



2. *Interest at court rate of 40% from the date the cause of action arose to the date of judgement.*
3. *Decretal sum to be paid with interest at Court rate from the date of judgement to the date of full payment by the defendant.*
4. *Cost of this suit; and*
5. *Any other relief that this Court shall deem fit and just to grant."*

The brief factual background is as follows: the defendant owns and drives of a motor vehicle with registration No. T 308 BJF. On the 27<sup>th</sup> day of September 2019, the said car being driven by the defendant was involved in an accident at Mtandika B, 15+000Km from Ruaha Mbuyuni along the TanZam Highway. During the accident, the defendant's car knocked galvanized steel guardrails causing damage to the said guardrails. After the incident, on the 20<sup>th</sup> day of January 2020, the first plaintiff served the defendant with a demand notice requiring him to make good of the damage caused. The letter contained price estimates for rehabilitation of the damage caused by the defendant's car. In accordance with the letter, the defendant was supposed to pay TZS. 4,600,000.00.

Despite several reminders, the defendant refused to head to the call. Since the road is an international highway, the first plaintiff took it upon himself to repair the damaged part of the road. The costs of the repair amounted to TZS. 4,600,000.00.

In this suit, the first plaintiff is seeking to recover the said amount from the defendant.

I pointed out earlier that the suit has been preferred under Order XXXV Rule 2(1) of the CPC. The defendant was duly served. Through **Misc. Civil Application No. 13 of 2023**, leave was granted for the defendant to enter appearance and defend the suit. subsequently, on the 16<sup>th</sup> day of August 2023, he filed a written statement of defence and a Notice of Preliminary. However, after filing the WSD the defendant neglected to enter appearance. On the 25<sup>th</sup> day of March 2024, the preliminary objections were marked abandoned. The matter was adjourned to the 09<sup>th</sup> day of May 2023, with a view to ascertain the status of pleadings in terms of Order VIII Rule 17(1) of the CPC.

The defendant failed to enter appearance despite being notified to enter appearance. Mr. Bryson Ngulo, learned State Attorney entered appearance for the plaintiffs. Relying on the provisions of Order VIII Rule 17(1) of the CPC, the learned counsel urged the court to strike out the defendants WSD. Accordingly, the defendants defence was struck out. Thereafter, Mr. Ngulo requested that judgment be pronounced in favour of the plaintiffs as provided for under Order XXXV Rule 2 (2) of the CPC.

It is not disputed that under section 54 of the Road Act, where damage is occasioned to a road or road furniture as a result of any contravention of the provisions of the Road Act,

TANROADS is enjoined to make good of such a damage. Thereafter, under section 54(1), TANROADS is empowered to recover the cost thereof from the person who had caused the damage. However, where the damage is attributable to a vehicle, TANROADS may recover such costs from the owner of the vehicle. Further to that, the mode of recovery is provided for under section 54(4) of the Act, which provides that the recovery may be made by way of summary procedure as provided for under the Civil Procedure Code. For ease of appreciation, section 54 of the Road Act provides:

- (1) ***Where damage occasioned to a road or road furniture as a result of any contravention of the provisions of this Act, the road authority may make good such damage and recover the cost thereof from the person contravening the Act or, if the damage is attributable to a vehicle, the road authority may recover such cost from the owner of the vehicle.***
  
- (2) *Where a person or the owner of the vehicle who has damaged a road or road furniture has been served with a written demand requiring him to pay the cost incurred by the road authority to reconstruct or repair the damaged road or road furniture as a result of that person or his vehicle contravening any provision of this Act or any other laws or regulations related to damage to roads or road furniture, fails to pay the cost after being duly informed of the cost, the road authority may apply to a court of competent jurisdiction for summary warrant in the form prescribed in the Third Schedule to this Act.*

- (3) *When the application has been made under subsection (2), the court may grant a warrant upon the road authority producing the name and address of the person so in default, the amount due and a written demand showing the person has failed to make good the cost after being duly served with such demand.*
- (4) ***Recovery of any cost, where no application is made pursuant to subsection (2) may be effected by way of summary procedure as provided for under the Civil Procedure Code, or in case of a convicted person, the court may in addition to any other penalty order the payment to the road authority of such sum as the court deems fit to cover the damaged caused to such road.***
- (5) ***In any proceedings under this section for the recovery of the cost of making good damaged to roads, a certificate under the hand of the Road authority as to the cost of making good such damaged shall be prima facie evidence of the amount payable by the person liable.***

[Emphasis is mine]

Since TANROADS is a government agency having been established under **the Executive Agencies Act [Cap. 245 R.E. 2002]**, the funds recoverable under section 54 of the Roads Act are recovered as a Government Debt under Order XXXV Rule 1(e) of the CPC. The above view was stated by this Court in the case of **Tanzania National Roads Agency & Another vs. Kidoshi Rajabu Kinanja** (Civil Case 21 of 2022) [2023] TZHC 21860 (4 July 2023) (TANZLII), where the court at page 14 stated:

*"Borrowing a leaf from the second meaning of the term "debt" as quoted above, **the amount claimed by the plaintiff also qualifies as a debt.** Having said that, it is the opinion of this court that the defendant owes the government Tshs. 19,090,500.00. **Thus, the plaintiffs' claims falls fairly and square within the setting of Order XXXV Rule 1(e) of the CPC."***

[Emphasis is mine]

In the instant case, a certificate given by TANROADS established that the cost of making good the damaged caused by the defendant amounted to TZS. 4,600,000.00. Since the defendant's defence was struck out under the provisions of Order VIII Rule 17(1) of the CPC, the plaintiff's averments in the plaint are uncontested and remain admitted. For the foregoing reasons, judgment is entered for the plaintiff in the sum of TZS 4,600,000.00, being costs for repair of the damaged galvanized guardrail.

In addition to the above stated amount, the plaintiff sought to be awarded 40% interest on the amount claimed from the date the cause of action arose to the date of judgment. I have considered the circumstances of the present case and I see no reason or justification of such a hike in the interests. However, I agree that the plaintiff is entitled to some form of consolation.

That said, judgment is entered for the plaintiff in the following manner:

- (a) The defendant is ordered to pay the first plaintiff Tshs 4,600,000/= being costs for repair of the damaged galvanized steel guardrail.
- (b) The defendant is ordered to pay interests at the rate 12% per annum from the date the cause of action arose to the date of judgement; and
- (c) The defendant is to pay interests on the decretal sum at the rate 12% per annum from the date of judgement to the date of full payment.

The plaintiff is also awarded costs of this suit.

**It is so disposed.**

**DATED at IRINGA this 17<sup>TH</sup> day of MAY, 2024.**



  
**S.M. KALUNDE**

**JUDGE**