IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: KILEO, J.A., MJASIRI, J.A., And KAIJAGE, J.A.)

CIVIL APPEAL NO. 25 OF 2014

1. ANTHONY NGOO
2. DAVIS ANTHONY NGOO ..... **APPELLANTS**

VERSUS

KITINDA KIMARO ..... **RESPONDENT**

(Appeal from the Judgment and Decree of the High Court of Tanzania at Arusha)

(Sambo, J.)

dated the 12th day of October, 2012
in
Civil Case No. 17 of 2010

JUDGEMENT OF THE COURT

12th & 25th February, 2015

MJASIRI, J.A.:

This appeal arises from the decision of the High Court of Tanzania at Arusha (Sambo, J). The appellants, Anthony Ngoo and Davis Anthony Ngoo, who were the defendants in the High Court, being dissatisfied with the decision of the High Court have come to this Court for redress. The respondent Kitinda Kimaro was the plaintiff in the High Court. The background to this case is that the appellant and the respondents were co-owners of a mining licence issued by the Ministry of Energy and Mining relating to a plot situated at Mererani in Simanjiro District, Arusha Region. The licence in question was admitted as Exhibit P1 during the trial in the

High Court. Prior to filing the suit in the High Court, the respondent filed a suit in the District Court of Manyara at Babati (Civil Case No. 4 of 2010). He sought an injunction order to restrain the defendants/appellants from continuing with the mining operation in Misc Civil Case No. 1 of 2012. The said order was granted exparte by the District Court. However after hearing the application inter parties the Court's decision was that both parties should continue with the mining operations. Subsequent to the restraining order, the respondent/plaintiff filed a suit on the same claim in the High Court, the decision of which has led to this appeal. The respondent sought the following reliefs in the High Court:-

(a) *A declaratory order against the defendants that the plaintiff is entitled to TShs 475 million worth of 50% of the Tanzanite minerals production pleaded in paragraphs 18 and 19 herein above.*

(b) An order for permanent injunction to restrain the 1st defendant, his agents, servants and any person acting under him from interfering with the plaintiff's and or his agent's free and unimpeded access to the suit plot and participation in mining operations thereof.

(c) General damages as the Court may assess and grant in the premises hereof.

(d) Interest on (a) at the rate of 18 percentum per month from the date of filing the suit to the date of judgment.

(e) Interest on the decretal sum at the Court's rate of 12 percentum per annum from the date of judgment till full and final payment.

(f) Costs of the suit

(g) Any other reliefs as the Honourable Court may deem fit and just to grant.

During the hearing of the suit in the High Court four (4) issues were framed with the agreement of the parties. We take the liberty to reproduce the same.

(i) Whether the plaintiff and the 1st defendant are partners in PML No. 0003601 which is in respect of the suit mining plot.

(ii) If the first issue is answered in the affirmative, whether there was a breach of partnership agreement by the 1st defendant.

(iii) Whether the first and second defendants committed any unjustifiable and illegal acts or a scheme to defraud the plaintiff or his legitimate interest in the suit plot.

(iv) Whether parties are entitled to any relief.

At the hearing of the appeal, the appellants were represented by Mr. Akoonay Sang'ka and Mr. Michael Ngalo, learned advocates while the respondent had the services of Mr. Mpaya Kamara. The appellants filed an unusually lengthy fourteen (14) points memorandum of appeal. We reproduce the memorandum of appeal as under:-

1. *That the trial High Court erred in iaw and in fact in proceeding with the trial of the suit without having first and foremost determined the issue of res sub-judice raised in both the respondent's plaint and in the appellants' written statement of defence.*

2. *That the trial court erred in law and in fact in framing or accepting and recording wrong issues and the same being based on un-pleaded matters.*

3. *That the learned trial judge erred in law and in fact in finding and holding that the respondent and the 1st appellant were partners with respect to the primary mining licence No. 0003601.*

4. *That the learned trial judge erred in law and in fact in remarking and holding that the 1st appellant was not "just and faithful" to the respondent and did not render true accounts and full information of all things affecting their partnership."*

