IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

AT DAR ES SALAAM

CIVIL APPEAL NO. 119 OF 2023

(Appeal from the Judgment and Decree of the District Court of Kinondoni in Civil Case No.74 of 2022 dated 08/06/2023 as per Hon.J.Kaluyenda, PRM)

SANITAS HOSPITAL LIMITED.....APPELLANT

VERSUS

PYRAMID PHARMA LIMITED.....RESPONDENT

JUDGMENT

Date of last Order: 30/10/2023

Date of Judgment: 17/11/ 2023

GONZI, J.;

In the District Court of Kinondoni the Respondent successfully sued the Appellant for breach of contract of supply of pharmaceutical products and services. The Respondent claimed for Tshs. 38,260,262.42/= as outstanding amount unpaid under the contract and Tshs. 20,000,000/= being special damages arising from the loss of business due to breach of the contract.

The District Court in its Judgment delivered on 8th June 2023 decided the case in favour of the Respondent who was the Plaintiff therein and granted her the following reliefs:

(i) The Defendant to pay the Plaintiff Tshs.38,260,262.42.

(ii) Payment of commercial interest of 10% from the date of default to the date of Judgment.

(iii) Payment of Court interest of 10% from the date of Judgment to the date of payment of the whole sum.

(iv) Payment of Tshs.10,000,000/= being punitive damages.

(v) Payment of Tshs.20,000,000/= as general damages.

(vi) Costs of the suit be borne by the Defendant.

Aggrieved with the above judgment and decree, the Appellant filed the present appeal in court and advanced the following grounds of appeal:

1. That the learned trial Magistrate erred in law and fact by stating that the appellant and the respondent had the contract for supply of medical facilities without any proof before the court.

2. That the learned trial Magistrate erred in law and fact for failure to analyse properly the evidence before her hence occasioned injustices to the Appellant.
3. That the learned trial Magistrate erred in law and fact by ordering that the appellant faulted the contract without the standard of proof which is on balance of probabilities.
4. That the learned trial Magistrate erred in law and fact in awarding the respondent a total of Tshs.38,260,262.42/= that being the amount for pharmaceutical medicines supplied to the Appellant without justified evidence.
5. That the learned trial Magistrate erred in law and fact by awarding the respondent a total of Tshs. 30,000,000/= being punitive damages and general damages without proper evidence to justify the same.

The appellant prayed that this court quashes and sets aside the judgment and decree of the trial court with costs.

The appeal was heard by way of written submissions. Mr.Elpidius Philemon, learned Advocate represented the appellant while Mr.Joseph Paulo, learned advocate, represented the Respondent.

Mr. Elpidius submitted in support of the first ground of appeal by arguing that the Respondent, in the trial court had pleaded that the parties had signed a contract for supply of medical facilities and therefore it was upon the Respondent to produce that contract to substantiate the claimed amount. The appellant argued that the Respondent failed to prove existence of the alleged contract.

On the 2nd, 3rd and 4th grounds of appeal, the learned Advocate for the Appellant combined on them all together. The key argument by the appellant was that the Exhibits P1-an e-mail dated 2nd August 2022; P2 – an email dated 1st September 2022; P3-an e-mail dated 2nd September 2022 and P4-A swift message of money transfer, were the basis for the court to conclude that there was a contract for supply of pharmaceutical products . But they had no connection to the claimed contract. The learned counsel argued that each supply should have its own supporting documents specifically. It was wrong to generalize the entire claim using a few documents.

On the fifth ground of appeal, the appellant submitted that it was wrong for the trial court to award Tshs.30 million as general and punitive damages. He relied on the case of **Finca Microfinance Bank versus Mohamed Omary Magavu,** Civil Appeal No.26 of 2020 where at page 11 thereof it was held that **"the trite law is that before awarding general damages, the court must give reasons.."**

The appellant urged this court to step in the shoes of the trial court and reassess the damages awarded.

