

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB REGISTRY)
AT DAR ES SALAAM**

CIVIL APPEAL NO. 374 OF 2021

MIKOCHENI BUILDER'S MERCHANTS.....APPELLANT

VERSUS

DAIKIN TANZANIA LIMITED.....RESPONDENT

JUDGMENT ON APPEAL

S.M. MAGHIMBI, J:

This is an appeal against the decision of the Resident Magistrates' Court of Kisutu at Dar-es-salaam ("the trial court") in Civil Case No. 46 of 2016 ("the original suit"). Aggrieved by the judgment and decree of the trial court, the appellant has lodged the current appeal on the following grounds: -

1. That the trial Magistrate erred in law and in fact by disregarding the oral evidence adduced by the appellant herein.
2. That the trial Magistrate erred in law and in fact by not considering important pieces of evidence.
3. That the trial Magistrate erred in law by not giving reason for the decision.

4. That the trial Magistrate erred in law and in fact by holding that the appellant's domain www.daikintanzania.co.tz infringes the respondent's domain www.daikintanzania.com while the two domains are quiet distinct from another.
5. That the trial Magistrate erred in law and in fact by ordering the appellant to de-register her domain www.daikintanzania.co.tz while the respondent has failed to prove any infringement caused to her when the appellant uses her domain www.daikintanzania.co.tz.
6. That the trial Magistrate erred in law and in fact by ordering the appellant to publish a retraction of its advertisement and website in a widely circulating Tanzania Newspaper indicating that the appellant has no relation with the respondent while the appellant has never at any point in time alleged any relationship with the respondent herein.
7. The trial Magistrate erred in law and in fact by awarding the respondent herein a punitive damage of TZS.50,000,000/=.
8. That the trial Magistrate erred in law and in fact by awarding the general damages of TZS. 10,000,000/= to the respondent while there is no proof to damage whatsoever alleged to have been incurred by the respondent.

It was the appellant's prayer that this appeal is allowed with costs and the judgment and decree of the trial court be set aside.

Brief background of the matter is that the respondent herein who was the plaintiff in the main suit sued the appellant for unauthorised use of their trademark in their website namely www.daikintanzania.co.tz. Their argument was that the unauthorised use infringed their right and brings confusion to the public by the use of the said domain name in their website, while the respondent has long been using the trademark name Daikin Tanzania Limited as their Company name and their website being www.daikintanzania.com.

During trial the appellant who was the defendant denied all allegations against him and claimed they have never infringed any right of the plaintiff's Company as the two domain website names are different. After a full trial, the trial Court entered judgment and decree as follows: -

- a) As to punitive damages the defendant Company to pay the plaintiff Tshs. TZS. 50,000,000/= (Fifty Million) as punitive damages.
- b) The defendant's use of the website name www.daikintanzania.co.tz is unlawful for infringing the prior registered domain name namely www.daikintanzania.com.

- c) The defendant was ordered to deregister and close the website www.daikintanzania.co.tz.
- d) The Defendant was ordered to refrain from using the terminology "Daikin Tanzania" in any literature or website text it might produce.
- e) The defendant was ordered to publish in a widely circulated Tanzania Newspaper a retraction of its advertisements and website indication it has no relation with the plaintiff.
- f) The defendant was ordered to pay the plaintiff TZS. 10,000,000/= (Ten Million) being general damages for inconvenience he caused the plaintiff.
- g) Finally, the defendant was ordered to pay the plaintiff costs of the case.

Aggrieved by the decision of the trial court, the appellant appealed before this Court on the afore mentioned grounds of appeal. The appeal was heard by way of written submissions. The appellant enjoyed the services of Matinde and Ms. Joyce learned Advocates while the respondent was represented by Ms. Felister Mtani, learned advocate.

Submitting in support of the appeal, Counsel for the Appellant started by making it clear to the Court that the dispute between the parties is based on issues of Company/corporate name, domain name and

trademark name and the rights arising from the registration of each under their respective laws. He argued that the rights are through registration and are governed by different laws, that is the Company Law Cap. 212 and the Trade and Service Marks Act (1986) Cap. 326 of 2002.