5. *That the learned judge erred in law and in fact in finding and holding that the appellants' conduct was in violation of section 192 of the Law of Contract Act, Cap 345 R.E. 2002.*

6. *The learned trial judge erred in law and in fact in finding and holding that the 1st appellant breached the partnership agreement between him and the respondent.*

7. *That the learned trial judge erred in law and in fact in finding and holding that the appellants committed unjustifiable and illegal acts or a scheme to defraud the respondent.*

8. *That having found that there is no particular date of the amount of minerals produced by the appellants to the exclusion of the respondent and further that there is no specific amount of minerals produced, the learned trial judge erred in law and in fact in speculating and being convinced that there were minerals produced during the period the respondent was said to have been axed out by the appellants.*

9. *That the learned trial judge erred in law and in fact in thinking and estimating that the respondent lost T. Shillings Four Hundred Million (400,000,000) during the period and he further erred to award him (the respondent) that sum.*

10. *That the learned trial judge erred in law and in fact in accepting the respondent's counsel's proposals contained in the final submissions for dissolution of the alleged partnership as well as for selling the suit mining plot without hearing parties on the aspects of those proposals which were not part of the pleadings.*

11. *That the learned trial judge grossly erred in law and in fact in ordering dissolution of partnership, disposal of the mining plot by way of sale and equal division of proceeds of the sale between the 1st appellant and the respondent which prayers were neither pleaded nor asked for by either party.*

12. *That the learned trial judge erred in law and in fact in awarding the respondent the sum of Shs One Hundred Million (100,000,000,) as general damages without assigning any reason and that the amount was exorbitant in the circumstances.*

13. *That the learned trial judge erred in law and in fact in awarding interest on the award of Tshs Four Hundred Million (400,000,000) at 15 percentum per month from the date of judgment with no basis provided for such rate.*

14. *That learned trial judge erred in law and in fact in awarding interest on the decretal sum at 12*

percentum from the date of judgment till full and final payment.

The respondents were also dissatisfied with certain parts of the High Court judgment and cross appealed. On the cross-appeal the learned advocate for the respondent presented the following grounds:-

1. *That the respondent suffered general damages at the instance of the appellants.*
2. *That the quantum of general damages (TShs 100 million) that was granted by the High Court is low; and*
3. *That the interests that were awarded by the High Court are, in the circumstances on the high side.*

The Court was asked for orders that:-

(1) *The quantum of general damages may be varied by re-assessing the same upward in the excess of Tshs 250 million;*

(2) Interest on item (a) of the decree may be varied so as to be 15% per annum from the date of filing the suit to the date of judgment;

(3) Interest on the decree sum may be varied so as to be 7% per annum from the date of judgment till full and final payment, and

(4) Costs be provided for by the appellants.

Both parties complied with the requirements under Rule 107 of the Tanzania Court of Appeal Rules, 2009 (the Court Rules), lengthy submissions were filed and numerous and useful decisions of this Court and beyond were cited. While we have endeavoured to review and to consider them all, we shall not necessarily make reference to all the authorities referred to us.

We shall commence with the main appeal. In relation to the issue of subjudice raised in the appellants' first ground of appeal, we are of the considered view that that issue need not detain us. The Principle of subjudice is provided under section 8 of the Civil Procedure Act, Cap 33 R.E. 2002.

> *"No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title such suit is pending in the same or any other court in Tanzania having jurisdiction to grant the relief claimed."*

The purpose of section 8 is to prevent multiplicity of proceedings and conflicting decisions.

After a careful review of the record and the submissions made by counsel for both parties, we are of the considered view that the issue is no longer relevant now. It is evident from the record that the respondent had withdrawn the case from the District court prior to the commencement of the hearing of the case in the High Court.

