**IN THE COURT OF APPEAL OF TANZANIA**

**AT MBEYA**

**(CORAM: NDIKA, J.A., RUMANYIKA, J.A., And MURUKE, J.A.)**

**CIVIL APPEAL NO. 51 OF 2021**

**SANLAM GENERAL INSURANCE TANZANIA LTD**
**(Formerly known as NIKO INSURANCE TANZANIA LTD) ..... APPELLANT**

**VERSUS**

**DENNIS CHARLES ..... FIRST RESPONDENT**
**GABRIEL MSIGWA ..... SECOND RESPONDENT**
**HENRY MARIO MSIGWA t/a SUPER FEO EXPRESS ..... THIRD RESPONDENT**

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

**(Ngwala, J.)**

**dated the 9th day of October, 2017**

**in**

**Civil Case No. 11 of 2013**

.....

## JUDGMENT OF THE COURT

7th & 23rd February, 2024

**NDIKA, J.A.:**

This appeal arises out of an accident that occurred on 29th July, 2011 at Madabaga along the Tanzania Zambia Highway, when a Fuso passenger bus travelling from Songea to Mbeya, registered as number T611 ATW, overturned thereby allegedly causing injuries to Dennis Charles ("the first respondent"). The bus was owned by Henry Mario Msigwa t/a Super Feo

Express ("the third respondent") and driven at the material time by Gabriel Msigwa ("the second respondent") as an authorised driver. It was said to have been insured by Sanlam General Insurance Tanzania Limited formerly known as NIKO Insurance (Tanzania) Limited ("the appellant").

The first respondent sued the second and third respondents along with the appellant, as the insurer, in negligence essentially for special and general damages amounting to TZS. 502,630,000.00 in the following breakdown:

1. Special damages for the loss of expected income from masonry due to incapacitation in the sum of TZS. 200,000,000.00.
2. General damages for injury, loss of arm and incapacitation amounting to TZS. 300,000,000.00
3. Reimbursement of medical expenses incurred in the sum of TZS. 2,000,000.00.
4. Compensation for loss of personal belongings valued at TZS. 630,000.00.

The first respondent also prayed for interest and costs of the suit.

While the first and second respondents admitted the occurrence of the accident as alleged, they denied that it was a result of negligence on their

part but failure of the brake system of the bus. The appellant, on its part, denied liability.

The trial court framed six issues for hearing and determination, namely: first, whether the first respondent was a passenger on the bus registered as number T611 ATW when it overturned. Secondly, whether the second respondent was driving the bus at the material time and whether the third respondent was the owner of the bus. Thirdly, whether the second respondent was liable for reckless and or negligent driving of the bus. Fourthly, whether the third respondent is vicariously liable for the tort committed by the second respondent. Fifthly, whether the appellant is liable for any contribution or indemnity to the third respondent. And finally, to what reliefs are the parties entitled.

In establishing his case, the first respondent testified as PW1 and called Assistant Inspector of Police Naoda Mohamed Naoda, a vehicle inspector from the Police Traffic Department at Rujewa, Mbarali, to support his claims. On the adversary side, the second and third respondents testified as DW1 and DW2 respectively. For the appellant, its Mbeya-based Branch Manager, Anthony Sylvester Nshiku, gave evidence as DW3.

The trial court answered all the issues in favour of the first respondent. On that basis, it entered judgment in his favour and awarded him the following reliefs: one, payment of TZS. 150,000,000.00 being special damages for loss of expected income due to above-elbow amputation of his right arm. Two, payment of TZS. 200,000,000.00 as general damages for the loss of limb, injury, and incapacitation. And finally, payment of TZS. 1,000,000.00 being reimbursable medical expenses. In addition, the court awarded interest at the court rate from the date the cause of action accrued until final payment as well as costs of the suit.