Arguing the first ground of appeal, he submitted that the trial Magistrate erred in law by failure to consider the testimony of DW1 that the domain name www.daikintanzania.co.tz was registered in 2015 after the appellant was given a list of websites not registered, and selected the website from the said list of unregistered websites as evidenced in the judgment. It was his averment that DW1 testified that though the respondent had been incorporated under the Company name Daikin Tanzania Limited, they had not produced any evidence that they had registered the trade name Daikin Tanzania as the trademark at BRELA. That if the trial Magistrate had considered that testimony, he would not have arrived at the conclusion that the respondent is the rightful owner of the trade name Daikin Tanzania Limited.

Ms. Matinde and Ms. Joyce for the appellant again submitted that it is settled law that in order to claim the exclusive rights and infringement under trademark law, one must be a lawful owner of a registered Trademark as required under the provisions of Section 14 (1) of the trademark and Service Marks. That the provisions of section 30 of the

same Act was based on barring a party to entitlement in instituting any proceeding to prevent or recover damages for infringement of an unregistered trade or service mark. The case of **JC Decaux SA & Another Vs. JP Decaux Tanzania Limited, Commercial Case No. 115 of 2018** by Hon. Philip, J. She cited a persuasive decision from Kenya the **Logistics Kenya Limited Civil Case No. 840 of 2010 High Court of Kenya (Mlimani Commercial and Admiral Division (2012)** eKLR, to support the submissions. The counsel for the appellant concluded on the first ground that similar to our case at hand, the mere registration of the Company under the Company's Act, does not give the respondent exclusive right to claim for infringement under trademark in absence of registration of the trade name and certificate given by the registrar.

On the second ground of appeal, it was the appellant's counsel submission that the trial Magistrate erred in law and in fact by not considering important piece of evidence which was referred to evidence of PW1. That the witness testified that his license with Daikin was terminated in 2013 and that the respondent is now selling another brand of air conditioning. Further that the Magistrate also failed to consider that PW 1 stated that the name Daikin and its products belong to Daikin Japan. He went on submitting that the trial Magistrate also failed to consider the testimony of PW2 who testified that the two websites are different

www.daikintanzania.com is a top-level domain handled in Tanzania by the registrar. He argued that if the two key points of evidence would have been considered by the trial Magistrate, he would not have reached the decision reached at the trial Court.

Moreover, Ms. Matinde and Ms. Joyce averred that since the respondent license had expired since 2013 and trade name Daikin exclusively belongs to Daikin Japan and then same can be licensed to another Company as Daikin Japan did to the appellant hence the respondent lacks exclusive rights over the name.

Counsel for the appellant argued the 3rd, 7th and 8th grounds of appeal collectively they stated that the Magistrate failed to give reasons as to why he awarded the Respondent punitive damages of TZS. 50,000,000/= and general damages of TZS. 10,000,000/=. The counsel then pointed that it is a well settled principle of law that damages must be specifically pleaded and proved. That the law requires the Court to assign reasons for awarding damages. The case of **Trade Union Congress Tanzania vs Engineering System Consultants Ltd & 2 Others Civil Appeal No. 49 of 2017** was cited in support of the submission. It was averred that in this case the Court of appeal cited the case of **Alfred Fundi vs Geled Mango and 2 Others, Civil Appeal No. 49 of 2017** and the same position was stressed in the case of

**Zuberi Agustino vs Anicet Mugae (1992) TLR 137 and Masolele
General Agencies vs African Inland Church Tanzania (1994) TLR
192.**

It was the appellant's Counsel submission that the Magistrate erred in law and fact by not giving reasons on his decision or his justification for awarding the respondent punitive damages of TZS. 50,000,000/= and general damages of TZS. 10,000,000/=. Further that the respondent had not given the Court any proof or justification to award specific damages to the tune of TZS. 50,000,000/=.

The 4th, 5th and 6th grounds were also argued collectively. His submission was on the issue that the domain www.daikintanzania.co.tz which is alleged to infringe the rights of www.daikintanzania.com. He first referred to the definition of the word domain from the Black's Law Dictionary, 8th Edition at page 522;

*"Domain name. the words and characters that website owners designate for their registered internet addresses. All domain names have at least two levels. The **first-level domain name** identified the registrant's category as, e.g., a commercial site (.com), a governmental institution (.gov), an educational institution (.edu), a nonprofit group*

*(.org), or a discussion group (.net). The second-level domain name is the unique identifier for the user in a particular category <rhapsangel.com> <rhapsangel.org>. **A second-level domain name may be protected under trademark law, but first-level domain names are not. In some circumstances, the entire domain name may be validly registered as a trademark. But trademark rights are not automatically created by registering a domain name***.

