IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB REGISTRY

AT DAR ES SALAAM

CIVIL APPEAL NO. 3706 OF 2024

(Arising from the Judgement and Decree of the Resident Magistrate's Court of Dar es Salaam at Kisutu in Civil Case No. 1 of 2022 (Hon. R.M. Rugemalira, PRM) dated 5th October 2023)

MUGISHA GRATIAN KAIZA.....APPELLANT

VERSUS

HIVIEW INTERNATIONAL COMPANY LIMITED.....RESPONDENT

JUDGEMENT

Date of last order: 23rd April 2024
Date of Judgement: 11th June 2024

MTEMBWA, J.:

In the Resident Magistrate Court of Dar es Salaam at Kisutu, the Respondent preferred a suit against the Appellant for the claim of **Tanzanian Shillings 21,287,000.00/=** being unpaid sum arising out of a business relationship that existed between the duos. According to the facts as revealed by the Plaint, on **19th March 2021**, parties herein entered into a credit business agreement in which the Respondent was to supply the new motor vehicle tires to

the Appellant on credit whereas the latter had to make payments within thirty days from the day of raising the Invoice. To carry out the terms, the parties agreed to open a credit account with credit limit amounts of **Tanzanian Shillings 20,000,000/=.**

The facts reveal further that, between 7th June 2018 and 3rd October 2018, the Respondent supplied to the Appellant several motor vehicle tires of various sizes valued at **Tanzanian Shillings 33,975,000.00/= (VAT inclusive).** That, in the course of such a business relationship, the debt stretched to **Tanzanian Shillings 21,287,000.00/=.** As such, the Respondent unsuccessfully reminded the Appellant several times to settle the outstanding balance. Consequently, a suit was preferred before the trial Court.

When the Plaint was served to the Appellant, cross-claim (counterclaim) was preferred by him. In the course of hearing, the Respondent fronted only one witness and tendered seven exhibits. The Appellant denied the claim and relied on his sworn testimonies and tendered no exhibit. Having evaluated the evidence adduced, the trial Court dismissed the Appellant's counterclaim and resolved in favour of the Respondent in the main claim. Dissatisfied, the Appellant

has laid before this Court the following grounds of appeal and I quote in verbatim;

1. *That, the learned Magistrate erred in law and fact by entertaining the matter marred with irregularities and illegalities.*
2. *That, the learned Magistrate erred in law and facts by failure to consider, analyze and evaluate carefully the pleadings, evidence and testimony tendered hence reached unfair decision.*
3. *That, the learned Magistrate erred in law by delivering the judgement which is bad in law.*
4. *That, the learned Magistrate misdirect himself by granting the interest at the Court rate of 12% as well as awarding general damages for loss to the sum of Tshs 30,000,000/=*
5. *That, the learned Magistrate erred in law and facts by dismissing the Appellant's Counterclaim.*
6. *That, the learned Magistrate erred in law and fact in holding that the Respondent proved her claims on the sum of Tshs. 21,287,000/=*

When the matter was placed before me for orders on **23rd April 2024**, the Appellant was represented by Mr. Daniel Bushele holding briefs with instructions to proceed for Mr. Benson Florence, the learned counsel. He also represented the Respondent. Upon his request, this Court ordered arguing of this Appeal by way of written submissions. In the conduct of this matter by way of written

submissions, **Mr. Florence** argued for and on behalf of the Appellant while **Mr. Bushele** argued for and on behalf of the Respondent.

Having prefaced on what transpired before, Mr. Florence proceeded to argue on the first ground of appeal that, the learned trial Magistrate erred in law and fact by entertaining the matter which was tainted with irregularities and or illegalities. The irregularities and or illegalities pointed out included failure to sign and verify the Plaint in view of ***Order XXVII Rule V1 rule 14 of the Civil Procedure Code, Cap 33, R.E 2019***.

The learned counsel proceeded to note that, according to the Board Resolution (Exhibit P7), the authorized officer to sign and verify the pleadings was **Sylvester Elias Katambi** while the one who signed and verified was **Sylivester Katambi**. He observed that the two are different persons. He cited the case of ***Basons Enterprises Limited Vs. Mire Artan, Civil Appeal No. 26 of 2020, (20231) TZCA 90 (9th March 2023).***

On the other hand, the learned counsel argued that the learned trial Magistrate contravened the provisions of ***section 84A of the Interpretation of Laws Act, Cap 1, R.E 2019*** as amended which

requires the pleadings, proceedings, and decisions to be in Kiswahili language. That, the trial Court did not comply with such requirement and thus rendered the proceedings and the resultant Judgement illegal.