The appellant now impeaches the aforesaid judgment on seven grounds of appeal as follows:

1. *That the learned trial judge erred in law and fact in holding that the first respondent was a fare-paying passenger on the bus when it overturned.*
2. *That the learned trial judge erred in law and fact for basing her findings and decision on documents that were not admitted in evidence.*
3. *That the learned trial judge erred in law and fact for failing to analyse the evidence on record properly.*

4. *That the learned trial judge erred in law and fact for holding the appellant liable to indemnify the third respondent without any proof that the first respondent's injury was due to the accident.*
5. *That the learned trial judge erred in law in granting special damages amounting to TZS. 150,000,000.00 based upon wrong principles.*
6. *That the learned trial judge erred in law for awarding general damages in the sum of TZS. 200,000,000.00 as well as TZS. 1,000,000.00 as reimbursable medical expenses contrary to the principles of law and in the absence of proof.*
7. *That the learned trial judge erred in law for condemning the appellant to pay costs.*

For the appellant, Mr. Oscar Msechu, learned advocate, canvassed the first six grounds of appeal only, leaving the seventh ground unattended. We, therefore, treat the seventh ground abandoned.

On the other hand, Dr. Tasco Luambano and Mr. Kamru Habib Msonde, learned counsel, represented the first respondent whereas Ms. Jalia Hussein Nyamoga, learned advocate, stood for the second and third respondents.

The learned advocates argued the above grounds seriatim. We propose to deal with them in the same sequence.

For the appellant, Mr. Msechu contended on the first ground that the first respondent failed to prove that he was a fare-paying passenger on the bus when it overturned. He argued that the first respondent should have presented a travelling ticket or, in the alternative, a police loss report (if the ticket was lost or destroyed) as proof of his travelling. He added that the situation was compounded further by the absence of the passenger manifest which would have confirmed if he, indeed, was one of the passengers. According to him, PW2's evidence was equally unreliable to support the first respondent's claim.

Ms. Nyamoga, for the second and third respondents, weighed in supporting Mr. Msechu's submission. She wondered why the first respondent did not contact the third respondent from whom he could have obtained a copy of the passenger manifest if at all he lost his travelling ticket in the accident.

Rebutting for the first respondent, Dr. Luambano submitted that the first respondent testified so credibly and reliably that he was on board the ill-fated bus and that following the accident he passed out at the scene. In the process, he lost the ticket. He urged us to find his claim sufficiently

propped up by PW2 who averred that he identified the first respondent at the scene of the accident as one of the injured passengers.

We have painstakingly examined the record of appeal on the issue at hand. It is notable that when the first respondent was examined about his travelling ticket he firmly replied, as shown at page 114 of the record of appeal, thus:

> *"It is true I travelled [on the bus]. I had a ticket which I had bought on 28/7/2011 in order that I could travel on 29/7/2011. It is true I had a ticket ... I had kept my ticket in the pocket of my shirt, which got burnt after the accident, and I did not see the shirt again. It got lost with the ticket and I was taken to the hospital [wearing a] vest only."*

The police vehicle inspector (PW2) who rushed to the scene of the accident confirmed that the first respondent was one of the injured passengers that he saw and attended to. In his evidence-in-chief, he is captured at page 121 of the record of appeal to have testified thus:

> *"I remember one Dennis Charles, [he] was amongst the names on the list of [casualties].... I remember him because when I was removing victims of the*

*accident from the said passenger bus, there was one casualty whose [arm] had been cut off – majeruhi alivunjika mkono pale pale. And I myself while being assisted by other people, took a khanga from one villager and tied the [arm] to stop [bleeding]."*

The above evidence was not shaken in cross-examination. We, therefore, accept it as truthful. It should be noted that the second and third respondents simply denied in their testimonies that the first respondent travelled on the bus.

