IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

(APPELLATE JURISDICTION)

AT DAR ES SALAAM

COMMERCIAL APPEAL NO. 2 OF 2015

(Appeal From the Resident Magistrates' Court of Dar es Salaam at Kisutu in Civil Case No. 284 of 2013)

PRIDE TANZANIA LIMITED ..... APPELANT

VERSUS

MWANZANI SAKATU KASAMIA ..... RESPONDENT

9th November & 15th December, 2016

JUDGMENT

MWAMBEGELE, J.:

This is an appeal emanating from the judgment and decree of the court of the Resident Magistrates of Dar es Salaam sitting at Kisutu in Civil Case No. 284 of 2013 in which the appellant Pride Tanzania Limited was ordered to pay Mwanzani Sakatu Kasamia; the respondent, Tshs. 80,000,000/= as general damages and condemned to pay costs of the suit as well.

The background to the suit as can be gleaned from the proceedings in the lower court are as follows: the respondent is a microfinance institution dealing with, *inter alia*, lending money to its customers. The appellant used to lend money to the respondent. The appellant and respondent were in that kind of

relationship for about four years before the fracas leading to the suit the subject of this appeal ensued. Some times in the year 2010, the respondent obtained a loan of Tshs. 12,000,000/= from the appellant alongside which a house standing on plot No. 1498 Block B, Kinyerezi area in the Ilala District of Dar es Salaam Region was pledged as security.

It happened that the respondent was unable to repay the loan. She thus entered in some arrangement with a certain Basil Gaspar Soka who would be making deposits in service of the loan. Following that understanding, the appellant and the said Basil Gaspar Soka visited the appellant's branch at Segerea at which they told the appellant on the arrangement; that the said Basil Gaspar Soka would be making deposits in the loan account to repay the outstanding loan amount. Thereafter, Basil Gaspar Soka made several deposits on the loan account in repayment of the loan.

It is the respondent's case that in the course of making those deposits, the appellant breached the duty of confidentiality between them by disclosing her financial affairs to the said Basil Gaspar Soka. She thus filed the suit the subject of this appeal which was ultimately decided in her favour as explained in the first paragraph of this judgment.

The decision did not make the appellant happy and has therefore preferred an appeal in this court advancing five grounds of dissatisfaction, namely:

1. That the trial court erred in law and in fact in holding that the Appellant had disclosed financial information of the Respondent to third parties without the Respondent's consent. In doing so the Trial Court failed to take into account the evidence that the Respondent had informed one Basil Gasper Soka to repay her loan;

2. That the trial court erred in law and in fact in holding that the disclosure of such financial information resulted in the Respondent's loss of business;
3. That the trial court erred in law and fact in awarding excessive general damages to the Respondent without evidence of the Respondent having suffered by damages;
4. The trial court erred in law in dealing and determining a matter of commercial nature of which it had no jurisdiction;
5. The learned trial magistrate erred in law and fact in failing to provide the reason as to why issue number 1 and 2 should be answered in the affirmative;
6. The trial court misapplied the principles applicable in the assessment and award of damages leading to award of excessive and unjustifiable damages; and
7. The trial court erred in law in failing to state any reason why the Respondent was entitled to the full amount claimed in the Plaint.

The appeal was argued before me on 09.11.2016. Both parties were represented. The appellant was represented by Mr. Gaspar Nyika, learned Counsel whilst the respondent had the services of Mr. Ndurumah-Majembe, also learned Counsel. Both learned counsel for the parties had filed their respective skeleton written arguments ahead of the oral hearing as dictated by rule 64 of the High Court (Commercial Division) Procedure Rules, 2012 – GN No. 250 of 2012.

Arguing for the appeal, Mr. Nyika, learned counsel, having adopted the skeleton arguments earlier filed, sought to abandon the second and fourth

grounds of appeal. He argued the first ground separately and consolidated the third and sixth as well as the fifth and seventh grounds.