In his reply submissions the respondent's counsel submitted as follows:

In respect of ground 1 of appeal, the respondent submitted that Exhibits P1, P2, P3 and P4 tendered during the trial were enough to prove existence of the contract and the amount involved. He added that Exhibits P5 and P6 which were the demand letter and the Appellant's reply to it show that the Appellant had admitted the claimed amount. He referred the court to the case of **Godyson Ogambi versus Magere Mang'era,** Civil Appeal No.13 of 2022, High Court of Tanzania at Musoma in support of his argument that parties are bound with what they agreed.

On the consolidated grounds No.2,3 and 4 of the appeal, the Respondent argued that there was ample evidence from Exhibits P1,P2,P3,P4,P5 and P6 and were corroborated by the testimonies of PW 1 and PW 2. That all that evidence showed that the Appellant admitted the claimed amount and brought a proposal of how to settle the claims but did not fulfil the same. He argued that there was proof that the Appellant had been supplied with pharmaceutical products by the respondent worth Tshs.44,260,263.42/= in respect of which the Appellant had paid only Tshs.1,500,000/= hence the balance of Tshs.38,260,262.42/= was correctly imposed by the trial court.

On the fifth ground of appeal, the Respondent submitted that general and punitive damages were prayed for and hence were granted correctly. He argued that general damages are granted at the discretion of the court. He cited the case of **Stanbic Bank Tanzania Limited versus Abercombie & Kent**, Civil Appeal No.21 of 2001 by the Court of Appeal of Tanzania which is to the effect that **general damages are such as the law will presume to be the direct, natural, or probable consequences of the action complained of.** He

submitted that the breach of contract had economic consequences upon the Respondent.

In his rejoinder, the Appellant's counsel reiterated what was submitted in his submissions in chief essentially.

I will determine the present appeal in the same pattern as per the memorandum of appeal and that was followed by the parties in their submissions. In the first ground of appeal, the appellant is complaining that there was no contract proved to have existed between the parties herein. Especially he argues that there is no copy of contract that was tendered in the trial court to prove existence of the contract. I have revisited the records of the trial court and I am satisfied that the trial court was correct in holding that there was a valid contract herein for supply of pharmaceutical products. I agree with the Appellant that there was no copy of a written agreement tendered in court during the trial. But I am mindful that a contract may be proved orally or in writing. In the case at hand the written correspondences and financial transactions as evidenced in Exhibits P1-an e-mail dated 2nd August 2022, P2 – an email dated 1st September 2022; P3-an e-mail dated 2nd September 2022 and P4-A swift message of money transfer were a sufficient basis

for the trial court to conclude that there was a contract for supply of pharmaceutical products. Over and above the Exhibits P1 to P4, there was also the Exhibit P5 a demand letter from the Respondent to the Appellant and Exhibit P6 a reply thereto which admitted the claim. Once a claim is admitted, why would the trial court need additional evidence in prove the same claim? I find that the analysis and conclusion made by the trial court leading to the conclusion that the contract existed, as can be seen at pages 4 and 5 of the Judgment, was proper. I dismiss the first ground of appeal for lack of merits.

With regard to the combined grounds 2,3 and 4 of the appeal which challenge the analysis of evidence to justify the conclusion reached by the trial court on the amount of balance payment, I am of the view that the same is also captured in a way by what is held under the 1st ground of appeal above. I find that the Court correctly inferred from the Exhibits, P1,P2,P3,P4,P5 and P6 as well as from the testimonies of PW 1 and PW2 to correctly ascertain the outstanding sum. I would just say that once it was proved that the Appellant vide the letter Exhibit P6, had admitted the liability for the stated amount, the claim and its quantum were proved against him. Therefore the Appellant is now estopped from

denying or refuting what she categorically communicated in writing to the Respondent vide Exhibit P6 which was an admission of claim while respondning to the demand letter Exhibit P5. A fact alleged by one party and admitted by the other side is deemed to have been proved. It needs no further proof because it is not a fact in issue. Therefore the arguments in respect of the 2nd, 3rd, 4th grounds of appeal hold no water. I dismiss them.