He then argued that from the definition of the word domain it can be concluded that domain contains two levels, second level domain which is a unique identifier (eg. Daikintanzania) and a first level domain name (also referred to as a top level domain (eg. .co.tz) of which when the two are combined form www.daikintanzania.co.tz.

Further to that, it was submitted that during trial, the respondent failed to produce a certificate of registration of "Daikin Tanzania" as a trade name in accordance to section 28 (2) of the Trade Mark Service Act. He pointed out that a person cannot claim for trademark infringement of a domain or otherwise of an unregistered trade name as per section 30 of the Trade and Service Marks Act. It was the burden of the respondent

to prove existence of such trade name registration by producing a certificate of trademark registration as required by section 110 and 111 of the Evidence Act Cap. 6 of 2019 which provided for the balance of proof in Civil Cases. It was emphasised that exhibit P1 and P2 do not prove registration of a tradename since the respondent failed to prove the exclusive ownership of the domain and trade name DaikinTanzania he cannot claim infringement or damages under Trade mark laws. It was concluded that the trial Magistrate misdirected himself in ordering deregistration of the appellant's domain in absence of proof of infringement.

In reply, Mr. Walli Counsel for the respondent stated by enlightening the appellant on Sections 31 and 14 of the Trademarks Service Act which provides for exclusive right of an individual who has registered a trademark. It is in their awareness that the appellant is not aware of the well-known phenomena and First Use Rule, not only and he is not considering that Tanzania is a contracting State to international legal instruments for the Protection of literary and Artistic work to mention a few are TRIPS Agreement, Agreement on Trade related Aspects of Intellectual Property and World Trade Organization. Mr. Walli argued that the first use rule belongs to the person that was first to use the trademark in the market place, irrespective of whether the trademark has been

registered. Although registration is not compulsory, he argued, the registered trademarks are provided much stronger protection. However, the respondent claimed to have registered the use of her domain which its evidence was admitted as exhibit P2 in the trial Court.

Now submitting on the 1st ground of appeal, Mr. Walli submitted that the appellant was supposed to submit her evidence to support the assertion that she was given list of website, and they chose the aforementioned one. That the appellant ought to prove that the respondent's website was not in use at the time of her registration. However, having read the judgment clearly, it showed that the respondent's sole witness knew before that there was another website but maliciously chose to register the same. Mr. Walli claimed at this stance it was important to note the first use rule by citing the case of **JC Decaux SA and Another vs JP Decaux Tanzania Limited** Commercial Division at Dar-es-salaam, reference was made to pages 15 and 16 of the said judgment. **And the same was reproduced in the submission for ease of reference;**

"However without prejudice to what I have stated herein above, in my considered opinion, legally, it is not correct for a person to register Trade mark or business/company name confusingly similar to a widely

used a known Trade Mark, with well-established goodwill in its business/trade while aware of the existence of the same, simply because that Trade Mark goes together with investment in terms of goodwill in a particular business.

In this case, DW1 admitted that at the time registration of the defendant's company he was aware of the existence of the 1st Plaintiff's trademark and business. Surprisingly, he decided to register a Company with a name confusingly similar to the 1st Plaintiff's well known trademark for a business which is similar to the one conducted by the 1st plaintiff".

Mr. Walli went on submitting that the position in the above-mentioned case shows implementation of the well-known first use principle and the applicant ought not to register the same since it was widely used throughout. He also pointed out that the certificate of incorporation to prove that she was incorporated was created before the existence of the appellant and she had a certificate of registration of the domain to prove she owned it which was tendered in trial.

Arguing the 2nd ground of appeal Mr. Walli averred the respondent to have explained that her licence for trading with Daikin Japan was

cancelled hence she was now selling other kind of products and also stated that the two domains are of different levels. He argued that the appellant failed to understand the concept of confusion as the domains were of similar nature and that the respondent centred in avoiding confusion to the customers. He explained that the use of the website creates confusion to the respondent business which has been in existence for 30 years. Further that it has been observed often that registration of an already existing domain is to benefit from the goodwill of the already existing company and the appellant never showed proof to show they were engaged by Daikin Japan to supply their products hence this does not substantiate the registration of www.daikintanzania.co.tz. He concluded that the registration was for the purpose of injuring and crippling the respondent's business.

In reply to the 3rd, 7th and 8th grounds of appeal, Mr. Walli claimed that there is a difference between specific damages, punitive damages and general damages. That punitive damages are legal recompense that a defendant is found guilty of committing a wrong or offence and is ordered to pay a compensatory damage. They are awarded to punish the defendant whose conduct is considered grossly negligent intentionally. A reference was made to the Black's Law Dictionary 8th Edition to cement on the meaning of punitive damages.