The main issue for consideration and determination in this appeal is whether or not the appellant 1st defendant and the respondent/ plaintiff were partners. The finding on the first issue by the trial Judge that the appellants and the defendant were partners led to the subsequent awards to the respondent for breach of the partnership agreement. While the counsel for the respondent strongly argued that there was a partnership and that a partnership need not be registered, the counsel for the appellants forcefully argued that there was no partnership.

After a careful analysis of the evidence on record, the judgment of the High Court and the submissions made by counsel, we would like to make the following observations:-

Paragraph 5 of the plaint provides as under:

> *"The plaintiff and the 1st defendant are joint lawful owners and holders in equal shares of a tanzanite mining plot at Block 'D' Mererani, Simanjiro District,*

Manyara Region (henceforth "the suit plot") registered under Primary Mining Licence No. 0003601 henceforth "the PML").

The mining licence was admitted in the High Court as Exhibit P1. This is reproduced as under for ease of reference.

Exhibit P1
THE UNITED REPUBLIC OF TANZANIA
THE MINING (MINERAL RIGHTS) REGULATIONS, 1999

PRIMARY MINING LICENCE

The Mining Act, 1998

The exclusive right, subject to the provisions of the Mining Act, 1998 and of the regulations thereunder now in force or which may come into force during the continuance of this primary mining licence or any renewal thereof, from the 7th day of March, 2002 to 6th day of March, 2007 is hereby granted to Mr. Anthony Ngoo and Mr. Kitinda Kimaro of P.O. Box 6051 Arusha. At block C. Mererani Simanjiro District ,Block C. Area D. 1334.

Insert name, address and description of the primary mining licence) to prospect and mine for (type of mineral) GEMSTONES within the area described on the application for registration of this primary mining licence and on the plan attached thereto,

RENT: Shs. 20,000/=

E.R.V. No. 12709265 of .....

8th day of March 2002

Signed by .....

On close examination of Exhibit P1, the document reads "Primary Mining Licence No. 0003601" issued on March 7, 2002 to March 6, 2009 granted to Mr. Anthony Ngoo and Mr. Kitinda Kimaro to prospect gemstones at Block C, Mererani, Simanjiro. Now the question is, is the primary mining licence "No. 0003601" in respect of the suit mining plot as

seen hereinabove sufficient to establish the existence of a partnership existence between the 1st appellant and the respondent? Is there any other document on record evidencing a partnership existence? Mr. Kamara learned advocate, submitted that a partnership need not be registered. It can be established simply by the agreement between the parties.

In **Black's Law Dictionary** Abridged (Sixth Edition) partnership is defined as follows:-

> *"A business owned by two or more persons that is not organised as a corporation.* ***A voluntary contract between two or more competent persons to place their money, effects, labour and skill or some or all of them in lawful commerce or business with the understanding that there shall be a proportional sharing of the profit and losses between them.*** *An association of two or more persons to carry on, as co-owners, a business for profit."*
>
> [Emphasis ours].

Under section 190 (1) of the Law of Contract Act, Cap 345 R.E. 2002 a partnership is defined as follows:

"Partnership" is the relationship which subsists between persons carrying on business in common as defined with a view of profit.

The Rules and regulations for determining the existence of partnership are provided under section 191 of the Law of Contract Act. Section 191 (1) provides that the relationship of partnership arises from **contract and not from status.**

Section 191 (2) provides as under:-

"(a) joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenant's or owners do or do not share any profits made by the use thereof;

(b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right of interest in any property from which or from the use of which the returns are derived;

(c) the receipt by a person of a share of the profits of a business is primafacie evidence that he is a partner in a business, ***but receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a***

partner in the business, and in particular the receipt of such share or payment."

(i) by a lender of money to persons engaged or about to engage in a business;

(ii) by a servant or agent as remuneration;

(iii) by the widow or child of a deceased partner as annuity, or

(iv) by a previous owner or part owner of the business, as consideration for the sale thereof, does not of itself make the receiver a partner with the persons carrying on the business.

[Emphasis provided].