We are unable to agree with Mr. Msechu and Ms. Nyamoga, with respect, that the only acceptable proof of the travelling was the bus ticket. The first respondent sufficiently explained how his ticket got lost or destroyed at the scene. He might have not produced a police loss report as submitted, but we think that his evidence sufficiently shifted the onus of proof particularly to the third respondent who had all records including the passenger manifest in its offices. He could have produced them to rebut the first respondent's claim, but he didn't. By any yardstick, his evidence did not cast any shadow of doubt to the first respondent's case. It is reasonably inferable, in our opinion, that had the third respondent produced the records they would have confirmed the first respondent's assertion. Consequently,

we hold the view that the first respondent was one of the fare-paying travellers on the doomed bus. The first ground of appeal fails.

Moving to the second ground, Mr. Msechu essentially criticised the learned trial judge for relying on three annexures to the amended plaint, which were not admitted in evidence, as the basis for her finding, revealed at pages 152 and 153 of the record of appeal, that the accident was due to the second respondent's negligence. The questioned documents were Police Forms No. 90 and 115 as well as the sketch drawing of the scene of the accident. He said that the learned trial judge's approach offended the provisions of Order XIII, rule 7 (2) of the Civil Procedure Code, Cap. 33 ("the CPC") stipulating that documents not admitted in evidence must not form part of the record and must be returned to the person producing them. Referring to, among others, **Japan International Cooperation Agency (JIA) v. Khaki Complex Limited** [2006] T.L.R. 343, he said this Court held that the application of Order XIII, rule 7 (2) of the CPC is imperious. It cannot be relaxed.

Ms. Nyamoga associated herself with Mr. Msechu's contention and drew our attention to **A.A.R. Insurance (T) Ltd v. Beatus Kisusi**, Civil

Appeal No. 67 of 2015 [2016] TZCA 191 [31 May 2016; TanzLII] in which the Court reiterated the essence of Order XIII, rule 7 (2) of the CPC.

While Dr. Luambano disagreed with his learned friends, he did not directly dispute if the said three documents were relied upon as claimed. However, he supported the learned trial judge's finding on the cause of the accident, at least, on one ground: that since it was undoubted that the second respondent, the driver of the accidented bus, admitted that in the aftermath of the accident he was charged with and convicted on twenty-seven counts of reckless driving and causing death and injuries to passengers, it was reasonably inferable that the accident occurred negligently.

Evidently, there is some merit in the appellant's complaint in the ground at hand. For the learned trial judge erroneously relied on Police Form No. 115 contrary to the dictates of Order XIII, rule 7 (2) of the CPC as elucidated in **Japan International Cooperation Agency (JIA)** (*supra*) and **A.A.R. Insurance (T) Ltd** (*supra*). To illustrate the point, we wish to extract from the judgment at pages 152 and 153 of the record of appeal:

> *"The defendants have stated in their pleadings that there was brake failure. In the evidence they allege that it was tyre burst. This is not acceptable at law. The plaintiff through* ***annexure PF 115, which is Police Final Report of the accident annexed to the Plaint as Annexure 'C'****, provides that the first defendant was convicted and sentenced to pay a fine of [TZS] 270,000.00. This was done in the District Court of Mbarali vide ERV No. 40962030. Though no judgment was tendered to that effect, the fact that a fine was paid and ERV number shown is enough to prove that the first defendant breached his duty."*
> [Emphasis added]

As the first appellate court, we are enjoined to intervene and re-appraise the evidence to resolve the issue.

We note, at first, that the first respondent attributed the accident to overspeeding. That the bus was travelling at a high speed when it veered off the highway and overturned. On the other hand, the second respondent – the bus driver – said that the bus overturned due to a tyre burst. That this was an unavoidable accident. This claim obviously contradicted the averment by the second and third respondents in their joint written statement of defence to the amended plaint attributing the accident to brake system

failure. The learned trial judge was alert, on the authority of **James Funke Ngwagilo v. Attorney General** [2004] T.L.R. 161, that parties are bound by their pleadings and that any evidence produced by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored – see also **Lawrence Surumbu Tara v. The Hon. Attorney General and 2 Others,** Civil Appeal No. 56 of 2012 (unreported); and **Charles Richard Kombe t/a Building v. Evarani Mtungi and 3 Others,** Civil Appeal No. 38 of 2012 [2017] TZCA 153 [8 March 2017; TanzLII].