With respect to the ground No.5 of appeal the Appellant complained of the imposition of Tshs.10 million as punitive damages and Tshs.20 million as general damages without the trial court assigning any reason. The respondent replied by saying that general damages are awarded at the discretion of the court and the follow naturally as a consequence of an action.

I accept the argument by the Respondent's counsel that general damages are awarded at the discretion of the court. But I still maintain the position that judicial discretion should be exercised judiciously that is by giving reasons. In their reply submissions the respondent argued that the reasons for the award of the general damages was due to the economic sufferings due to the breach of the contract by the appellant

which affected the economic interests of the respondent. But these reasons are mentioned by the counsel from the bar while making these submissions. They are not borne out form the records of the trial court. In the judgment, there are no reasons assigned as to why the general damages of Tshs.20 million were awarded. I find that was wrong. As it has been submitted by the Appellant's counsel that when a court grants general damages, it should assign the reasons or basis of awarding the said quantum damages. The reasons help the parties to know the basis behind a particular decision. Lack of reasons is a breeding ground for arbitrariness and capriciousness. I hold that the trial court erred in this aspect. Equally, the trial court imposed punitive damages of Tshs.10 million in a contractual dispute was wrong. The trial court ought to have identified the circumstances in law under which general damages and punitive are awarded and relate to the facts before it and then justify her imposition of the amount of general and punitive damages in the case. But that was not done. It was an error.

As the first appellate court, I am duty bound to step in the shoes of the trial court and make an analysis of the evidence and impose the quantum of general and or punitive damages, if any, which befits the

justice of the case. I have considered the amount involved in the substantive claim as well as the fact that the Respondent was awarded costs of the suit and I am of the view that general damages at Tshs. 10 million would suit the justice of the case.

With respect to punitive damages, the position of the law is as it was held by the court of appeal of Tanzania in the case of **Evarist Peter Kimathi And Another Versus Protas Lawrence Mlay ,** Civil Appeal No. 3 of 2000, Court of Appeal of Tanzania at Arusha, where in a case for breach of contract of sale of land, the High court had awarded punitive damages. In an appeal it was held as follows:

> ***"It is common knowledge that damages for breach of contract being pecuniary compensation which the law awards to a person for the injury or loss sustained through the act or default of another, may be either general or specific but not exemplary or punitive. All in all, therefore, the award of punitive damages for Tshs. 500,000/= is set aside as such damages are in law confined only to actions based on the law of torts. "***

It is on that ground that I quash and set aside the order of punitive damages in a claim based on contract which was awarded by the trial Court.

There was no need for the trial court to resort to the principles of law of torts in awarding damages for breach of contract while there is a statutory provision in respect thereof. Section 73 (1) of the Law of Contract Act, Cap 345, R.E. 2002. This section provides as follows:-

> Where a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it."

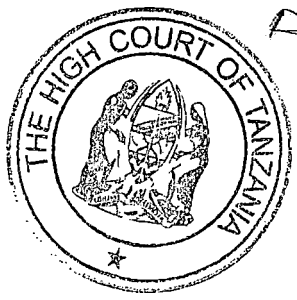
I hold that the above provision was sufficient to guide the trial court in assessing the specific damages. And as for the discretion of awarding general damages, the trial court ought to have

exercised its discretion judiciously and award a reasonable and proportionate amount.

All in all, the appeal partly succeeds to the extent of the 5th ground of appeal only. Given the partial success of the appeal, I make no order as to costs.

1. I set aside the order for payment of Tshs.20 million general damages and I substitute thereof for an order of Tshs 10 million only as the general damages which the Appellant should pay the Respondent.
2. I set aside the order of payment of Tshs.10 million as punitive damages. The same was illegally issued in a claim for breach of contract.
3. Each party to bear its own costs.

   It is so ordered.



A.H.Gonzi
Judge
14/11/2023

Judgment is delivered in court this 17th day of November 2023 in the presence of Mr. Elipidius Advocate for the Appellant and Mr. Paulo for the Respondent.

A.H.Gonzi

Judge

14/11/2023