There is no evidence on record that the partnership was registered. Even for the sake of argument that there was a non-registered partnership, the terms of the partnership agreement have not been established. No document was produced in the course of the trial indicating what the terms of the agreement between the 1st appellant and the respondent were. The respondent as PW1 in his testimony at the High Court merely complained that the appellant breached the terms of their agreement. The terms were never laid bare and none of the witnesses for the respondent in the trial came up with the particulars. The testimony given by the respondent's witnesses were merely speculative. The only document linking the 1st appellant and the respondent is the primary mining licence. No agreement

was brought fourth specifying the terms and conditions agreed upon by the parties. Nor was oral evidence provided to establish the nature of the relationship between the 1st appellant and the respondent. Is the primary mining licence on its own sufficient to establish the partnership arrangement between the 1st appellant and the respondent? This is a court of record and we are therefore not in a position to speculate and conclude what the relationship between the parties would entail.

Given the circumstances, and after giving the situation a lot of thought, we are compelled to conclude, as we hereby do, that the High Court wrongly reached a finding that there was an existing partnership between the parties. It then follows as the night follows day that if there was no partnership between the parties there could never be a breach of the partnership agreement. This means that the remedies sought for by the respondents and granted by the High Court with a premium (that is the order for the dissolution of partnership and the sale of the partnership properties) were not justified. There is no evidence or record that the respondent had invested into the mining project and how much he has contributed. Once we are able to establish that no partnership existed between the plaintiff it is sufficient for us to quash the judgment and

decree of the High Court and to set aside the orders for permanent injunction, general and specific damages, and interests awarded.

However, on a careful scrutiny of the record and the judgment and decree of the High Court, and upon observing serious misconceptions and anomalies on the reliefs awarded by the High Court Judge, we feel we are duty bound to address the following issues in order to provide a clear guidance in the future.

We would commence with the award of general damages to the respondent. In looking at the record, there are glaring irregularities and non-compliance with the law. 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 One Hundred Million (100,000,0000) without assigning any reason for the same.

According to Lord Macnaghten in **Stroms v Hutchison 1905 A.C. 515, "general damages"** are such as the law will presume to be the direct natural or probable consequence of the act complained of."

Lord Dunedin in **Admiralty Commissioners S.S. Susguehann** (1926) A,C, 655 at page 661 stated thus:

> *"If damage be general, then it must be averred that such damage has been suffered, but the quantification of such damage is a question of the jury,"*

In a claim for general damages, particulars will not be needed of the quantum of damages claimed – **See London and Nothern Bank Limited v George Newnes Ltd** (1900) 16 TLR 433, CA.

Black's Law Dictionary (supra) defines general damages as under:-

> *"Damages that the law presumes follow from the type of wrong complained of. General damages do not need to be specifically claimed or proved to have been sustained."*

Although the law presumes general damages to flow from the wrong complained of, general damages are not damages at large. See **Flint v Lowell (1935) KB 354.** It is not clear what principle the High Court Judge used to reach the amount of Tshs. One Hundred Million as general damages.

In relation to special damages, the law is settled. Special damages must be proved specifically and strictly. In **Stanbic Bank Tanzania**

Limited versus Abercrombie & Kent T. Limited, Civil Appeal No. 21 of 2001 CAT (unreported). It was stated as under:-

> *"The law is that special damages must be proved specifically and strictly."*

This Court in the **Stanbic** case (supra) made reference to **Strom v Hutchison** (supra) at page 525. Lord Macnaughten stated thus:

> *"... such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and therefore they must be claimed specifically and proved strictly."*

In **Zuberi Augustino v Anicet Mugabe** (1992) TLR 137 at page 139 it was stated by the court that:

> *"It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved."*

See -**Arusha International Conference Centre v Edward Clemence,** Civil Appeal No. 32 of 1988 CAT (unreported).