In addition to the above, Mr. Florence complained that, although the trial Court ordered the filing of the final submissions, to his surprise, the same was not considered in the final Judgement unjustifiably.

Arguing further, Mr. Florence submitted that, the learned trial Magistrate erred by shifting the burden of proof to the Appellant. He added further that, in civil law, it is the Plaintiff who must prove his or her case and that such duty cannot shift to the defendant. He cited the case of ***Ami Tanzania Limited Vs. Prosper Joseph Msele, Civil Appeal No. 159 of 2020, (2021) TZCA 668 (11th November, 2021)***.

Mr. Florence compressed the second, third, and sixth grounds of appeal and argued them altogether. In that, he contended that the learned trial Magistrate did not consider the pleadings, in particular, paragraph 5 of the plaint. That, the averments that the motor vehicle

tires were supplied on 7th June 2018 and 3rd October 2018 as per paragraph 5 of the Plaint were disputed by the Appellant in view of paragraph 4 of the written statement of defense. That, it was therefore the duty of the Respondent to prove the delivery by evidence in accordance with ***sections 110 and 111 of the Evidence Act, Cap 6, R.E 2022.***

In addition, Mr. Florence argued that it was the duty of the Respondent to plead in her Plaint the particulars of the alleged kinds of motor vehicle tires in accordance with ***Order VI Rule 4 of the Civil Procedure Code (supra).*** That, there was no evidence on records to prove the value of the supplied tires and that had an adverse impact on the Respondent's case. He recited the case of ***Ami Tanzania Limited Vs. Prosper Joseph Msele (supra).***

It was his argument further that, the learned trial Magistrate did not consider that parties are bound by their pleadings. He added that PW1 testified that the total claimed sum was Tanzanian Shillings 21,387,000/= while the amount as per the Demand Notice (Exhibit P3) was Tanzanian Shillings 21,887,000/=. That during hearing, there was no explanation offered in respect to such differences. To fortify,

he cited the case of ***James Funke Gwagilo Vs. Attorney General (2004) T.L.R 191.***

Mr. Florence continued to observe that, those who delivered the tires to the Appellant were not brought to testify during hearing. He insisted that such witnesses were material. He faulted the invoice (Exhibit P5) tendered during hearing which does not prove delivery of the tires on 7th June 2018 and 3rd October 2018. In that respect, the trial Court was supposed to answer the first issues in the negative, the learned counsel added.

By citing the case of ***Stanslaus Rugaba and Another Vs. Phares Kabuye [1982] T.L.R 338***, the learned counsel submitted that the Court is duty-bound to evaluate the evidence of each witness and make findings on the issues. He faulted the trial Court for failure to evaluate properly the evidence adduced to comply with ***order XX Rule 4 of the Civil Procedure Code (supra)***. In his evaluation, it was wrong for the trial Magistrate to hold that the Appellant was indebted to the Respondent in the absence of evidence.

Arguing on the fourth ground of appeal the learned counsel contended that the learned trial Magistrate misdirected himself by

granting interest at the Court rate of 12% per annum as well as awarding general damages to the tune of Tanzanian Shillings 30,000,000/=. He argued further that, the award of such interest was wrong in view of section 29 if read together with ***Order XX Rule 21 of the Civil Procedure Code (supra).*** In his opinion, the grant was premised on the wrong principles of law as the parties did not agree to that effect. He cited the case of ***Njoro Furniture Mart Ltd Vs. Tanzania Electric Supply Co. Ltd (1995) T.L.R 205.***

As to the lawfulness of the general damages awarded, the learned counsel argued that there was no evidence to prove strictly that the Respondent suffered such loss. That, it was an error to award such amounts without materials on records. In addition, the Respondent failed to lay evidence on the purchase price per tire and the amount of loss suffered. He invited this Court to intervene in the amount awarded as general damages.

Arguing on the fifth ground of appeal, briefly, Mr. Florence argued that, there were admissions by the Respondent witnesses on the counterclaim but the learned trial Magistrate did not consider the claim. He faulted the trial Court by dismissing the counterclaim raised

by the Appellant. Lastly, he implored this Court to allow the appeal with costs.

