

**IN THE HIGH COURT OF UNITED REPUBLIC  
OF THE TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR-ES-SALAAM**

**COMMERCIAL CASE NO.63 OF 2020**

**SOLVOCHEM HOLLAND B.V.....PLAINTIFF**

**VERSUS**

**CHANG QUING INTERNATIONAL  
INVESTMENT CO. LTD.....DEFENDANT**

**RULING**

Date of Last Order: 10/09/2021

Date of Judgement: 30/09/2021

**NANGELA, J.:**

This is a ruling concerning a preliminary objection raised and argued by the Defendant herein on the ground that, the Plaintiff should not be awarded specific damages since the same have not been specifically pleaded in the Plaintiff.

It behoves, however, that, I should set out, albeit briefly, the facts of this matter, before I proceed to its nitty-gritty. On 29<sup>th</sup> June 2020, the Plaintiff sued the Defendant claiming from the latter, a total of **USD 265,000.00** only, being payment for the price of goods

supplied by the Plaintiff, and interests accrued thereon. The Plaintiff also prayed for damages suffered as a result of pursuing recovery of the amount in respect of the goods supplied to the Defendant. The Defendant filed a written statement of defence.

On the 23<sup>rd</sup> of April 2021, the parties appeared before me for orders of the Court. On that same date, the learned counsel for the Plaintiff applied to the Court, under Order XII Rule 4 of the Civil Procedure Code, Cap.33 R.E 2019, for a judgement on admission, as he contended that, the Defendant was, essentially, not disputing the claims.

This Court examined the written statement of defence filed by the Defendant and came to a conclusion that, in essence, there was no concrete denial of supply of the goods and the fact that, the Plaintiff was yet to be paid for the supplies made.

In view of the above, this Court entered judgment in respect of the principal amount claimed and interest thereon in favour of the Plaintiff. However, since there was a prayer for payment of a sum of **USD 22,693.9** as specific damages, the Court called upon the Plaintiff to, specifically, address that issue in line with the requirements of the law.

This ruling, therefore, is in respect of that specific issue which was left unresolved by this Court because it

called for proof in accordance with the requirements of the law as set out in a plethora of cases, the case of **Zuberi Augustino Mugabe vs. Anicet Mugabe** [1992] T.L.R. 137 at page 139, being one of them.

On the 10<sup>th</sup> day of September 2021, the parties appeared before me. The Plaintiff was still enjoying the services of Mr Dennise Tumaini, learned advocate, while Mr Deogratius Lyimo Kirita and Alfred Kirita appeared for the Defendant.

In his submission, Mr Kirita told the Court that, the Defendant's a preliminary objection is to the effect that, the remaining issue in relation to this suit is not legally maintainable. He argued that, the same has not been specifically pleaded in the Plaint and its particulars are not clearly stated in the pleadings either. He maintained that, what the Plaint contains are mere general statements on damages but no specific plea for specific damages has been set out in the entire Plaint.

He contended, therefore, that the preliminary objection should be upheld on the basis of the legal requirement as stated by the Court of Appeal in the case **Zuberi Augustino Mugabe vs. Anicet Mugabe** [1992] T.L.R. 137 as well as the decision of this Court in the case of **Xiubao Cai and Maxinsure (T) Ltd vs. Mohamed Said Kiaratu**, Civil Appeal No.87 of 2020 (Kakolaki, J.,).

Mr Dennis opposed the objection on the ground; inter alia that, it does not meet the threshold set out in **Mukisa Biscuits vs. West End Distributors Manufacturing Co. Ltd** [1969] E.A 696. He also contended that, under the Rules of procedure governing this Court or Order VI and VII of the Civil Procedure Code, Cap.33 R.E 2019, the Defendant's objection cannot stand.

Mr Tumaini even distinguished the cases relied upon by the learned counsel for the Defendant, on the ground that, such cases do not fit the circumstances of this case. He contended that, the cases relied upon could have been meaningful if the matter is to be allowed to proceed to its hearing stage, where evidence would be adduced.

In a brief rejoinder, Mr Kirita submitted that, in our jurisdiction, it is clearly known that the sources of law, according to the doctrine of precedent, include decisions of the higher courts. As such, the decision cited, especially that of the Court of Appeal, are binding on this Court while that of this Court is highly persuasive.

He rejoined that, those decisions cannot be distinguished because they prescribe on the procedure regarding how the pleadings should look like, especially where the Plaintiff has sought to plead an issue of specific damages therein. He maintained that, such should be

specifically pleaded and its particulars clearly set out in the pleadings, failure of which such a plea will be denied.

Mr Kirita rejoined further that, the preliminary objection raised by the Defendant does fall within the parameters set out in the case of **Mukisa Biscuits** (supra).

I have given a careful consideration to the rival submissions. I have as well looked at the cases referred to and, the Plaintiff in light of the preliminary objection. In the case of **Mukisa Biscuits** (supra), the Court was of the view that,

“..., a preliminary objection consists of a point of law which has been pleaded or which arise by clear implication out of the pleadings, and which, if argued as a preliminary point, may dispose of the suit...”

At page 701 of that decision, the Court stated that:

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion.”