Paragraph 19 of the respondent's plaint made a claim for special damages but strictly speaking the particulars were not given. Documentary evidence is vital in such claims as demonstrated by this Court's decision in

Masolete General Supplies v African Inland Church (1994) TLR 192. In the above case the appellant claimed for special damages for loss of use. However documentary evidence was not produced to prove the alleged loss. The Court made the following observation:-

> *"This was all the evidence led on behalf of the applicant company on its cement operations, no documents were produced to back up those figures, which appear to have been plucked from the air"*

In the instant case the respondent had not produced any documentary evidence to substantiate and justify the claim. There was no verifiable evidence to prove the plaintiff's alleged loss.

From the evidence on record it is evident that the respondent did not prove how he suffered special damages of TShs Four Hundred and Seventy Five Million (475,000,000). No evidence was produced to show that he incurred a loss of TShs. Four Hundred Million (400,000,000). The High Court judge therefore had no basis to award the respondent the said sum as special damages. In looking at the conclusion reached by the trial judge, it is obvious that his finding was speculative and full of conjecture. We take the liberty to reproduce the relevant paragraph of the judgment.

The trial judge concluded without any basis that the appellant breached the partnership agreement. At page 146 of the record, the High Court Judge held as under:-

> *"It is apparent in this matter that the 1st defendant was not "just faithful" to the plaintiff and did not render true accounts and full information of the things affecting their partnership. I am therefore satisfied that the 1st defendant breached the partnership agreement between him and the plaintiff."*

At page 146 - 147 of the record the High Court Judge stated as under:

> *"I attentively listened to what PW1, PW2 and PW3 stated in Court. There is no particular data of the amount of minerals produced by the defendants to the exclusion of the plaintiff. On their part the defendants alleged that the mine never produced Tanzanite, except green garnet "magonga" being signs that the Tanzanite was to be produced.* ***We do not have any specific amount of the minerals produced, leading to the claim of TShs. 475 million worth 50%. But, the mine pit being as old as it is, I find it very difficult to believe that it had not started producing minerals. I am highly convinced that it was***

producing minerals during the period the plaintiff was axed out. I therefore think and estimate that the plaintiff lost not less than TShs. 400,000,000 during the period."

[Emphasis ours].

In **Masolete General Agencies** (supra), the Court held that:

"Once a claim for a specific item is made, that claim must be strictly proved, else there would be no difference between a specific claim and a general one; the trial judge rightly dismissed the claim for loss of profit because it was not proved"

In addition to granting an order for permanent injunction to restrain the 1st defendant, his agents, servants and any other person acting under him as prayed for in paragraph (b) of the prayer to the plaint. The trial judge went an extra mile. Acting on the strength of the proposals made by the respondent's advocate in his written submissions for the dissolution of the partnership and the sale of the mining and the proceeds to be divided equally between the 1st appellant and the respondent, he granted the said orders.

The order for dissolution was not prayed for in the pleadings. Nor were issues framed regarding the dissolution of partnership. This was

merely raised in the respondent's submissions, and consequently an order for dissolution of partnership was made.

In **Black's Law Dictionary** (supra) Dissolution of partnership is defined as under:-

> *"The dissolution of a partnership is the change in the relation of the partner caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business".*

There is a specific procedure for dissolution of partnership. Order XX Rule 15 of the Civil Procedure Act provides as under:

> *"Where a suit is for the dissolution of a partnership, or the taking of a partnership accounts, the Court, before passing a final decree, may pass a preliminary decree, declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved and directing such accounts to be taken and other acts to be done as it thinks fit."*

In relation to the order for dissolution of partnership, we would like to state that the trial High Court Judge had no justification whatsoever in making the dissolution order. Apart from the fact that the partnership was not registered, the pleadings filed by the respondent made no reference

whatsoever to the dissolution of the partnership and sale of properties. Dissolution of partnership is provided under the Law of Contract Act. Section 212-216. Section 215 provides as follows:-

> *"On an **application by a partner**, the court may decree a dissolution of a partnership in any of the following cases:*
>
> *(a) When a partner becomes of unsound mind*
>
> *(b).....*
>
> *.....*
>
> *.....*
>
> *(c).....*
>
> *.....*
>
> *(d) When a partner, other than the partner suing, wilfully and persistently commits a breach of the partnership agreement, or otherwise conducts himself in matters relating to the partnership business that it is not reasonably practicable for other partner or partners to carry on the business in partnership with him.*
>
> *(e) .....*
>
> *(f) Whenever in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved.*

No application was made to the Court for the dissolution of partnership, the Court was simply moved through the written submissions made by the respondent's counsel.

