has defined the term "certain" to mean **"capable of being identified or made known, without liability to make mistake or ambiguity, from data already given".** From the data already given, it is possible to identify what the parties had agreed with respect to the first agreement for sale of the IST car. The Appellant was given a car, to sell and remit the money obtained to the Respondent. It can also be ascertained that the Appellant had flexibility or latitude in obtaining the selling price. He was told to sell it at about Tshs.9 to 8 million, but as the

car was defective in some parts, the Appellant testified that he sold it at Tshs.7.5 million. In the case at hand, the respondent says the car was sold at Tshs. 8.5 million and the Respondent has not refused to accept the Tshs.8.5 million shillings. The Respondent complains that the same has not been paid to her despite her follow-up. Therefore, I uphold the finding of the District Court on the first ground of appeal with respect to the contract for sale of the IST motor vehicle. I hold that the Appellant and the Respondent's contract for sale of the IST motor vehicle was certain.

Having established that there was a valid contract for sale of the IST motor vehicle, I will proceed to answer the question as to whether or not the amounts which were being claimed thereunder were proved? The District Court held that that the amounts claimed under the contract of sale of the IST motor vehicle were proved and proceeded to award the Respondent Tshs.15 million for both contracts in respect of the IST and in respect of the imported motor vehicle. The 15 million was awarded without analysis as to which portion thereof related to the contract for sale of the IST motor vehicle and which amount stems from the failure to perform the contract to import the car through Zanzibar port. Equally the District Court did not make it clear how much out of the 15 million is specific and how much is

general damages. I had to look again at the nature of the claim of the Respondent in the Primary Court when she instituted her case. She wrote: **"Mnamo mwaka 2013 nilimpatia Mdaiwa Gari aina ya IST kwa ajili ya kuiuza Tshs.8,500,000/= lakini mpaka leo amekuwa akinipa ahadi zisizotimizika. Kuhusu ulipaji wa gari au kiasi kilichopatikana kwenye uuzaji wa gari hilo. Na Mpaka sasa ni takribani miaka saba. Pamoja na riba ni Tshs.15,000,000/="**

The above words can be translated into English to mean " in 2013 I gave my Motor Vehicle make IST to the Defendant for him to sell at Tshs.8,500,000/= but todate he has been giving me empty promises about returning the car or the amount realized from the sale of the car. It is about seven years now and the principal sum plus interest is Tshs.15,000,000/=."

Therefore, the Respondent was claiming Tshs.8.5 million shillings from the contract for sale of the IST. Was this sum paid? Once again the answer is found from the proceedings of the Primary Court where the Respondent hersfelf testified that: "***2020 alienda kwa wakili ili wabalance juu ya kumpatia gari alimwambia kuwa ampatie kiwanja Kigamboni na alimwambia kuwa anahitaji pesa ila alikaa kimya tena mpaka sasa***

deni lake na alishamlipa milioni 5 bado milioni 10 kuwa ndio waliyokubaliana". **(in 2020 she went to an advocate so that they could balance about giving her a car, he told her that he would give her a piece of land at Kigamboni while she told him that she needed money but again he did not do anything till todate. He has already paid her Tshs 5 millionand the balance is Tshs.10 million and that is what they have agreed).**

From the statement of the claim and the testimony of the Respondent herself, she had been paid by the Appellant Tshs.5 million. She was claiming for additional Tshs 10 million but at least it is not disputed that she had been paid Tshs.5 million as admitted herself in court. So, we can pause here and observe that out of the Tshs.8.5 million she was claiming from the Appellant for the sale of the IST Motorvehicle, the Respondent had already been paid Tshs.5 million. This means that the outstanding balance in respect of the contract for sale of the IST motor vehicle was Tshs. 3,500,000/=. But the Appellant in his testimony stated that he had sold the car at Tshs.7,500,000/=. If we go by the statement of the Appellant then the outstanding balance becomes Tshs.2,500,000/=. Which version of the story should be accepted between that of the Respondent

and that of the Appellant as regards the purchase price of the IST motor vehicle? I would accept the version of the story about the price as given by the Respondent that the IST motor vehicle was sold by the Appellant at Tshs.8,500,000/= . This is because it is the Appellant who sold the car and allegedly sent the money to the Appellant. If the Appellant is alleging that he sold the IST motor vehicle at Tshs.7.5 million, then the burden was upon him to prove that allegation. He did not do so while he had the means to. He ought to have kept records of the sale which he could have tendered in court to verify the price.