On the first ground, he submitted that the court did not take into consideration the evidence of Peter Andrew Songoma DW1 and at p. 4 second paragraph of the judgment where it is shown the respondent asked the said Basil Gasper Soka to go and pay the money to the appellant. That is why the appellant gave Basil Gasper Soka a note complained of to the effect that the loan has been fully paid. He contended that that is the note which triggered the respondent to file the suit and had the trial court considered the evidence of the respondent PW1 and DW1, it would have concluded that there was an implied consent by the respondent to divulge such information to the said Basil Gasper Soka. He cited ***Tournier Vs Nation Provincial and Union Bank of England*** [1924] 1 KB 461 in which the court established conditions under which banks owed the duty of confidentiality to their clients, allowing four conditions wherein the banks were not allowed to guard confidentiality/privacy, namely; the law, public duty, the interest of the bank or where the client had consented, even impliedly, to disclosure.

On grounds 3 and 6, Mr. Nyika stated that there was no proof of the extent the respondent sustained damages. He was, however, aware that the respondent was not supposed to prove general damages but argued that there ought to have been evidence to show that she suffered to warrant the grant of damages awarded. To him, Tshs. 80,000,000/= awarded as general damages was on the high side considering the value of relationship between the appellant and respondent. He clarified that the last loan the respondent was granted was Tshs. 12,000,000/=; the previous ones were fewer than that. According to him, the trial court ought to have considered this

relationship in assessing the extent of general damages to be awarded. The learned counsel referred the court to the statement of Lord Dunedin in ***The Susquehanna*** [1926] AC.655 cited in the book **McGregor on Damages**, 17th Edition at p. 22 that:

> "If the damage be general, then it must be averred that such damage has suffered".

The learned counsel also referred the court to ***Stroms Bruks Aktie Bolag Vs Hutchison*** [1905] AC 515 where it was stated:

> "General damages are such as the law will presume to be the direct and natural or probable consequence of the action complained of".

He also referred the court to ***Razia Jaffer Ali Vs Ahmed Mohammedali Sewji & 5 others*** [2006] TLR 433 wherein the court of Appeal cited with approval the following excerpt on general damages from ***Livingstone Vs Rawyards Cool Co.*** (1880) 5 App. Cas. 25, 39:

> "That sum of money which will put the party who has been injured, or who has suffered in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or separation".

The learned counsel also referred the court to ***Bashir Ally (a Minor) Suing by his Next Friend FATUMAZABRON Vs Clemensia Falima & 2 others*** [1998] TLR 215 in which this court (Mackanja, J.) stated that the general

object of an award of damages is to put the plaintiff in the same position he would be had it not been for the tort committed.

The learned counsel submitted further that it is only where a party has been injured that general damages can be awarded and that the general damages must be commensurate to the injury. On this premise, he argued, the general damages awarded ought not to have been more than Tshs. 12,000,000/=; the value of the loan. He stressed that, in the absence of any evidence of the respondent having suffered anything to justify the award, the amount of general damages awarded was on the high side.

On grounds 5 and 7, the learned counsel for the appellant submitted that the trial court stated that the first two issues were answered in the affirmative without assigning any reason thereof. That was against the provisions of Order XX rule 4 of the CPC which requires a judgment to have reasons for decision, he argued. He relied on ***Kukal Properties Development Ltd Vs Maloo and others*** [1990 - 1994] 1 EA 281 to state that the judgment of the trial court is no judgment at all.

The learned counsel also attacked the judgment of the trial court that it did not state why the respondent was entitled to the full amount stated in the plaint. He thus prayed that the appeal be allowed with costs in this court and in the lower court as well.

Arguing against the appeal, Mr. Majembe, learned counsel, also having adopted the skeleton written arguments earlier filed, submitted that Basil Gaspar Soka was being sent by the respondent to the appellant bank to make deposits and that standard banking practices are that deposits may be made by anybody. But that any other supply of details must be authorized by the

account holder. That it was therefore wrong for the appellant to give Basil Gaspar Soka the details complained of. He submitted that the Memo complained of which was tendered in evidence as Exh. P1 together with a letter from the appellant to Fortis Attorneys which was tendered in evidence as Exh. D1 and the evidence of the respondent PW1 as well as that of Peter Andrew Songoma DW1 are quite clear that the appellant divulged the financial information complained of without the permission of the respondent.