On general damages, he submitted that the same as defined under the Black's Law Dictionary 7th Edition as damages that the law presumes to follow from the type of wrong complained of and they need not be specifically pleaded, the case of **London North Bank Ltd vs Georg Newnes Ltd (1900) 16 TLR 433 CA** and **P.M Jonathan vs Athuman Khalfan (1980) TLR 175**, **Sabuni Detergents Limited Vs. Murzah Oil Mills Commercial Case No. 266 of 2001** were cited to support the submission.

On the cited cases of Zuberi **Augustino vs Anicet Mugae (1992) TLR** and **Masolole General Agencies vs African Inland Church Tanzania (1994) TLR 192**, counsel for the respondent argued that the two cases were a misconception as there is no place in the judgment that shows the respondent was awarded specific damages.

According to the 4th, 5th and 6th grounds of appeal, Mr. Walli replied that the appellant has gone further in defining the issue of Domain as provided in the Black's Law Dictionary, however, the issue was a confusion. He then argued that although in the centre the domains are of different levels one being first level domain and the second level domain, but the primary problem still remains that similarity of the domain brings confusion to the public. The respondent invited the Court to take a close look at the two domains www.daikintanzania.co.tz and

www.daikintanznaia.com. That with a naked eye, it is not in dispute the existence of the two domains shall bring confusion and prejudice the respondent's business. Having submitted all of the above, the respondent concluded that the appeal before the Court lacks merit and prayed the same be dismissed with costs.

In his rejoinder, the appellant reiterated his submissions in chief and added that the principle of a well-known marks in Tanzania applies to registration, that one is prohibited from registering marks that are similar to well-known marks. He argued that it is the owner of the trademark that can claim that his well-known mark has been registered or used without his authorisation and that the interests of the registered trademark are likely to be damaged by such use. That the respondent is not the registered user of the trademark "DAIKIN" or whether "DAIKIN" is not a well-known mark.

Learned Advocate for the Appellant also distinguished the cited case of **P.M. Jonathan Vs. Athumani Khalfan** cited by the respondent as the case does not allow a Judge or magistrate to award damages without giving reasons of so awarding the damages. He reiterated his prayer that the appeal be allowed with costs.

Having gone through the rival submission of both parties, and the records of this appeal, the main issue for determination in this appeal is

whether the appellant's use of the name "DAIKIN" in his website infringed the respondents rights if any, over the domain name which is a registered trademark. It is trite law that in determining a first appeal, the first appellate Court has the duty to re-evaluate the trial Court's evidence and make a finding on the evidence or law in relation to the grounds of appeal raised.

The grounds raised have been argued in following manner the 1st ground, 2nd ground while the 3rd, 7th and 8th were argued together and lastly the 4th, 5th and 6th grounds were also argued together. This Court will determine the said grounds as argued by parties.

Beginning with the first issue as to whether the Court disregarded oral evidence adduced by the appellant and other important pieces of evidence. The appellant has before this Court submitted that the magistrate erred not to consider the evidence by the appellant who was the defendant at trial. It was stated that the domain name was registered in 2015 and was among the names in the list availed to them on unregistered domain name where they chose www.daikintanzania.co.tz and registered it. It was the appellant's argument that though the respondent claimed to have been incorporated under company name Daikin Tanzania Ltd, they did not produce evidence to that effect that the same was registered as a trademark. It was claimed by the appellant that

for one to have an exclusive right over a domain name such name has to be registered.

The respondent on the other side averred that the appellant was supposed to submit evidence to prove being given a list of unregistered websites from which they chose the domain name and also prove the respondent's domain name was not in use at the time they registered theirs. It was the respondent's submission that the appellant ought to have known of the first use rule and that makes the respondents the owner of the said domain name.

Going through the records of the Court the same reveal that the appellant who was the defendant at trial had one sole witness defending the claims against him who was one Gasper Simbachawene working with Eclips Group of Companies whereby the defendant was one of the companies in the group of companies. He testified on the relationship between Eclips Group of Company with Mikochei Builders Merchants Ltd (MBM) to be one of the Companies of Eclips Group where he works. The records further reveal that Mr. Simbachawene went further in explaining on the knowledge of the existence of Daikin Tanzania Ltd which he had received a tender to supply Daikin products. He also testified to have begun dealing with Daikin Products in 2015 and that a website domain name www.daikintanzania.co.tz was created and registered. It was

further his testimony that his director informed him of a complaint from another person for using the said domain name in the website on claims that he was obstructing business of the other person.