As I look at the preliminary objection raised by the learned counsel for the Defendant, I find it difficult to agree with Mr Tumaini, that, such a preliminary objection does not fall within the standard set out in the **Mukisa Biscuits' case** (supra). In my view, it does, and I hold it to be so because, what it has brought to the light is a valid point of law.

As a matter of law, which I also stated in my earlier decision between these same parties (**Solvochem Holland BV vs. Chang Quing International Investment Co. Ltd**, Comm. Case No.63 of 2020 (Unreported) (a judgment dated 15<sup>th</sup> June 2021), at page 19-20), the law in our jurisdiction, as pronounced in various decisions of this Court and the Court of Appeal, is that, as a matter of principle, once pleaded, specific damages call for strict proof thereof.

That being said, the issue that follows is whether the preliminary objection has any merit. To respond to that question, however, one has to first respond to the issue whether the Plaintiff has specifically pleaded the special or specific damages claimed in the Plaint and set out their particulars, since the law is to that effect. That is not an issue calling for evidence but a matter of setting one's eyes at the Plaint to see if there is conformity with the law.

As stated by Mr Kirita, the Plaintiff, in particular paragraphs 3 (and even paragraph 12 which the Plaintiff's counsel has relied on) provide for general averments only and such cannot be specific pleadings setting out particulars or details of a claim for specific damages. I will reproduce the two paragraphs below. They read as follows:

"3. That, the Plaintiff's claim against the defendant is for the payment of the United States Dollars Two Hundred Sixty-Five Thousand (USD 265,000.00) only, being payment for price of goods supplied by the Plaintiff to the Defendant, interest accrued on the price of the goods supplied as well as compensation for the damage suffered by the Plaintiff as a result of pursuing recovery of the price of goods supplied to the Defendant.

12. That, following the Defendant's failure to settle the Plaintiff's invoices, the Plaintiff has faces (sic) financial constraints that stopped her from meeting production and supply goals hence finding herself incurring extra-expenses which, if the Defendant played her part, the Plaintiff would not have found herself under such inconveniences."

Mr Kirita has contended that, the above paragraphs do not contain a plea for specific damages with particulars thereof as required by the law but rather general averments. Indeed, by the look of things, these two paragraphs cannot be said to plead specific damages nor do their explicitly give the details even if one would argue that they are inclined to claim for such damages.

In the case of **Zuberi Augustino Mugabe vs. Anicet Mugabe** [1992] T.L.R. 137 and that of **Xiubao Cai and Maxinsure (T) Ltd vs. Mohamed Said Kiaratu**, Civil Appeal No.87 of 2020, which the learned counsel for the Plaintiff sought to distinguish from this case on the ground that the same were decided not on a preliminary point of law but on merit, the Courts were clear that specific damages must be specifically pleaded and strictly proved.

In my view, and, as correctly stated by Mr Kirita, the two cited cases cannot be distinguished from the case at hand since what was stated there in are matters of legal principles. In the case of **Zuberi Augustino Mugabe** (supra) the Court of Appeal was of the view that:

“It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved. Cost of repair was pleaded but not proved.”

In the **Xiubao Cai and Maxinsure (T) Ltd's case (supra)** this Court, exploring what does special damages entail, stated, and quoting from other persuasive and authoritative sources, that:

"Special damages are such a loss as will not be presumed by law. They are special expenses incurred or monies actually lost. For example, the expenses which a plaintiff or a party has actually incurred up to the date of the hearing are all styled as special damages; for instance, in personal injury cases, expenses for medical treatment, transportation to and from hospital or treatment centre, etc... Unlike general damages, a claim for special damages should be specifically *pleaded, particularized* and *proved*. I call them three P's."

Guided by the principle set out in the case of **Zuberi Augustino Mugabe (supra)** and **Stanbic Bank Tanzania Ltd vs. Abercrombie & Kente (T) Limited**, Civil Appeal No.21 of 2001 (CAT) (unreported), the Court emphasized that, a claim for specific or special damages must not only be **pleaded** but also its **particulars** must be specifically stated and strictly **proved**. These are three limbs which must be demonstrated, failure of which the objection is to be found merited.

Turning to the case at hand and the objection, it is clear from the Plaintiff that, the first and second limbs constituting the above legal principle were not adhered to. The Plaintiff at hand does not contain specific pleading of such damages nor are there particulars thereof. As such, and, on its face value, it is apposite, to uphold the objection since it is merited and can dispose of the matter even without further ado.

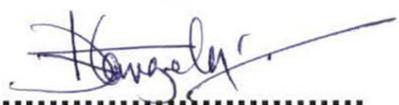
In view of the above findings, I am inclined to uphold the preliminary legal issue raised by the Defendant in respect of the claim for specific damages. The claim cannot be successful since, even if special damages are set out in the Plaintiff prayers, such ought to have been in the body of the pleadings first and clearly particularized.

Failure to plead such specific damages, therefore, makes it impossible to proceed with the hearing of the matter regarding payment of such damages. The claim for payment of specific damages is, thus, hereby dismissed with costs.

**It is so ordered.**

DATED AT DAR-ES-SALAAM THIS 30<sup>TH</sup> SEPTEMBER 2021



  
.....  
**DEO JOHN NANGELA**  
**JUDGE**