On the award of damages being excessive he stated that general damages may be exemplary, punitive, *et cetera* and are discretional. He added that the fact that the value of relationship was between the appellant and respondent was Tshs 12,000,000/= but that the respondent, as a business person, was affected; affected beyond the value of their relationship. He stressed that as general damages are awarded at the discretion of the court, and after considering the relevant surrounding facts of the case, the trial court properly awarded the amount of general damages complained by the appellant as excessive. The learned counsel was of the view that the general damages awarded was a mixture of punitive, exemplary and compensatory damages.

The learned counsel for the respondent underlined that it is settled law that an appellate court shall not substitute a figure awarded as general damages unless it is satisfied that the lower court erred in assessing the award. On this stance, the learned counsel referred the court to ***the Cooper Motor Corporation Ltd Vs Moshi/Arusha Occupational Health Services*** [1990] TLR 96 in which it was held:

> "... the appellate court is not justified in substituting a figure of its own for that awarded

> below simply because it would have awarded a different figure if it had tried the case ... Before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as taking into account some irrelevant factor or leaving out of account some relevant one); or short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage".

Relying on the above holding, the learned counsel submitted that the learned trial magistrate did not take any irrelevant factors in awarding general damages and therefore he should not be faulted on the amount awarded.

Emphasizing on the duty of confidentiality between the appellant and the respondent, the learned counsel referred the court to the provisions of section 48 (1) of the Banking and Financial Institutions Act, No. 5 of 2006 which provides:

> "Every bank or financial institution shall observe, except as otherwise required by law, the practices and usages customary among bankers, and in particular, shall not divulge any information relating to its customers or their affairs except in circumstances in which, in accordance with the law or practices and usages customary among bankers, it is necessary or appropriate for the

bank or financial institution to divulge such information."

Basing on the above, the learned counsel prayed that the appeal be dismissed with costs.

In a short rejoinder, Mr. Nyika submitted that there was implied authorization of Mr. Basil Gaspar Soka by the respondent to the appellant. That the said Basil Gaspar Soka was more that a person to make deposits.

The learned counsel conceded on the court's discretion to award general damages but underlined that there must be evidence to show that the plaintiff suffered damages which was wanting at the trial; there was no evidence bought to show that loans were refused to be granted to the respondent because of the note/letter complained of.

On punitive damages; the learned counsel stated that they were not pleaded.

I have given due consideration to the learned rival arguments presented to me by both learned counsel for the parties to this appeal during the hearing of this appeal. I thank both learned counsel for the industry exhibited in representing their clients in this appeal. I commend them for the good work well done. As was put by Lord Denning when commending counsel in the case of ***Trendtex Trading Corporation Ltd Vs the Central Bank of Nigeria*** [1977]1 All E.R. 881 C.A. (U.K.) and adopted by the court of Appeal of Tanzania in ***East African Development Bank Vs Blueline Enterprises Limited1B***, Civil Appeal No. 110 of 2009 (unreported), which commending I feel proud to borrow a leaf from in commending Mr. Nyika and Mr. Majembe who, respectively, represented the appellant and respondent in the present appeal, they presented their respective positions in a manner to which I

would pay sincere tribute. The arguments, both in the skeleton written arguments earlier filed and oral at the hearing, have been put forward lucidly. The ball is now in my court to confront the grounds of appeal and my decision thereon. I shall deal with the grounds of appeal in the order they appear in the memorandum of appeal and as argued by the learned Counsel for the appellant.