In rebuttal, Mr. Bushele, on the first ground of appeal argued that the learned trial Magistrate was correct to resolve in favour of the Respondent because the plaint was signed and verified by the company officer who is competent and aware of the facts. He relied on ***Order VI Rule 14 and Order XXVIII Rule 1 of the Civil Procedure Code (Supra).*** He added that one **Sylvester Elias Katambi** is the principal officer of the Respondent.

Mr. Bushele further argued that the learned trial Magistrate was right to use the English language as a medium of communicating the proceedings and the Judgement drawn therefrom. That, the trial Court had the option to use either Kiswahili or English language as from the beginning all pleadings including a written statement of defense and the Counterclaim were in the English Language.

In response to whether the burden of proof was shifted, the learned counsel observed that the same was not shifted to the Appellant. It was argued in addition that the Respondent managed to prove her claim to the required standards, that is, on balance of

probability, unlike the Appellant who relied on a weak defense and tendered no documentary evidence.

In response to the second, third and sixth grounds of appeal Mr. Bushele argued that, there was no dispute that the Respondent supplied goods or motor vehicle tires to the Appellant. That, what was in dispute was the outstanding amount payable to the Respondent by the Appellant. In addition, that, the Appellant tried to hide behind the counterclaim which however was not proved to the required standards. He joined hands with the leaned trial Magistrate concerning the examination of Exhibit P4.

In response to the fourth ground of appeal, Mr. Bushele joined hands with the trial Court by awarding 12% as interest per annum and Tanzanian Shillings 30,000.000/= as general damages. He noted further that, under Section 29 and the ***Order XX rule 21 of the Civil Procedure Code (supra)*** the Court has the discretion to award interest which should not stretch beyond 12% per annum. That, equally, the Court has discretionary powers to award general damages. He added further that, the relationship between the parties was purely of business nature.

In response to the fifth ground of appeal, Mr. Bushele contended that the Respondent admitted to receive the said amount as claimed on the counterclaim because it reflected the total amount paid throughout the whole transaction, and still the sum of Tanzanian Shillings 21,287,000/= remained unpaid. That, the Respondent managed to prove the case to the required standards. Lastly, He implored this Court to dismiss this Appeal with costs.

In rejoinder, Mr. Florence insisted that the Plaint was signed by a person who had no mandate to do that. It was his further argument that the plaintiff's witness did not lay evidence to prove the title. That is not known whether he was employed as a secretary, director, or sales manager. He also insisted that the pleadings were prepared in English Language and there was no interpretation of it. The Plaint itself was silent on the circumstances leading to the use of English instead of the Kiswahili Language.

Mr. Florence further insisted that the burden of proof was shifted to the Appellant. He faulted the learned trial Magistrate for pressing a duty of proof to the Appellant.

Rejoining to the second, third, and six grounds of appeal, the learned counsel referred this Court to issues framed as to whether the Respondent supplied motor vehicle tires to the Appellant, an issue that was erroneously answered by the trial Court. He insisted that there was no evidence tendered to prove the supply of the said tires. He denied the Respondent's assertion that the debt was proved by the statement because the same was not tendered as an exhibit during the hearing. That the electronic system of recording the said transactions was never proved in accordance with ***section 18 of the Electronic Transactions Act, CAP 442, R.E 2022.***

Rejoining further, Mr. Florence observed that, admission of an exhibit does not necessarily amount to proof of the fact in issue in view of the case of ***Pro. T.L. Malyamkono Vs. Wilhelm Sirivester Erio (Civil Appeal No. 311 of 2022) [2023] TZCA17910 (7th December, 2023).*** That**,** the learned Magistrate did not take into consideration the probative value of exhibit P4 especially the difference in terms of the claimed amounts. That the statement as alleged under paragraphs 10 of the Plaint was not tendered as an exhibit.

Rejoining in respect to an award of interest and general damages, the learned counsel observed that there was no record indicating that the parties agreed on the Court interest rate of 12% per annum. He insisted that general damages were awarded in violation of the legal principles.

Rejoining to the fifth ground of appeal, Mr. Florence submitted that, the Respondent admitted the amount in the counterclaim but there is no reflection on the exhibits admitted in the Court. He reiterated that the amount claimed by the Respondent was not proved to the required standards in civil law. Lastly, he beseeched this Court to allow the appeal with costs.