However, records further reveal that the respondent 's evidence is to the effect that the respondent had ceased dealing with Daikin products in 2013. The appellant also testified also to have had a tender to supply Daikin Products hence in 2015 opened a website with domain name www.daikintanzania.co.tz different with the domain name www.daikintanzania.com. It is in records that the defendants witness elaborated on the process of registering the said website domain name and that they selected it from a list of unregistered domain names they chose from the list given to them and then registered it.

Going through the judgement of the Court, I find all that was testified by the appellant including exhibit D1 have been contained in the judgment and analysis for the court to have reached its decision. Records of the Court are believed to be the most authentic record, therefore if there is any evidence by the appellant alleged not to be considered by the Court the same may not have been adduced in Court. I find this issue to have been answered in the negative.

On the second ground the appellant is concerned by the Court not considering important pieces of evidence. It was the appellant's

submission that failing to consider PW1's testimony that his licence with Daikin was terminated in 2013 as revealed by records in pages 7 and 3 of the judgment and that now is selling other brand of air conditioning. The Court also failed to consider the testimony that Daikin products belong to Daikin Japan. Even failure to consider PW 2's testimony on the two website names being different; www.daikintanzani.com as a top domain handled by the registrar made the Court to arrive at a wrong decision. The respondent on this ground claims that she explained her licence being cancelled and was on other products being sold now. And that she explained the domains being on different levels. The appellant has failed to understand the concept of confusion of which the respondent has centred herself upon. The respondent has had her business running for 30 years and the respondent is not ready for the appellant to benefit from good will already created by the Company.

It is undisputed that for a trade mark to be registered, it is required to be distinguishable from similar products by other trademarks. The appellant claims to have been given a tender to deal with Daikin Products in 2015 while the respondent has testified to have been dealing with manufacturing Daikin Products under licence until 2013 when their license was terminated and hence therefrom dealt with other brand of air conditioner. In all the 30 years that the respondent has been using the

trademark, he was using the website domain www.daikintanzania.com and has proved its registration. The general rule of owning a trademark is that it must be a registered trademark as per the laws of our land. The appellant claims to be using www.daikintanzania.co.tz as their website but has not proved registration of the same. Going through the judgement of the trial court, at page 3 the judgement reveals that a certificate of registration of the website domain name was tendered hence in determining important piece of evidence in as far as the website domain names are concerned, I find that the Court considered them and therefore reached an appropriate decision in favour of the respondent. I find this ground to be devoid of merits.

With regard to the 3rd, 7th and 8th grounds of appeal that the appellant argued collectively, the appellant faults the trial Court in that it erred in awarding the respondent punitive damages and general damages in absence of proof of damages suffered and without giving reasons for granting the said damages. The respondent on the other hand argued in line with the well settled principle that damages must be specifically pleaded and proved.

On my part, having had a look at the judgment of the trial Court while determining the 5th issue on reliefs, the trial Court clearly stated that the parties are entitled to orders which the findings will meet end of justice

in the suit. The court was further clear in listing the orders on item (a) being on punitive damages and item (f) being on general damages. Damages are always relief granted by the Court for the purpose of compensating a party that has suffered loss caused by the acts of the other party. The damages may be punitive damages, specific damages and/or general damages depending on the circumstances of the case.

In the current case, the court granted punitive damages and general damages. Punitive damages are damages that go beyond compensating the aggrieved party, they are specifically designed to punish a defendant's whose conduct is considered grossly negligent or intentional. The requirement is that before granting the punitive order, the Court has a duty to give reasons as to how it arrived to such a decision. In the case of **Peter Joseph Kilibika and Another vs Patrick Aloyce Mlingi, Civil Appeal No. 37 of 2009**, the Court held at pages 22 that:-

"The purpose of punitive damages is to punish the defendant for outrageous misconduct and to deter the defendant and others from similar misbehaviour in the future. We need to establish whether there was arbitrary and unconstitutional action, bad faith, fraud, malice, oppression, outrageous, violent, wanton, wicked, and reckless behaviour on the part of the appellants in order to justify the award of punitive

damages. We do not think the circumstances of this case fall under that category, therefore there was no justification for the award of punitive damages."