The foregoing apart, we are persuaded by Dr. Luambano, that it was reasonably inferable from the bus driver's own admission that the accident occurred negligently. For it was undoubted that the driver, admitted that following the accident he was charged with and convicted on twenty-seven counts of reckless driving and causing death and injuries to passengers.

Furthermore, we are of the considered view that since it is common ground that the bus swayed, left the road, and overturned – be it because of the brake system failure or tyre burst – the onus shifted to the second and third respondents to show that the accident did not occur due to the second respondent's negligence. Certainly, this is a clear case for the

application of time-honoured doctrine of *res ipsa loquitur* – the thing speak for itself; that the mere occurrence of some types of accident is sufficient to imply negligence. None of the two respondents attempted to discharge that burden. We conclude on the issue under discussion by finding that the accident was not inevitable. It was an act of negligence on the part of the bus driver. Consequently, we dismiss the second ground of grievance.

The third ground of appeal raises a general complaint that the learned trial judge failed to analyse the evidence on record properly. Submitting on this, Mr. Msechu repeated the grievances that the learned judge wrongly held that the first respondent was a traveller on the bus and that the accident was a result of negligence. We have dealt with these complaints while considering and determining the two preceding grounds of appeal above.

What remains to be resolved as part of the third ground is Mr. Msechu's submission that the learned trial judge erred in finding that the bus had a valid third-party insurance cover issued by the appellant. He argued that the first respondent failed to tender any insurance policy or interim cover note to substantiate his claim.

For her part, Ms. Nyamoga was resolute that the hapless bus had a valid insurance cover issued by the appellant. She recalled the evidence by the first respondent that he negotiated with the appellant for an *ex-gratia* settlement. She could not help but wonder why the appellant was prepared to settle the claim if, truly, the bus had no cover.

Replying, Dr. Luambano referred us to pages 137 to 140 of the record of appeal showing the third respondent's testimony that the bus had an insurance cover issued by the appellant. He added that the third respondent was not cross-examined by the appellant's counsel on that aspect, implying the appellant's acceptance of the truthfulness of the said assertion by the third respondent. The learned counsel submitted further that the appellant's sole witness (DW3) did not deny the aforesaid assertion. As the appellant's Branch Manager at Mbeya, he acknowledged that the third respondent was one of the appellant's customers and that all his motor vehicles were insured by the appellant.

Ordinarily, the question of existence of a valid insurance cover at the time of the accident would not arise in a claim of this nature as it would be expected that the insurance policy or interim cover note would be tendered

in evidence. In the present case, however, none of the said documents was unveiled at the trial. But we note that the third respondent averred in cross-examination, as shown at page 139 of the record of appeal, confirming that the bus had an insurance cover. He said that:

> *"My bus had insurance [issued by] NIKO Insurance; I do not have [a] copy of the insurance [policy]."*

On being questioned by the trial court, the third respondent reiterated, as unveiled at page 140 of the record of appeal, that:

> *"We had a third-party insurance for that motor vehicle. I did not take [a] comprehensive insurance because it [is expensive] .... Third-party insurance covers passengers. It is because we have many motor vehicles and buses; [for] other [buses] we take full insurance cover [from] NIKO Insurance ...."*

We agree with Dr. Luambano that the appellant's sole witness (DW3) did not deny the third respondent's assertion. He is recorded at page 142 of the record of appeal to have testified that:

> *"I know one Henry Msigwa [the third respondent herein] as my customer. I know Gabriel Msigwa. [...] They are my customers because they have insurance*

*contract with us [over] their transport vehicles.... All their motor vehicles have insurance...."*