Having considered the rival arguments by the parties, the question would be whether the claim by the Respondent against the Appellant and the claim by the Appellant against the Respondent by way of counterclaim was proved to the required standards in civil law. The determination of this issue calls for a fresh re-evaluation of the evidence adduced during hearing.

Indeed, being the first appellate Court, it has a duty to re-evaluate the evidence on records and put it under critical scrutiny and come

out with its own conclusion. In the case of ***Mapambano Michael @ Mayanga vs. Republic, Criminal Appeal no. 258 of 2015***, the court placed the special duty on the first appellate court as follows;

> *The duty of the first appellate court is to subject the entire evidence on record to a fresh re-evaluation in order to arrive at decision which may coincide with the trial court decision or maybe different altogether.*

While guided by the above principle, it is a trite law also that, whoever alleges the existence of any fact bears the duty to prove the same. This principle is gathered from ***sections 110, 112 and 115 of the Evidence Act (supra)*** and judicial precedents including the case of ***Manager NBC Tarime Vs. Enock M. Chacha [1993] TLR 228***. Before I delve into the nitty gritty of this Appeal, I find it opt that I determine whether the main claim by the Appellant and counterclaim by the Respondent both were proved to the required standards. The determination of this issue will, in my conviction, dispose of this appeal easily.

Briefly, according to PW1, the Respondent's business development manager, in the year 2018, approached the Respondent company and wanted to do motor vehicle tires selling businesses with her. By that time the Appellant had a shop at Buguruni in Dar es

Salaam City. The Respondent's officer had to visit the Appellant's shop. Since the Appellant wanted to transact on credit as opposed to cash arrangement, he had to follow the laid procedures. The procedures included filling in the Credit Application Form. He was also requested to bring a Tax Identification Number (TIN), Identity Card, and business license. According to PW1, the Appellant (DW1) complied with the requirements. The Credit Application Form was tendered as **Exhibit P1.**

PW1 continued to testify at page 19 of the typed script of the proceedings that, having complied with the requirements, the application by the Appellant was granted on the term that each raised invoice shall be paid for within thirty days. That, the tires were delivered to the Appellant by the Respondent on a free basis. However, the Appellant was allowed to collect the tires directly from the Respondent's deport. The Invoices and the delivery notices were not received in evidence.

The statement showing the summary of payment was admitted as **Exhibit P2**. PW1 continued to note that in fine, the sum of Tanzanian Shillings 21,887,000 was unpaid by the Appellant. The

relationship between the parties was a going concern up to when the Appellant defaulted on payments. The default prompted the Respondent who served him with several demand notices including exhibits P3 and P6. On 3rd September 2019, the Appellant replied to the demand notice giving excuses for not paying the outstanding balance. The said letter from the Appellant was tendered without objection and was admitted as **Exhibit P4.**

That, having given him time to pay the claimed sum, on 16th September 2019, the Respondent paid Tanzanian Shillings 500,000/= being part of the claimed sum and thereafter opted for a cash arrangement while paying his outstanding balance. That, on 14th April 2020, the Appellant bought tires from the Respondent's store valued at Tanzanian shillings 1,100,000/= by cash and paid Tanzanian Shillings 1,200,000/= while reducing his outstanding balance by Tanzanian Shillings 100,000/=.

On his part, the Appellant (DW1) denied the claim and in addition, raised a claim by way of counterclaim. According to DW1, one Daddly Makune came to his shop and identified himself as the Respondent's employee and wanted to do business with him. He

asked him to present the price list and he did. Thereafter the business relationship started. The tires were brought to the Appellant's shop by a person known as Juma and were received by his employee, Augustino. The mode of payment was either by cash or through cheque. Later on, he was served with a demand notice by the Respondent claiming the sum of Tanzanian Shillings 21,887,000/=.

That, having been so served, he asked the Respondent to sit and reconcile the accounts but in vain. He then called Daddley and having passed through the Bank statement, he discovered that he paid for an extra amount of Tanzanian Shillings 21,410,000/=. That Daddley promised to repay the money but he did not come back. The Respondent proceeded to demand the sum of Tanzanian Shillings 21,287,000/=. He was of the view that the Respondent claimed nothing from him. Cross-examined by Mr. Bushele, the Appellant denied to have admitted the claimed sum in his reply letter. Cross-examined further the Appellant admitted to have not tendered the said Bank statement.