Therefore with respect to the first ground of appeal, I hold that there was an agreement which was certain and at any rate capable of being made certain between the Appellant and the Respondent for the sale of the respondent's IST motor vehicle at Tshs.8.5 million Shillings and that out of that purchase price, the Appellant has paid the respondent only Tshs.5 million as admitted by the Respondent in her testimony at the primary court. The Appellant is still liable to pay the Respondent Tshs.3,500,000/=. Hence the first ground of appeal holds no water.

On the validity of the second contract for importation of the car which was seized at Zanzibar Port which allegedly the Respondent had paid the

Appellant USD 3000, I have the following to say. I have considered the arguments of both parties on this transaction too. My careful perusal of the records of the Primary Court show that the claim was not pleaded in the Primary Court. In the Claim Form and her letter in filing the case in the Primary Court, the Respondent had written as follows: **"Mnamo mwaka 2013 nilimpatia Mdaiwa Gari aina ya IST kwa ajili ya kuiuza Tshs.8,500,000/= lakini mpaka leo amekuwa akinipa ahadi zisizotimizika. Kuhusu ulipaji wa gari au kiasi kilichopatikana kwenye uuzaji wa gari hilo. Na Mpaka sasa ni takribani miaka saba. Pamoja na riba ni Tshs.15,000,000/=."** The above words can be translated into English to mean: **"in 2013, I gave my Motor Vehicle make IST to the Defendant for him to sell it at Tshs.8,500,000/=. But to date, he has been giving me merely empty promises about returning the car or the amount realized from the sale of the car. It is about seven years now, and the principal sum plus interest is Tshs.15,000,000/=."**

The above was all the official claim presented by the Respondent against the Appellant in the Primary Court. The Appellant was called to defend himself in the Primary Court against that claim communicated to him. But

while the Appellant was testifying in the Primary Court, he suddenly introduced the claim of imported car seized and auctioned at Zanzibar Port. That claim just arose in the course of hearing thus: ***alinunua gari kwa USD 3000 kuwa wafanye 1600 aliileta kwa kutumia kontena lake na ilifika bandarini Zanzibar kulitokea mabadiliko ya kodi kwenye bandari na kontena zilipofika na ilipelekwa order ya loading list na kukaguliwa na kamishina wa kodi Zanzibar walipata kontena na offence ambayo moja ilikuwa USD 3000 walifatilia na baada ya miaka 2 walishindwa kutoa gari ziliishia kupigwa mnada. (he bought the car at USD 3000 so that they could make 1600. He transported it in his container and it arrived at the Port in Zanzibar. There were changes in customs charges and taxes at the Port. Upon arrival of the containers, and when the order of loading list was inspected by the Tax Commissioner in Zanzibar, they were impounded for an offence which cost them USD 3000. They followed up for two years but failed to clear the car and it was ultimately auctioned."***

This was the first time that the allegations about the transaction of the imported car in Zanzibar Port were brought to the attention of the Trial

Court. No evidence was given by the Respondent in the primary court about that claim. It was not even part of the claim she had filed in court. Parties are bound by their pleadings. Extending the same principle to the letter filed, and the statement of claim signed, by the Respondent while instituting her case in the Primary court, this claim of contract with regard to importation of the motor vehicle seized and auctioned at Zanzibar Port was not pleaded nor proved. It goes without saying therefore that the alleged contract and amounts in respect of the imported car via Zanzibar port, have not been proved. This means the second ground of appeal partly succeeds. The District Court in imposing the liability of Tshs.15 million as both specific and general damages in respect of both contractual transactions was wrong. There was no claim nor proof of existence of the contractual arrangement between the parties herein worth USD 3000 for importation of the alleged car through Zanzibar Port. The District Court should have quantified the damages specifically between specific and general damages and further it should have ascertained the validity and the financial implications of each of the two alleged contractual transactions separately. In respect of the specific damages, it was necessary for the same to be strictly proved. There was no proof as to

justify the imposition of Tshs.15 million as damages upon the Appellant. The claim of interest was equally not proved.

In the end, this appeal partly succeeds. I quash and set aside the judgment and decree of the District Court and substitute thereof with an order for the Appellant to pay the Respondent Tshs.3,500,000/= being unpaid purchase price for the IST motor vehicle. The sum will fetch interest at the court rate of 12% per annum from the date of this Judgment. Each side shall bear its own costs.

It is so ordered.

A.H.Gonzi

Judge

10/11/2023

Judgment is delivered in court this 10th day of November 2023 in the presence of Mr. Mfinanga Advocate for the Appellant and Mr. Mafie Advocate for the Respondent. The Appellant and Respondent are also present in person.

A.H.Gonzi

Judge

10/11/2023