The bone of contention in the first ground of grievance rests on the question whether or not the trial court erred in law and in fact in holding that the appellant had disclosed some financial information of the respondent to third parties without the latter's consent and that, in so doing, the trial court failed to take into account the evidence that she (the respondent) introduced Basil Gaspar Soka to repay the loan. On this ground, the learned counsel for the appellant argued that the respondent is the one who introduced Basil Gaspar Soka to the appellant and that no financial information of the respondent was disclosed to the said Basil Gaspar Soka and even if that was done, there was an implied permission of the respondent. The learned counsel for the appellant cited ***Tournier Vs Nation Provincial and Union Bank of England*** (supra) in which the court established conditions under which banks owed the duty of confidentiality to their clients, allowing four conditions under which the banks were not allowed to guard confidentiality/privacy, namely; first, the law, secondly, public duty, thirdly, the interest of the bank, or, fourthly, where the client had given consent, even implied, to disclosure. The appellant argues that the respondent gave an implied consent to divulge the information complained of. To this the respondent denies any consent, express or implied, to have the financial information disclosed stating that the said Basil Gaspar Soka was only allowed to make deposits in repayment of the outstanding amount in the loan.

From the arguments of the learned counsel for the parties on the first ground of appeal, there arise three sub-issues; first, whether the appellant disclosed any financial information to Basil Gaspar Soka; secondly, whether the said Basil Gaspar Soka was a third party and thirdly whether the respondent consented to such disclosure.

I have read the evidence at the trial. As rightly put by Mr. Majembe, learned counsel for the respondent, there is enough material from the record at the trial to answer the issue in the affirmative. The evidence of the respondent who testified as PW1, of Peter Songoma who testified as DW1, the Memo to Basil Gaspar Soka which was tendered at the trial as Exh. P1 and a letter from the appellant to Fortis Attorneys which was tendered and admitted in evidence as Exh. D1 speak volumes against the appellant. Let me demonstrate.

Exh. P1 was addressed to Basil Gaspar Soka from the Branch Manager of the appellant at Segerea. It is in the headed paper of the appellant and bears the appellant's rubber stamp impression. The Note which bears the head "Memo" and address, telephone numbers and email address of the appellant has the following details:

> "To: BASIL GASPER SOKA From: BM SEGEREA
>
> **Re:** LOAN CLEARANCE FOR CLIENT MWAZANI SAKATU KASAMIA
>
> The subject above refers.
>
> This is to confirm Mr. Basil Gasper Soka of Kinyerezi, Dar es Salaam has successful

complete (sic) repayments for our defaulter client MWAZANI SAKATU KASAMIA as per their agreement ie Mr. Soka had to pay the outstanding loan amount to confiscate collateral and collateral document (TITLE) which we (PRIDE) currently hold, until further arrangements. Today Mr. Soka has paid 4,886,300 ie outstanding loan amount.

Please accord Mr. Soka with necessities.

Yours

(sgd and stamped)"

And the letter authored by DW1 (Exh. D1) on behalf of the plaintiff reads in part:

"... Sisi kama Taasisi hatuna mawasiliano ya moja kwa moja na mtu anayeitwa Bazil Soka bali kwa kupitia mteja wetu aitwaye MWAZANI SAKATU KASAMIA. Mteja wetu alishindwa kurejesha mkopo wake iiipofika mwezi Septemba 2010 na baada ya juhudi kubwa ya kumfuatilia hatimaye alifika ofisini kwangu tarehe nisiyokumbuka, akiwa ameongozana na mtu aliyemtambulisha kuwa ni BAZIL SOKA. Mada iliyokuwa imewaleta ni kuhakiki hati ya nyumba ili Bwana Soka anunue Nyumba iliyowekwa dhamana kwetu

ikiwa ni sehemu ya ulipaji wa deni la PRIDE. Kufuatia mazungumzo hayo mnamo tarehe .20/12/2010 .Bwana Soka alianza kuleta malipo kama ajenti wa Mteja wetu hadi deni lilipomalizika kulipwa tarehe 13.07.2011 ..."

PW1 so stated at the trial as well. The letter, however, denies Exh. P1 to have been originated from the appellant but that whoever authored it did so in good faith to inform Mr. Soka that the loan he was servicing had been fully paid.