From the testimonies of the parties, it is not in dispute that, the parties agreed to enter into a business relationship in which the

Respondent supplied motor vehicle tires to the Appellant. The modes of payment seem to be in dispute as, while the appellant testified that he sometimes paid by cash and sometimes by cheque, the Respondent maintained that it was on credit terms payable thirty days after the day of raising the invoice. The parties also are in dispute about the outstanding amount. While the Respondent testified that the Appellant was indebted to the sum of 21,287,000, the latter denied to have been so indebted to such sum.

In his evidence, the Appellant did not dispute the presence of exhibit P1 (the Credit Facility Form) signed by both parties. That alone is an indication that there was an agreement to that effect. If the Appellant bought tires in cash mode, one would ask why he signed a credit facility form. There is no evidence that the said Agreement was discharged at any point in time. It is my conviction that there was a credit terms arrangement between the parties by virtue of Exhibit P1. In view of ***section 101 of the Tanzania Evidence Act, Cap 6 R.E 2019,*** this Court considers Exhibit P1 to be what the parties intended to be bound with. This principle was restated in the case of ***Lulu Victor Kayombo Vs. Oceanic Bay Limited and Mchinga Bay***

Limited, Consolidated Civil Appeals No. 22 and 155 of 2020 where the Court stated, thus;

> *Documentary evidence reflected repositories and memorial of truth as agreed between the parties and retained the sanctity of their understanding*

In ***Nicholaus Mwaipyana vs The Registered Trustees of Little Sisters of Jesus Tanzania (Civil Appeal No.276 of 2020) [2023] TZCA 17578 (30 August 2023),*** the Court noted that;

> *It is the law, according to section 101 of the Evidence Act that if there be a contract which has been reduced to writing, verbal evidence will not be accepted so as to add to or subtract from or in any manner to vary or qualify the written contract. The rationale behind the rule is to uphold the value of written proof and effectuate the finality intended by the parties. The applicability of the rule, according to the authority in Jos Hansen and Soehne v. GK. Jetha Limited [1959] E.A. 1563 is conditional upon there being established that the terms of the parties agreement are wholly contained in the written document.*

Having so observed, the next question would be whether the Appellant was indebted to the tune of Tanzanian Shillings 21,287,000/= as per the plaint. There is no direct evidence as to how the figures were arrived at. However, the Appellant admitted to have been served with the demand letter dated 23rd August 2019 claiming

the sum of Tanzanian Shillings 21,887,000/= (exhibit P3). In view of Exhibit P4, the Appellant replied by giving excuses as to why he did not pay the claimed sum. He requested for the time to pay the claimed sum.

I passed through Exhibit P3 and noted that the Appellant did not deny the claimed sum of Tanzanian Shillings 21,887,000/= payable to the Respondent. He only requested for extension of time while making follow-ups to his creditors so that he could pay the claimed sum. On 16th September 2019, he paid the sum of Tanzanian Shillings 500,000/= and thereafter he requested to start buying in cash while paying his debt. On 14th April 2020, he reduced his outstanding balance by paying Tanzanian Shillings 100,000/=. These facts were not denied by the Appellant. In my evaluation, such conducts is an indication that the Appellant was indebted to the Respondent to such sum. On this assertation, I join hands with the trial Court.

From the evidence adduced, parties agreed and or promised to each other to carry out the terms of exhibit P1. It could appear that the Respondent discharged her duties by supplying tires to the

appellant but later defaulted payment in blatant violation of ***section 37 of the Law of Contract Act*** which provides that;

> *The parties to a contract must perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act or of any other law.*

The Appellant complained that the Plaint was signed by a person who was not authorized to do so in view of the Board Resolution (Exhibit P7). He added that the authorized officer to sign and verify the pleadings was **Sylvester Elias Katambi** and not **Sylivester Katambi**. In reply thereof, the Respondent's counsel observed that the one who signed is the authorized officer of the Respondent. This issue should not detain us long here.

Order XXVIII rule 1 of the Civil Procedure Code (supra) provides that, in suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case. The principal officer may be defined as the highest-ranking officer of the qualified organization according to its written constitution, charter, articles of incorporation, or bylaws. In this case, PW1 introduced himself as

the sales development manager. As the manager, in my consideration, is capable of signing and or verifying the pleadings provided he can depose to the facts of the case.