Rather startlingly, however, in cross-examination, DW3 prevaricated, as revealed at page 145 of the record of appeal, thus:

*"I am not sure if we had insured the motor vehicle of Super Feo Company, which got the accident and caused injuries to the plaintiff [the first respondent herein]. It is unless I look at our documents to see if it was insured [by] NIKO Insurance Company Limited. It is until ... I look [at] our documents, then I can say that the motor vehicle was insured [by] our company."*

From the excerpted testimonies of the two witnesses above, it is evident that while the third respondent (DW2) was emphatic that the bus had an insurance cover issued by the appellant, the DW3, who had initially confirmed that the appellant was the insurer of all the third respondent's motor vehicles, became ambiguous and ambivalent when he was pressed in cross-examination to confirm, in particular, whether the bus had a valid insurance cover issued by the appellant at the material time. In our view, DW3, who must have appeared at the trial fully aware of the particulars of the accidented bus, chose to sit on the fence on the matter to hide the truth.

Besides, we accept the first respondent's testimony that he negotiated with the appellant for an *ex-gratia* settlement, and, like Ms. Nyamoga, we wonder why the appellant was prepared to settle the claim if, indeed, it had issued no insurance cover over the bus. On totality of this evidence, we find it preponderant, as did the trial court, that the bus had a valid third-party insurance cover issued by the appellant. In the result, the third ground of appeal falls by the wayside.

The contention in the fourth ground is that the trial court wrongly held the appellant liable to indemnify the third respondent without any proof that the first respondent's injury was due to the accident. Mr. Msechu essentially claimed that the first respondent failed to prove that his injuries arose from the accident in issue. He reiterated his earlier argument that the first respondent tendered no documentary proof – such as the travelling ticket, police loss report and so forth – to substantiate him claim that the alleged injuries were sustained in the accident. Apart from supporting Mr. Msechu's submission, Ms. Nyamoga reiterated her argument in respect of the first ground of appeal.

With respect, we go along with Dr. Luambano's submission that ground four is an unnecessary replication of the grievance in the first and third grounds of appeal. Perhaps, it is worthy reiterating that based on the testimonies of the first respondent as corroborated by the police vehicle inspector (PW2) as well as the third respondent's failure to rebut the first respondent's case by tendering in evidence the passenger manifest of the bus, we found it pre-eminently established that the first respondent was a fare-paying passenger on the bus.

Given that the accident was caused by the negligent act of the second respondent, as the authorised bus driver, the third respondent, as the employer, was vicariously liable for the consequential loss. For broadly speaking, a master is liable in tort for the acts of his servant done in the course of his employment. As far as liability in tort is concerned, it has been settled for a very long time that the master is liable for the negligent act of his servant committed in the course of his employment.

Moreover, we held that it is sufficiently established in the evidence that the bus had a valid third-party insurance cover issued by the appellant in favour of the third respondent. As the insurer of the bus, the appellant is

liable, in terms of section 10 (1) of the Motor Vehicles Insurance Act, Cap. 169, to satisfy whatever judgment passed against the third respondent, as the insured, in respect of third-party losses. For clarity, we extract the said provision thus:

> *"**10.**—(1) If, after a policy of insurance has been effected, judgment in respect of any liability as is required to be covered by a policy under paragraph (b) of section 5 of this Act (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."*

Given the position as stated above, we find the fourth ground of appeal without merit.

The fifth and sixth grounds question the learned trial judge's award of special damages, general damages, and medical expenses.

Attacking the award of special damages, Mr. Msechu contended that the claim was neither pleaded specifically nor proven strictly. He, therefore, said that the award of TZS. 150,000,000.00 as special damages as well as the grant of TZS. 1,000,000.00 as medical expenses were unjustified. The mainstay of his argument was **Zuberi Augustino v. Anicet Mugabe** [1992] T.L.R. 137.