I have closely examined the evidence above. One thing comes out clearly from that evidence: that the appellant disclosed financial information to Basil Gaspar Soka. The contents of the letter which bears the rubber stamp impression on a headed paper of the appellant has not been satisfactorily explained by the appellant to disprove the respondent's evidence. I take the "aliyeandika Memo hiyo siyo mhusika wa mawasiliano ya kiofisi na inawezekana aliandika **kwa nia njema tu** kumthibitishia Bwana Soka kwamba deni liliiowaleta kwetu lilikuwa limemalizika ili waendelee na makubaliano yao na mteja wetu" to amount to an admission that the information complained of was divulged to Basil Gaspar Soka but that it was so divulged in good faith. I see no good faith in such an act. If anything, that amounted to but divulging financial information to another person and, as it will be seen shortly, a third party.

On the premise of the above I would answer the first sub-issue that the appellant disclosed financial information of the respondent to Basil Gaspar Soka.

The second sub-issue is whether the said Basil Gaspar Soka was a third party. The term "third party" is defined by **Black's Law Dictionary**, Abridged Seventh Edition by Brian A. Garner at p 1202 as:

> "One who is not a party to a lawsuit, agreement, or other transaction but who is somehow involved in the transaction; someone other than the principal parties."

In the case at hand, there is hardly any dispute that the loan agreement was, undoubtedly, between the appellant and the respondent. These are the principal parties to the agreement. Basil Gaspar Soka does not feature anywhere in the agreement. He was involved in the transaction by being authorized to make deposits in servicing the loan. I have no iota of doubt in my mind that Basil Gaspar Soka was but a stranger to the loan agreement between the parties to this appeal and for that matter a third party. In the premises, the appellant's Memo to him; that is, the said Basil Gaspar Soka, regarding the respondent's financial affairs amounted to disclosure of financial information to a third party which eventually amounted to breach of confidentiality between the parties to the loan agreement.

The third sub-issue is whether the respondent consented to the disclosure of such financial information by the appellant to Basil Gaspar Soka. I have read the evidence, both oral and documentary, adduced at the trial. I have read the principles laid down in the ***Tournier*** case; a case cited by the learned counsel for the appellant. Having so done, I have failed to unveil any evidence, express or implied, suggesting that the respondent consented to the disclosure of financial information of the respondent. What is evident is that the respondent introduced Basil Gaspar Soka to the appellant as a person

who would be making deposits in repayment of the loan. Nothing can be gleaned from evidence to suggest otherwise.

In the light of the foregoing, I would answer the first ground of appeal that the trial court was quite correct in holding that the appellant disclosed financial information of the respondent to a third party without the latter's consent.

The third and sixth grounds of appeal were consolidated by Mr. Nyika, learned counsel for the appellant. As intimated at the beginning of this judgment, I shall also consolidate them in their determination. This consolidated ground hinges, primarily, on the excessiveness of general damages awarded to the respondent without any evidence to warrant such award of the amount. The learned counsel for the appellant submitted that there was no evidence to prove that the respondent suffered loss and that the awarded amount was on the high side. The learned counsel submitted that the relationship between the appellant and respondent was worth Tshs. 12,000,000/= which was the loan amount. To this, Mr. Majembe for the respondent strenuously resists stating that the respondent being a business person must have suffered loss and that she was affected beyond the value of the loan amount. To him, the general damages awarded was a mixture of punitive, exemplary and compensatory damages.

Before I proceed to determine on this consolidated ground of appeal, I wish to clarify two points here. The first stems from Mr. Nyika's submissions on this consolidated ground of appeal and the second stems from Mr. Majembe's, also on this ground.