There are allegations that the one who was authorized to sign the pleadings by virtue of board resolution (Exhibit P7) is **Sylvester Elias Katambi.** That it was very unfortunate that the one who signed and verified the Plaint was **Sylivester Katambi**. When re-examined by Mr. Daniel Bushele on page 43 of the typed proceedings, PW1 testified that the names **Sylvester Elias Katambi.** are the same as **Sylivester Katambi**. In my considered opinion, the names are used interchangeably. In the circumstances, I don't see anything in controversy. I will therefore dismiss the argument.

The Appellant's counsel further complained that the use of the English language contravened the provisions of ***section 84A of the Interpretation of Laws Act, Cap 1, R.E 2019*** as amended. Indeed, the said law was amended and as a result, section 84A (1) was added. The amends brought into use the Kiswahili Language. In view of section 84A (5) thereof, the Honourable Chief Justice enacted ***the interpretation of Laws (use of English Language in***

Courts) (Circumstances and conditions) Rules, 2022*. According* to the schedule, there are circumstance exempting a person from using English language. The schedule state;

> *(a) either of the parties or their representatives to the proceedings are not Swahili speakers;*
> *(b) the matter is about an international investments dispute;*
> *(c) the matter is about a foreign trade or business;*
> *(d) the matter involves a finance and monetary affairs;*
> *(e) the matter is about tax and taxation;*
> *(f) the matter relates to International, Regional or Sub Regional affairs;*
> *(g) the law governing the matter subject of litigation, and the practice and procedure thereto are not available in Kiswahili language;*
> *(h) matters of science and technology are involved; or (i) for any other reason the interest of justice demands so.*

Above all, I am interested in sub (g) above. In other words, a person is allowed to file a suit in the English Language if the law governing the matter subject of litigation, practice, and procedure thereto are not available in the Kiswahili language. In this case, the commencement and conduct of the matter proceeded in view of the Civil Procedure Code which, to my attention, has never been interpreted into the Kiswahili Language. In the premises, the use of

the English Language befalls under the said circumstance or conditions. However, it will serve the purposes if the Kiswahili language is used too in civil litigations. That said, as of now, the arguments are worthless.

The learned counsel for the Appellant also complained to the effect that the trial Court failed to consider the final written submissions. Indeed, I went through the Judgement and noted that, although parties filed final written submissions as per the order of the trial Court dated 17th July 2023, the same were not included and or considered in the final Judgement. Although Courts are enjoined to consider final written submissions, in my opinion, such failure did not vitiate the proceedings as submissions are not part of the evidence. In fact, that did not prejudice the Appellant. In the case of ***Director of Public Prosecutions V.s Josephat Joseph Mushi & Another (Criminal Appeal No.471 of 2019) [2023] TZCA 17536 (24 August 2023),*** the Court observed that;

> *……..Much as we find it desirable that the submissions of parties should be considered in the decision the court finally arrives at, we are alive to the cherished principle of law founded upon prudence that submissions are not evidence. As such, failure to consider them is not the same*

as failure to consider defence as the first appellate court would have us believe…….

……..As we have already said above, submissions of the parties are not evidence and therefore failure to consider them cannot be equivalent to failure to hear parties. We have heard, times without number, that arguments and submissions by an advocate cannot be a substitute of evidence……..

It was the arguments by the learned counsel for the Appellant further that the learned trial Magistrate erred by shifting the burden of proof to the Appellant. I have passed through the evidence adduce and noted that the learned trial Magistrate resolved in favour of the Respondent on the strength of the evidence adduced and not on the weakness of the Appellant's case. There was no shifting of the burden of proof to the Respondent as alleged. As said before, the claim by the Respondent was proved to the required standards. I thus find the allegations misplaced. In fine, the first ground of appeal is devoid of merits.