In **Lever Brothers Ltd v Bell** (1931) I KB 557 AT p. 583 Scruttan L J emphasised on the necessity of adhering to pleadings. He stated thus:-

> *"The practice of the courts is to consider and deal with legal result of pleaded facts, although the particular legal result alleged is not stated in the pleading."*

Cases must be decided on the issues on record and if it is desired to raise other issues they must be placed on record by amendment. In the present case the issue of dissolution of partnership and sale of properties was not raised in the pleading. The dissolution order was made after being referred by respondent's written submission. The parties were not involved. It is our considered opinion that the trial judge should not have taken such a course. See – **James Funke Ngwagilo v Attorney General** (2004) TLR 162.

In **Hadmor Productions v Hamilton** (1982) I ALL ER1042 at p 1055, Lord Diplock stated thus:

"Under our adversary system of procedure for a Judge to disregard the rule by which counsel are bound, has the effect of depriving the parties to the action of the benefit of one of the most fundamental rules of natural justice, the right of each to be informed of any point adverse to him that is going to be relied upon by the Judge, and to be given the opportunity of stating what is his answer to it."

The law is settled that the parties are bound by their own pleadings. See **Scan TAN TOUR Ltd v The Catholic Diocese of Mbulu,** Civil Appeal No. 78 of 2012 & **Peter Ng'homango v the Attorney General,** Civil Appeal No. 114 of 2011 CAT (both unreported).

According to **Mogha's Law of pleading in India**, 10th Edition at page 25.

"The Court cannot make out a new case altogether and grant relief neither prayed for in the plaint nor flows naturally from the grounds of claim stated in the plaint."
(Emphasis ours)

Order VII Rule (1) (g) of the Civil Procedure Code requires the plaint to contain the relief which the plaintiff claims. The Court of Appeal also emphasised this in **Cooper Motors Corporation (T) Ltd v Arusha International Conference Centre** (1991) TLR 165

The respondent/plaintiff did not pray for dissolution as a relief. However, he claimed for ancillary relief under paragraph 23 (g) of the plaint in which he prayed for the following:-

> *"Any other reliefs as the Honourable Court may deem fit and just to grant.*

Order VII Rule 7 of the Civil Procedure A. Code Cap 33, R.E. 2002 provides as under:

> *"Every plaint shall specifically state the relief which the plaintiff claims."*

The pertinent question is, can the Court grant any relief to the plaintiff under this head?

In **MOGHA'S LAW OF PLEADING** (supra) the learned authors are of the view that under this prayer the Court has power to grant any general or other relief as it may think just, to the same extent as if it has been asked for, **provided that the relief should not be of an entirely different description from the main relief.**

The learned authors based their opinion on the decision in **Shiv Dayal v Union**(1963) Punj 538, where it was held that:

"The plaintiff ought to get such relief as he is entitled on the facts established on evidence even if the relief has not been specifically prayed for"

The principle was followed by the Court of Appeal of Tanzania in **Zuberi Augustino v Anicet Mugabe** (supra). Having found that the respondent was somehow entitled to some relief, although he had failed to prove special damages, the Court granted an award of Shs. 500,000/= under the prayer "any other relief."

Applying the principle to this case, we are satisfied that this is not one such case in which it is just and equitable to grant a dissolution order to the plaintiff under "any other relief."