First, in the course hearing the appeal, I asked Mr. Nyika why he thought the respondent ought to have proved loss of general damages. His response was that there ought to have been some material regarding the loss suffered on which the court would exercise its discretion to assess the extent of general damages. Mr. Nyika's argument would sound very attractive on first sight, but, I am afraid, that is not the law. Admittedly, as was stated by Justice Yaw Appau (Justice of the Court of Appeal) in his article titled **ASSESSMENT OF DAMAGES**; a Paper Presented at an Induction Course for Newly Appointed Circuit Judges at the Judicial Training Institute (sourced from www.jtighana.org), assessment of damages is a very wide area of the law. It is very "technical" and covers an important area of civil litigation where there is an alleged civil wrong or an infraction of the law. It permeates almost all civil claims arising from tort and contract. However, the law on general damages in commonwealth jurisdictions to which we belong is that general damages need not be specifically pleaded and proved and may be asked for by a mere statement or prayer of claim – see: ***Tangamano Transport Service Ltd Vs Elias Raymond & Anor*** Commercial Case No. 50 of 2004 (unreported) and ***Cooper Motors Corporation (T) Ltd Vs Arusha International Conference Centre*** [1991] TLR. 165. General damages are even grantable under the head "any other relief" normally seen in the region of reliefs sought in a plaint – see: ***Gift Eric Mbowe Vs Reuben Pazia*** Commercial Case No. 67 of 2005 (unreported). Thus to agree with Mr. Nyika's line of argument to the effect that the respondent ought to have shown by evidence the extent of loss suffered would be to shoulder her (the respondent) the responsibility which is not backed by law.

The authorities cited by Mr. Nyika, learned counsel, do not support his view. For instance, the ***The Susquehanna*** case cited in the book **McGregor on**

Damages, stated that general damages "must be averred that such damage has suffered". The catch word here is "averred". By this, I think, the learned the author meant that it must be pleaded in the plaint. In the instant case, the respondent stated at para 10 of the plaint that the appellant's disclosure of relevant financial information had affected the running and supervision of her business venture. What more did the appellant want the respondent to satisfy the holding in ***The Susquehanna***? Likewise, ***Stroms Bruks Aktie Bolag Vs Hutchison*** which has been relied upon by the appellant described general damages to be "such as the law will presume to be the direct and natural or probable consequence of the action complained of". The respondent's case was that the acts of the appellant had led to the dwindling down of her business which to my mind is a direct impact of the appellant's action.

As the respondent pleaded general damages to be assessed by the court, I am of the considered view that she discharged enough duty to the satisfaction of the law. As already said, she could even be awarded the same; that is, general damages, under the head "any other relief" pleaded in the plaint.

The second point I wish to remark on is an anecdote by Mr. Majembe, learned counsel for the respondent. In justifying the amount of general damages awarded to the respondent, Mr. Majembe, learned counsel, submitted that the amount comprised punitive, exemplary and compensatory damages. With due respect, I do not think the learned counsel is on the right track on this take. While I agree that general damages are compensatory in nature - see: ***Haji Associates Company (T) Ltd & Another Vs John Mlundwa*** [1986] TLR 107, punitive or exemplary damages have the same

character like special damages; they have to be expressly pleaded and proved – see: Justice Yaw Appau's **ASSESSMENT OF DAMAGES** (supra) at p. 8.

Writing about kinds of damages, **Winfield and Jolowicz on Tort**, 13th Edition, by W. V. H. Rogers states at p. 600:

> "Ordinarily an award of damages is made in order to compensate the plaintiff for his injury ... An award of damages, however, may be avowedly non-compensatory in intention. If not compensatory, damages may be: (1) contemptuous; (2) nominal; or (3) exemplary or punitive."

The learned author goes on at p. 603:

> "Exemplary damages ... are not compensatory but are awarded to punish the defendant and to deter him from similar behaviour in the future."

And making a distinction between general and special damages, the learned author writes at p. 608:

> "... in the context of pleading special damage is used, in contradistinction to 'general damage', to signify 'the particular damage (beyond the general damage) which results from the particular which he ought to give warning in his pleading in order that there may be no surprise at the trial' ... This is more than a mere matter of nomenclature, for

> the rule is that special damage must be strictly pleaded and proved."

Thus exemplary and punitive damages are one and the same. They are meant to punish the defendant with a view to deterring him from such actions in future. They are like special damages; they must be specifically pleaded and proved. Thus, deducing without deciding, Mr. Majembe, learned counsel might therefore be right in his stance that the awarded amount of general damages might have taken in account exemplary or punitive aspect. However, the learned trial Resident Magistrate could not be right in considering them in the absence of specific pleading and proof.