The Appellant also faulted the learned trial Magistrate for awarding Tanzanian Shillings 30,000,000/= as general damages as well as interest at the Court rate of 12% per annum. He argued further that, the award of such interest was wrong given section 29 if

read together with ***Order XX Rule 21 of the Civil Procedure Code (supra).***

I understand that general damages need not be specifically pleaded and may be awarded even if not pleaded in view of ***Order VII Rule 7 of Civil Procedure Code (supra)*** (see also ***Consolidated Holdings Corporation Vs. Grace Ndeana (2003) TLR 191).*** Awarding general damages therefore depends on the discretion of the jury (see also ***Bamprass Star Service Station LTD Vs. Mrs. Fatuma Mwale (2000) TLR 390)*** and ***London and Northern Bank Limited Vs. George Newes LTD (1900) 16 TRL 433)***. In ***Tanzania Saruji Corporation V. African Marble LTD (2004) TLR 155,*** the Court said;

> *General damages are such as the law will presume to be the direct, natural or probable consequences of the act complained of, the defendant's wrongdoing must, therefore have been cause of damage, it is discretional of the court.*

As such, it was said in ***Admiralty Commissioners V. Susquch – Hanna (1926) AC 655*** that if the damage is general, then it must be averred that such damage has been suffered, but the quantification of such damage is a jury question. The question would

be whether failure to pay Tanzanian Shillings 21,287,000/= would have reasonably resulted in Tanzanian Shillings 30,000,000/= as general damages considering the available evidence. In my opinion, it is exorbitant even on the reasonable man test and cannot be considered as direct, natural, or probable consequences of the act complained of. In the circumstances, I think an award of Tanzanian Shillings 15,000,000/= is reasonable considering the circumstances.

The Appellant complained about the interest rate awarded of 12% per annum at the Court rate as there was no agreement between the parties to that effect. Indeed, ***order XX rule 21(1) of the Civil Procedure Code (supra)*** provides as follows.

> *The rate of interest on every judgment debt from the date of delivery of the judgment until satisfaction shall be seven per centum per annum or such other rate, not exceeding twelve per centum per annum, as the parties may expressly agree in writing before or after the delivery of the judgment or as may be adjudged by consent:*

In view of the cited law, the interest at the Court rate chargeable is 7% per annum or such other rate, not exceeding 12% per annum, as the parties may expressly agree in writing before or after the delivery of the judgment or as may be adjudged by consent.

In this case, the trial Court awarded an interest rate of 12% per annum in the absence of express agreement in writing by the parties. In my considered opinion, the learned trial magistrate erred. In the circumstances, I award interest at the Court rate of 7% per annum from the day of Judgement of the trial Court to the date of full recovery.

On the other hand, the Appellant faulted the trial magistrate by dismissing his Counterclaim amounting to Tanzanian Shillings 31,410,000/=. As I know, a counterclaim is the right of the defendant in a civil case to file a claim against the claimant (Plaintiff). It happens when the Plaintiff sues another in a court of law and the defendant responds by filing his lawsuit against the former arising from the same transaction. When raised as the Appellant did in his written Statement of Defense, the same becomes a separate suit and thus it must be proved to the required standards in civil law.

It is on records that the Appellant, by way of counterclaim claimed the sum of Tanzanian Shillings 31,410,000/=. In his testimony, the Appellant argued that he went to the Bank and, picked up the Bank Statement and called Daddley for reconciliation. That,

having passed through the said statement with Daddley, it was learnt that he paid an extra amount of Tanzanian Shillings 21,410,000/=. That, Daddley promised to repay the money but he did not come back.

From the evidence adduced I join hands with the learned trial Magistrate that the counterclaim was not proved to the required standards. On this, the said Daddley who seemed to have conceded to the claims as per the Bank statement was not called to testify. Similarly, the Bank Statement that revealed such extra payments was not tendered in Court as evidence. From the records, nothing was exhibited warranting the assertion that there were such extra payments. In the circumstances, the complaint is devoid of merit and I proceed to dismiss it.

From the totality of the arguments above, I wholesomely affirm and or endorse that the Claim by the Respondent was proved to the required standards. The counterclaim by the Appellant was not proved to the required standards. I therefore find that the second, third, fifth and sixth grounds of appeal are devoid of merits and I proceed to

dismiss them accordingly. The fourth ground of appeal is allowed to the extent provided for hereinabove.

In fine, save for what I have reversed in respect to the interest rate chargeable which is now **7% per annum** and the amount payable as general damages which is now **Tanzanian Shillings 15,000,000/=,** the appeal is disallowed. The Respondent shall recover the costs arising out of this Appeal.

I order accordingly.

Right of appeal explained.

DATED at **DAR ES SALAAM** this 11th June 2024.

H.S. MTEMBWA
JUDGE