Ms. Nyamoga supported Ms. Msechu's argument, positing that the first respondent's claim of loss of income from his masonry activities due to the amputation of his arm along with the claim of reimbursement of medical expenses were not substantiated by any documentary proof. She anchored her submission on **Tanzania China Friendship Textile Co. Ltd. v. Our Lady of Usambara Sisters** [2006] T.L.R. 70 for the statement of principle that special damages must be specifically pleaded and strictly proved.

As regards the award of TZS. 200,000,000.00 as general damages, Mr. Msechu argued that the said quantum offended the principle that general damages must be reasonable and reflective of the reality of the matter. He

submitted that in a bodily injury claim, the court is enjoined to consider the extent of incapacitation as certified by a medical professional. In the case at hand, he added, no such evidence was led at the trial. Relying on **The Cooper Motor Corporation Ltd. v. Moshi/Arusha Occupational Health Services** [1990] T.L.R. 96; and **Stanbic Bank Tanzania Limited v. Abercrombie & Kent (T) Limited**, Civil Appeal 21 of 2001 [2006] TZCA 7 [3 August 2006; TanzLII], he submitted that this Court, as an appellate court, is entitled to intervene and reduce the quantum of the general damages on the ground that it is manifestly excessive. In the circumstances of the matter, he added, an award of not more than TZS. 15,000,000.00 would be fitting.

Ms. Nyamoga echoed the above submission by Mr. Msechu.

On the other hand, Dr. Luambano urged us to uphold the disputed amounts awarded on the reason that they were soundly based on the evidence on record and relevant principles of the law. Focusing on the award of general damages, he argued that the High Court justifiably considered, among others, pain and suffering by the first respondent along with the loss of limb that resulted in permanent disability.

It is manifest from their respective submissions that the learned advocates agreed on the applicable principles of law on the issue at hand. So far as special damages are concerned, the jurisprudence instructs that such compensation must specifically pleaded and strictly proven. In **Stanbic Bank Tanzania Limited** (*supra*), the Court, reproduced with approval, the following definition of special damages by Lord McNaughten in **Stroms Bruks Aktie Bolag & Others v. J & P Hutchison** [1950] AC 515 at 525:

> *"'Special damages,' ... are 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 specially and proved strictly."*

If such a claim is sufficiently particularised or detailed in the plaint, it must then be proved strictly especially by presenting documentary proof, such as receipts of payments made to substantiate loss or economic injury sustained.

As regards general damages, in **Stroms Bruks Aktie Bolag** (*supra*), Lord McNaughten defined that term, at 525, thus:

*"'General damages' as I understand the term are such as the law will presume to be the direct natural or probable consequence of the act complained of."*

It is trite that the assessment of general damages is at the discretion of the trial court and the appellate court will not be justified in substituting a figure of its own for that awarded by the trial court unless it is satisfied that the court below applied a wrong principle or that it misapprehended the evidence and, consequently, arrived at a figure so excessive or so inconsiderable – see, for instance, **The Cooper Motor Corporation Ltd.** (*supra*) and **Stanbic Bank Tanzania Limited** (*supra*).

To compare the incidents of special damages and general damages, we wish to extract, with approval, a passage from the Kenyan decision in **Joseph Kipkorir Rono v. Kenya Breweries Limited & Another Kericho** HCCA No. 45 of 2003, in which Kimaru, J. aptly held that:

*"In current usage,* ***special damage or special damages relate to part pecuniary loss calculable at the date of the trial, whilst general damages relate to all other items of damage whether pecuniary or non-pecuniary.*** *If damages are special damages they must be*

> *specifically pleaded and proved as required by law. For a loss to be calculable at the date of trial it must be a sum that has actually been spent or loss that has already been incurred.... Special damages and general damages are used in corresponding senses. Thus,* ***in personal injury claims, 'special damages' refers to past expenses and lost earnings, whilst 'general damages' will include anticipated loss as well as damages for pain and suffering and loss of amenities****.... Special damage is in the nature of past pecuniary losses or expenses while general damage is futuristic pecuniary loss or expenses."* [Emphasis added]