Having perused the records of the trial Court, I agree with the appellant that the court misled itself in awarding punitive damages. It is a settled position of the law that general damages are upon the discretion of the Court. They need not to be specifically pleaded and proved, what the party required to do is to state reasons for granting the same. In the case of **Antony Ngoo & Another vs Kitna Kimaro (Civil Appeal 25 of 2014 [2015] TZCA 269 (25 February 2015))** the Court Stated that:-

"The law is settled that general damages are awarded by the trial Judge after consideration and deliberation on the evidence on record able to justify the award. The judge has discretion in the award of general damages. However, the Judge must assign a reason, which was not done in this case. Nevertheless, the trial Judge awarded the plaintiff/respondent general damages of Tshs. 100,000,000/= without assigning any reason for the same".

Coming to our case at hand, I find the circumstance to be similar. In the judgment, the trial Magistrate awarded the Plaintiff/Respondent

general damages to the tune of Tshs. 10,000,000/=. His reasons were that the act of the appellant/defendant to use the plaintiff's trade name "Daikin Tanzania" with the website domain name is nothing else but calculated injury to the business or goodwill of another trade. On that note, I see no reason to interfere with the general damages awarded to the respondent.

As for the fourth, fifth and sixth grounds of appeal which were also argued together, the appellant was aggrieved by the court ordering that the two domain names for the website are similar and that the order for deregistration of the appellant's website in absence of the respondent proving how she is infringed in the existence of the appellant's website is a misconception. Further that the order of publishing a retraction advertisement that the two websites are not related is a gross error since it has never been stated that the two are related. The appellant's argument was that in the absence of registration of a trademark Daikin Tanzania, the appellant finds the respondent lacking proof of owning the said tradename. On the other hand, the respondent's emphasis was that the two domain names provide a confusion to the public and invited the Court to look at the two domains.

At this juncture, it is clear that the parties herein are battling on who is the rightful owner of the trade name "Daikin Tanzania" to be entitled to

use it in their domain name in the website. The History from the records reveal the respondent to have been the first one to be using the trade name Daikin Tanzania. It was after his license was terminated in dealing with Daikin Japan that the appellant changed their business name to Daikin Tanzania Ltd and incorporated the company. The Company also registered a website with the name www.daikintanzania.com and the registration certificate was tendered in Court. The records further reveal that the appellant became engaged with Daikin Japan products and created the www.daikintanzania.co.tz website. However, during trial, the appellant did not tender proof of officially registering the said name. Theirs was only oral evidence.

Section 20 (1) f the Trademarks Act bars registration of identical or resembling trade or service marks. The issue to be determined here is where the two names are identical or resembling in such a way to be deceiving. Undisputedly so, the appellant's website is www.daikintanzania.co.tz. While the respondent's website is www.daikintanzania.com. From the way the two websites reads, it is not easy for a lay person to work on reading and differentiating between the last designation of the domain whether it is .com or .co.tz. A lay person will just perceive that the two websites are the same and may proceed to trade as if he is doing so with any of them. The anti-dissection rule was

elucidated in the case of M/S South India Beverages Pvt vs General Mills Marketing Inc. and Another (No. 961/2013 in CS (OS) 110/2013: It was held that:

"This rule mandates that Courts while dealing with cases of trademark infringement involving composition marks, must consider the composite marks in their entirety as an indivisible whole rather than truncating or dissecting them into parts and make comparison with the corresponding parts of a rival mark to determine the likelihood of confusion".

In the circumstance at hand, this ground is pegged on similarity in the overall impression created by the two marks, visually and structurally. The trial Court found the claim in affirmative hence ordered the deregistration and a public advertisement to state that the two are not related. I see no reason to fault that part of the finding of the trial court. As stated earlier, for a lay person to dissect the trade name and identify the difference in the domain last description would not be easy. In the eyes of an ordinary person, the two names are similar enough to deceive an layperson. The ground hence lacks merits and it is hereby dismissed.

Having made the above findings, apart from my findings which set aside the awarded punitive damages to the tune of Tshs 50,000,000/-. I

find the remaining grounds of appeal to be lacking in merits. The appeal is therefore dismissed to the extent explained. The respondent shall have her costs for this appeal. It is so ordered.

Dated at Dar es Salaam this 19th Day of February, 2023.



A handwritten signature in blue ink, appearing to be "S.M. Maghimbi", is written above a horizontal dotted line.

S.M. MAGHIMBI
JUDGE