Having so discussed, let me now answer the question whether or not the amount of general damages was on the high side. I start with the premise that general damages are awardable at the discretion of the court. And that this court, sitting as an appellate court should not meddle with the discretion of the trial court unless it is of the view that the same was not judicially exercised. This is the stance in the decision of the Court of Appeal of ***the Cooper Motor Corporation Ltd Vs Moshi/Arusha Occupational Health Services*** (supra), a case cited to me by Mr. Majembe, leaned cousel, in which it was held:

> "... the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case ... Before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as

> taking into account some irrelevant factor or leaving out of account some relevant one); or short of this, that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage".

In arriving at the quantum of general damages to award, the learned trial Resident Magistrate, undoubtedly injected some exemplary or punitive aspects before granting. He stated at p. 7 of the typed judgment:

> "... the defendant, deliberately and without any reasonable ground, decided to offend the rule [of confidentiality]. Apparently, the defendant must suffer the consequences so as to deter her from any future attempt to fault the rule ..."

The learned trial Resident Magistrate therefore felt that the appellant ought not only be condemned to pay general damages but exemplary or punitive damages as well so as "to deter her from any future attempt to fault the rule" of confidentiality. I have considered the way the discretion was exercised by the learned trial Resident Magistrate and find that by injecting punitive or exemplary aspects to the assessment of general damages to award, he (the learned trial Resident Magistrate) treaded on a wrong principle of law. In my considered view, in the absence of specific pleading and proof, he was wrong to consider exemplary or punitive aspects in arriving at what quantum of general damages to award. That is enough justification for this court, as an appellate court, to interfere with the trial court's discretion. I shall revert

(infra) on the amount which I think would have been appropriate in the circumstances.

Regarding grounds 5 and 6 which were consolidated by the learned counsel for the appellant, the appellant has complained that the trial court did not comply with the provisions of Order XX rule 4 of the Civil Procedure Code, Cap. 33 of the Revised Edition, 2002 because he just said at p. 5 that the first two issues are answered in the affirmative. I have read the judgment of the trial court particularly p. 5 regarding the point complained of. The learned trial Resident Magistrate was specific that from what he stated earlier, the first and first two issues would be answered in the affirmative. The reasons why the first two issues could be answered in the affirmative were to be found in a discussion before that conclusion. I thus would not agree with Mr. Nyika, learned counsel that the trial court ascribed no reasons why the first two issues could be answered in the affirmative. The provisions of Order XX rule 4 of the CPC were therefore not offended.

To respond to Mr. Nyika's second limb of contention that the trial court did not state why the respondent was entitled to the full amount stated in the plaint, I think the learned counsel has missed the point here. The trial court did not award the full amount stated in the plaint. What was awarded was general damages which was not, and to my mind rightly so, quantified. The relief of general damages was pleaded under head 2 of the prayers. It was couched thus:

> "General damages as may be assessed by the court for the Defendant's act for breach of duty of confidentiality".

It had nothing to do with compensation of Tshs. 80,000,000/=pleaded under head 1. In the absence of any statement in the judgment to that effect, it will be dangerous to make an assumption that the amount of general damages awarded was pegged on the amount of compensation pleaded but which was not granted. I therefore find this consolidated ground of appeal to be wanting in merit and consequently dismiss it as well.

The above said and done, I now revert to the quantum of general damages. I think the award of Tshs. 50,000,000/= as general damages would have been appropriate in the circumstances. I therefore substitute the amount of Tshs. 80,000,000/= awarded by the trial court as general damages with Tshs. 50,000,000/= which I think would have been appropriate had the trial court not considered punitive or exemplary aspects of damages.

Save for the foregoing variation, I find no merit in this appeal and dismiss it with costs.

Order accordingly.

DATED at DAR ES SALAAM this 15th day of December, 2016.

J. C. M. MWAMBEGELE

JUDGE