In the instant matter, the first respondent pleaded in his amended plaint a global figure of TZS. 200,000,000.00 as a claim for special damages. He gave no details on how that figure was arrived at. The despondency of his claim was further compounded by the fact that he led no evidence to prove the claimed amount. To be sure, in his evidence-in-chief, he testified that he claimed the said sum as special damages for loss of income due to total incapacitation because of the loss of the arm, without more. In cross-examination, he said his lost arm was more valuable than the said amount of money. On this evidence, the alleged loss of earnings was, in the eyes of

the law, evidently incalculable, if not speculative. Based on this analysis, we set aside the entire award of TZS. 150,000,000.00 as special damages.

In the same vein, we set aside the award of TZS. 1,000,000.00 made for reimbursement of medical expenses. For no documentary proof in form of receipts for payment of the medical bills was produced at the trial.

Finally, we deal with general damages, which, as indicated earlier, the High Court set at TZS. 200,000,000.00. On this, we are cognizant that before arriving at the said sum, the High Court considered the pain and suffering that the first respondent went through as well as his loss of amenities following his above-elbow amputation. Unfortunately, the first respondent's claim was bedeviled by the lack of supporting medical report.

We appreciate that no sum of money will fully compensate the first respondent for the loss of arm. In any event, the High Court was enjoined to ensure that its award was reasonable and moderate, but also commensurate with the loss suffered. It was also important that the court ought to have reflected on the fact that excessive awards in bodily injury cases, arising from motor vehicle accidents, could potentially result in enormously high premiums for insurance of all kinds, an occurrence that

must be avoided lest the insurance industry in the country crumble – see **Sheikh Mustaq Hassan v. Nathan Mwangi Kamau Transporters & 5 Others** [1986] KLR 457.

Having considered all the above, we agree with Mr. Msechu that the disputed award of general damages was excessive and disproportionate. On that basis, we reduce it from TZS. 200,000,000.00 to TZS. 80,000,000.00.

We recall that the High Court awarded interest on the decretal sum at the court rate *"from the date the cause of action accrued until final payment."* Since the main part of the award is general damages and given that as a matter of principle, interest on general damages and costs is awardable from the date of judgment, the High Court erred in making such a retrospective award. In **National Insurance Corporation Consolidated Holding Corporation (Formerly PSRC) v. Johanes Jeremiah & 2 Others**, Civil Appeal No. 61 of 2008 [2016] TZCA 844 [21 July 2016; TanzLII], we quoted our holding in **Consolidated Holding Corporation v. Grace Ndeana** [2003] T.L.R. 199 that:

> *"Interest on general damages begins to run from the date of judgment on which the decretal sum is known*

*and is governed by rule 21 of Order XX of the Civil Procedure Code."*

Based on the above settled position, we adjust the order on interest to the effect that it will start running from the date of the judgment of the High Court.

In the upshot, we allow the appeal to the extent shown. Since none of the parties has emerged fully successful, we make no order as to costs of this appeal. The first respondent, however, shall get his costs in the court below.

**DATED** at **MBEYA** this 22nd day of February, 2024.

G. A. M. NDIKA
**JUSTICE OF APPEAL**

S. M. RUMANYIKA
**JUSTICE OF APPEAL**

Z. G. MURUKE
**JUSTICE OF APPEAL**

Judgment delivered this 23rd day of February, 2024 in the presence of Mr. Ibrahim Athuman, learned counsel for the 2nd and 3rd Respondents who also holding brief for Mr. Osca Msechu, learned counsel for the Appellant and Mr. Kamru Habibu Msonde, learned counsel for the 1st Respondent, is hereby certified as a true copy of the original.

E. G. MRANGU
**SENIOR DEPUTY REGISTRAR**
**COURT OF APPEAL**