Now coming to the rate of interest awarded by the learned High Court Judge, we would like to make the following observations. On interest on general damages, this Court in **Saidi Kibwana and General Tyre E.A. Limited v Rose Jumbe,** (1993) TRL 175 this Court held that interest on general damages is only due after the delivery of judgment because before then the principal amount due is unknown. Therefore the High Court trial Judge was wrong to grant interest on general damages from the date of filing the suit. The rate of interest to be awarded during the period

after the judgment is delivered is governed by Order 20 Rule 21 of the Civil Procedure Code which is limited between the minimum of seven (7) percentum per annum and the maximum of twelve (12) percentum per annum.

The trial Judge was wrong to award interest at the rate of 15 percentum per month beyond the date of delivery of judgment, such rate in any case was too high and out of proportion. The rate of interest to be awarded for the period prior to the delivery of judgment is set at the discretion of the Court.

In the present case the learned trial judge awarded interest at the uniform rate of fifteen (15) percentum per month from the date of filling the suit to the date of full and final payment. The judge therefore consolidated two distinct periods, the one before and after judgment. In **Said Kibwana** (supra), it was stated that the Court has a discretion to award interest for the period before the delivery of judgment only in special damages actually expended or incurred, but even this at such rate the Court thinks reasonable. This discretion does not extend to the period after the delivery judgment.

The statutory power to award interest on judgment debts is contained in section 29 and Order 20 Rule 21 of the Civil Procedure Code Cap 33, R.E. 2002. Section 29 provides as follows:-

> *"Section 29 - The Chief Justice may make rules prescribing the rate of interest which shall be carried by judgment debts and, without prejudice to the power of the Court to order interest to be paid up to the date of judgment at such rates as it may deem reasonable, every judgment debt shall carry interest at the rate prescribed from the date of delivery of judgment until the same shall be satisfied."*

Order 20 Rule 21 provides as follows:

> *"The rate of interest in every judgment debt from the date of delivery of the judgment until satisfaction shall be seven(7) percentum per annum such other rate, not exceeding twelve percetum per annum as the parties may expressly agree in writing before or after the delivery of judgment or as may be adjudged by consent."*

Section 30 of the Civil Procedure Act, fixes 7% interest on costs:-

> *.....at any rate not exceeding seven percent per annum, and such interest shall be added to the costs and shall be reasonable as stated.*

We now come to the cross appeal. All the grounds in the cross appeal need not detain us, given our findings on the main appeal. In view of our findings that there was no partnership and therefore no breach. The respondent is not entitled to any damages. On looking at ground No. 1, this is a general observation made by the respondent and is dependant on the Courts finding on the award of damages.

In relation to ground No 2, we have already made our observations on the award of Tshs 100 million as general damages. Therefore the question of variation or re-assessing the same in excess of TShs 250 million does not arise.

With regard to ground No 3, counsel for the respondent is simply conceding that the interests awarded by the trial Court were on the high side. We have already stated on that.

In relation to costs, Mr. Ngalo asked for costs for two counsel. His reason for doing so, is the complexity of the case, the amount of research needed to be done, the various issues raised in Court by respondent, the application for revision and preliminary objection on a point of law before

the hearing of the appeal and finally the hearing of the appeal. The case was heard both in Dar es Salaam and Arusha.

Mr. Kamara opposed the application for costs for two counsels. He stated that the matter could be handled by one counsel and that only one counsel handled the matter in the Court, though documents filed in court indicated that the pleadings and submissions were filed by two advocates.

What we need to consider is under what circumstances can the Court grant costs for two advocates?

Taking into account the complexity of the issues involved and the multiplicity of proceedings (preliminary point of law prior to the hearing of the appeal, the cross appeal, revision proceedings) and the numerous authorities filed. We exceptionally allow costs for two advocates. We think it is reasonable and proper under the circumstances.

In the result, we allow the appeal in its entirety, dismiss the cross appeal save for the ground raised that the interests awarded by the High Court were on the high side, quash the judgment and decree of the High Court and set aside the dissolution order made by the High Court. As costs

follow the event we grant costs to the appellants. Costs awarded to the appellant for two counsel. It is so ordered.

DATED at ARUSHA this 24th day of February, 2015.

E.A. KILEO
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

Z.A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL