IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

CIVIL APPEAL NO. 6 OF 2020

(Originating from Civil Case No. 10 of 2018 of Songea District Court)

FILIBERTHA KAYOMBO ..... APPELLANT

VERSUS

MAHAMUD DOST MOHAMED

T/A RUVUMA OIL SUPPLIES ..... 1ST RESPONDENT

MAJEMBE AUCTION MART LTD ..... 2ND RESPONDENT

Date of last order: 17/11/2020
Date of Judgment: 03/12/2020

JUDGMENT

I. ARUFAN, J.

The appeal at hand is challenging the judgment and decree of the District Court of Songea at Songea (hereinafter referred as the trial court) delivered in Civil Case No. 10 of 2018 dated 17th February, 2020. The genesis of this appeal is to the effect that, the appellant, Filibertha Kayombo filed the above mentioned suit in the trial court against the respondents namely Mahamud Dost Mohamed T/A Ruvuma Oil Supplies

and Majembe Auction Mart Ltd. The claims of the appellant against the respondents jointly and severally were for general as well as specific damages arising from torts of defamation by innuendo and conversion.

The appellant testified before the trial court as PW1 and stated she is an entrepreneur. She said from 2007 to 2010 she was doing business with the first respondent who used to put Azania Flour at her shop on an agreement that, the first respondent would have been paying her Tshs. 500/= per bag. She went on saying that, on September, 2012 she was arrested and charged before the trial court with the offence of kite flying on a ground that she issued a cheque in favour of the appellant for withdrawing Tshs. 8,500,000/= but the said cheque was dishonored as her account in the CRDB Bank had no enough money to pay the stated sum of money. She said after hearing of the matter the trial court found she was not guilty and acquitted her.

The appellant stated further that, on 19th June, 2018 she was served with a notice by the second respondent which showed she was required to pay Tshs. 27,996,000/= to the second respondent within fourteen days and said she denied the said claim. She said on 27th July, 2018 the second respondent went to her home with a pick up car which had two policemen

and three guys and they told her they had gone to attach her properties. She said the second respondent and his companion took various properties from her house worth Tshs. 3,712,000/= and departed with the said properties. She said that event was witnessed by many people who had gone at her home to fetch water as there is a public water tap at her home.

The event was witnessed by Kelbina John and Anna Innocent who testified before the trial court as PW2 and PW3 respectively together with her Street Chairman Namely, Francis Haule who did not testify before the trial court. She said the people who witnessed the said event thought she was a thief or chronic debtor. The appellant said the event caused her to be frustrated, suffered from blood pressure and her reputation was lowered. She prayed the court to find both respondents are liable for a tort of conversion, be paid general damages of Tshs. 200,000,000/= and specific damages of Tshs. 3,712,000/= for the properties attached and converted by the respondents and costs of the suit.

Nadia Mahamud Dost who testified for the first respondent as DW1 and holding a power of Attorney donated to her by the first respondent she told the trial court that, she know the appellant as a business woman who

used to take shop's goods from the first respondent and paid them by installments. She said the appellant took shop's goods worth Tshs. 12,400,000/= and she failed to pay when the money was required. She said the appellant issued to them a cheque which was deposited at the CRDB Bank for paying them the debt but it was discovered her bank account had no balance. They reported the matter to the police station and the appellant was taken to court but the court advised them to file a civil suit in the court against the appellant.

DW1 told the court that, after the said case they didn't file a civil suit in any court as advised by the court and they didn't make any further follow up against the appellant. She said she know the second respondent through Nelson Mwasomola who testified in the matter as DW2 as he went to their office with a letter praying to be given work of collecting their debts. DW1 said to have appointed the second respondent as their debt collector and required DW2 to go to their office for further instructions but she didn't see DW2 or any other person from the office of the second respondent going to their office for the said instructions.

She said as nobody from the second respondent went to their office they didn't enter into any agreement of collecting their debts with the

second respondent. She said they didn't instruct the second respondent to go to the appellant to collect their debt and said she doesn't know when the second respondent went to the appellant to take her properties. She prayed the court to find the first respondent is not liable for the claims of the appellant and prayed the suit to be dismissed with costs.

DW2 told the trial court that, he is a second respondent's Zonal Manager at Songea. He said on July, 2017 he went to the first respondent to apply for a job of collecting their debts and their application was granted. He said after their application being granted he was required to go to the office of the first respondent for further instructions. He said to have gone to the office of the first respondent where DW1 give him a list of debtors of the first respondent and instructed him to proceed with the work of collecting their debts. He said he was required to collect debts from all Councils of Ruvuma Region and two persons who were E. F. Komba and Family and the appellant.

He said he agreed with DW1 that they would have started with the appellant and said he wrote a demand notice to the appellant which was served to her on 19th June, 2018. DW2 said that, after the appellant failed to pay the debt within fourteen days given to her they went to attach her

properties. He said they prepared a list of properties attached from the appellant and thereafter they reported to DW1 who said they had no place of keeping those properties. DW2 said to have taken the properties attached from the appellant to their office but their office was broken and the properties were stolen.

He said they used to collect debts of the first respondent while with DW1 and said it is not true that they were not instructed by the first respondent to collect their debts from the appellant. He said he didn't know the appellant before being introduced to him by DW1. DW2 called Yustin Emilian Komba who testified as DW3 and told the trial court that, one day DW2 went to him with a letter bearing the name of the second respondent (Majembe Auction Marts Ltd). He said to have been told by DW2 that, he had been instructed by DW1 to demand from him the sum of Tshs. 68,000,000/= being the debt the first respondent was claiming from him and told he was required to pay the same within fourteen days and failure of which his properties would have been attached.

DW3 said that, as he was about to travel he prayed to be given thirty days so that he would have consulted his lawyer. He said to have consulted and instructed his lawyer to inquire from DW1 about the notice served to

him by DW2 and whether DW1 was claiming any money from him. DW3 said that, when they went to DW1 she said they were not claiming anything from him and DW1 phoned to DW2 and told him to stop going to him and said DW1 denied to have sent DW2 to him to claim for any debt.

After considering the above evidence the trial court found the first respondent is not liable to the claims of the appellant for the acts of the second respondents as there was no principal and gent relationship between the first respondent and the second respondent. However, the trial court found the conduct of the second defendant and his agents made at the home of the appellant amounted to defamation by innuendo as the second respondent had no instruction from the first respondent to carry out the exercise complained of. The second respondent was ordered to pay the appellant Tshs. 3,712,000/= being specific damages for the properties attached and taken from the appellant by the second respondent. The second respondent was also ordered to pay the appellant the sum of Tshs. 3,500,000/= being general damages and costs of the suit.

The appellant was dissatisfied by the decision of the trial court and filed in this court a memorandum of appeal carrying the grounds of appeal listed hereunder:-

1. *That the trial court misdirected itself in law and in fact in holding that there was no Principal – Agent relationship between the first and second respondent despite clear admission by the first respondent that such relationship existed.*
2. *That the trial court erred in law and in fact in holding that the first respondent was not liable for the acts of the second respondent as there was no revocation implied or express of the second respondent's authority by the first respondent before the acts complained of by the appellant were done by the second respondent.*
3. *That the trial court erred in law and in fact in not holding that the fact that in her testimony in chief the first respondent testified that the reason why the appellant was reported to police and prosecuted was that she owed her business Tshs. 12,400,000/= and issued a cheque of Tshs. 8,500,000/= which was dishonored and the fact in the demand note served to the appellant by the second respondent (exhibit PE-D) the principal sum demanded was Tshs. 12,400,000/= was inconsistent with the first*

respondent's contention that the second respondent was acting without any instructions from her.

4. *That the trial court erred in law and in fact in not holding that though apparently DW3 (Yustin Emilian Komba) turned as a hostile witness against the second respondent nonetheless his testimony corroborated the second respondent's testimony that he was employed by the first respondent to collect debts from several defaulters including the appellant.*
5. *That the quantum of general damages is in the discretion of the trial court nonetheless the trial court erred in law and in fact in the circumstances of this case in awarding manifestly un-proportionately low amount of damages as compared to the loss/injury suffered by the appellant.*

The appellant prays the appeal to be allowed with costs and the first respondent be equally held liable as the second respondent by virtual of Principal - Agent relationship. He also prays the court to increase the amount of general damages payable to the appellant to such sum as it will deem fit and just for ends of justice.

At the hearing of the appeal while the appellant was represented by Mr. Edson Mbogoro, Learned advocate the first respondent was represented by Mr. Melkion Mpangala, learned advocate and the second respondent was represented by Mr. Nelson Mwasomola, Zonal Manager for the second respondent.

The counsel for the appellant argued the third and fourth grounds of appeal together and argued the rest of the grounds separately. He told the court in relation to the first ground of appeal that, the trial court erred in deciding there was no Principal – Agent relationship between the first and second respondents while DW1 admitted there was such a relationship. He argued that, agency is a type of contract and its ingredients are the same as those of a normal contract provided under section 2 (1) (a) and (b) of the Law of Contract Act, Cap 345 R.E 2019 as offer and acceptance. He said the only difference as provided under section 137 of the Law of Contract Act is that there is no consideration which is needed in the formation of Principal – Agent relationship.

He argued that, the evidence adduced before the trial court as appearing at page 39 of the proceedings shows the first respondent admitted the second respondent applied to be given a work of collecting

their debts and their application was granted and that shows there was Principal - Agent relationship which was formed between the first and second respondents. He argued the issue that the second respondent was required to see the first respondent for the purpose of being given instruction of doing the work cannot affect the third party who was affected by the act of the Agent on behalf of the Principal. He supported his argument by referring the court to section 160 of the Law of Contract Act and said they have failed to understand why the trial court held there was no principal and agent relationship between the respondents.

He argued in relation to the second ground of appeal that, after establishing there was a principal and agent relationship between the respondents it is their firm submission that the stated principal and agent relationship has never been revoked as provided under section 159 of the Law of Contract Act. He said that provision of the law shows a principal and agent relationship can be revoked expressly or impliedly but there is no evidence adduced to show the respondents' relationship has ever been revoked.

As for the third and fourth grounds of appeal which were argued together the counsel for the appellant argued that, there are matters in the

case which cannot be by a shire coincidence. He argued that as appears at page 39 of the proceedings of the trial court DW1 said they were claiming Tshs. 12,400,000/= from the appellant and after the appellant issued a cheque which was dishonored by the bank they took the appellant to the court. He said the fourteen day demand notice served to the appellant by the second respondent show the debt of the appellant to the first respondent was Tshs. 12,400,000/=. He argued that, if the second respondent was not working under the instruction of the first respondent how the second respondent managed to know how much the first respondent was claiming from the appellant.

He stated that, if you look the evidence of DW3 who though appears to turn hostile but he said as appearing at page 52 of the proceedings of the trial court that, whatever was done by the second respondent was done under the instruction of the first respondent. He said that is supported by the fact that DW3 said DW1 phoned to the second respondent and stopped him to going to DW3. He argued that, as DW1 stopped the second respondent to go to DW3 to collect their debts it is crystal clear that, under the principle of exclusion of one thing means the

inclusion of the others the second respondent was required to proceed with the process of collecting debts from other debtors.

He argued in relation to the fifth ground of appeal that, the appellant was awarded only Tshs. 3,500,000/= while she prayed to be paid Tshs. 200,000,000/= as a general damages. He argued that, although they know award of general damages is on the discretion of the court but under the circumstances of the case where the appellant was defamed by the act of the second respondent who was acting as agent of the first respondent they are praying the amount awarded to the appellant as general damages to be raised to the quantum which the court will find is reasonable. He prays the appeal to be allowed with costs and both the respondents be found liable to the claims of the appellant under the principle of the principal and Agent relationship.

In his reply the counsel for the first respondent argued the first and second grounds of appeal together and argued the rest of the grounds of appeal separately. He argued in relation to the first and second grounds of appeal that, the appellant had a duty to prove her claims against the respondents and one of the issues she was required to prove is the existence of the principal and agent relationship between the respondents

and she failed to prove the said relationship. He said the argument that DW1 admitted there was a relationship of the principal and agent between the first and second respondents is not true and said the evidence of DW1 is supposed to be read in its holistic. He said if you read at page 40 of the proceedings of the trial court you will find DW1 denied existence of the relationship of the principal and agent between the first and the second respondents.

He said DW1 denied categorically to have instructed the second respondent to go to attach the properties of the appellant. He said DW1 said there has never been a contract between the first and the second respondents to do the alleged work of collect debts of the first respondent. He said there was no agreement entered to show how the second respondent would have been paid for the service which he would have rendered to the first respondent. He said the second respondent failed to show they had a contract with the first respondent of doing the work of collecting their debts. He argued that, when DW2 was cross examined he stated at page 50 of the proceedings of the trial court that he was not instructed by DW1 to do the work of collecting debts from their debtors.

He went on arguing that, to say the second respondent made an offer of collecting the debts of the first respondent to the first respondent and the first respondent accepted the offer that is not enough to establish there was a principal and agent relationship between the first and second respondent. He said there was a need of going further to show the agreement reached by the respondents and how the work would have been done. As for the argument that the principal and agent relationship entered by the respondents was required to be revoked, the counsel for the first respondent said there was no need for the first respondent to revoke the alleged relationship as there was no such a relationship which was established between the respondents.

He argued in relation to the third ground of appeal that, it is true that the first respondent was claiming Tshs. 12,400,000/= from the appellant and said it is not true that DW1 said in her evidence that the appellant issued to the first respondent a cheque of Tshs. 8,500,000/=. He said it is also not true that the demand note written to the appellant by the second respondent was claiming for Tshs. 8,500,000/= as the evidence at page 20 of the proceedings of the trial court and the demand notice admitted in the case as exhibit PE.B shows the appellant was required to pay Tshs.

27,929,000/= to the second respondent. He said the indicated discrepancy gives them impression that the second respondent was doing his work without getting instructions from the first respondent.

Coming to the fourth ground of appeal the counsel for the first respondent told the court that, they are denying the evidence of DW3 did not support the evidence of DW2. He said the evidence of DW3 shows the second respondent was not instructed by the first respondent to collect their debt from him and said that includes the debt from the appellant. He said if you read the evidence adduced at the trial court as appearing at page 52 of the proceedings of the trial court you will find that, DW1 took immediate action after being notified DW3 had received a letter from second respondent claiming from him the sum of Tshs. 68,000,000/= as she notified DW3 and his advocate the first respondent was not claiming any debt from DW3.

As for the fifth ground of appeal the counsel for the first respondent said that, the award of general damages is on discretion of the court. He said that being the position of the law they are leaving that claim to the court to assess the same and if it will find the amount awarded to the

appellant is excessive to reduce it. At the end he prayed the appeal to be dismissed with costs.

Nelson Mwasomola who represented the second respondent in this appeal told the court that, the second respondent applied for a work of collecting debts of the first respondent and he was required to make his application in writing and required to supply to the first respondent their profile of work. He said after making their application in writing, the application was accepted and required to go to the office of the first respondent to discuss about how the work would have been done. He said after going to the office of the first respondent and discussed how the work would have been done he was given a list of debtors of the first respondent and the appellant was one of the debtors in the said list. He said initially he didn't know the appellant and said he came to know the appellant after being given the list of debtors of the first respondent.

He said the debt he claimed from the appellant was Tshs. 12,400,000/= but that debt rose up to 27,929,000/= after being added with the costs of collecting it. He said there was principal and agent relationship between the first and second respondents which was for the second respondent to collect the debts of the first respondent. He said

there was no need of going to the office of the first respondent to be taught how to do the work given to them by the first respondent. He said he was instructed by the first respondent to collect their debts and said the evidence of DW3 that DW1 told him not to go to DW3 to collect the debt shows there was a relationship of principal and agent between the first and the second respondents.

He stated further that, DW1 was not required to supervise him as she does not know the law. He said as the second respondent is a Court Broker and Auctioneer they know how to do the work of collecting debts. He said he followed all the required legal procedures in attaching the properties of the appellant as he didn't ambush her and all the required leaders were involved and said there were many people who witnessed the event. He prayed the court to find he followed the law and the required procedures in doing his work. He also prayed the court to find the trial court erred in finding him liable for the claims of the appellant and prayed the court to find there was a principal and agent relationship between the respondents.

In his rejoinder the counsel for the appellant told the court that, if you read paragraph 8 of the plaint you will find it shows the second respondent was doing his work under the instruction of the first respondent

and said that is supported by the demand notice admitted in the case as exhibit PE.B. He argued further that, to show there was a relationship between the respondents the appellant said the second respondent told her he was sent by the first respondent.

To show there was a relationship between the respondents the second respondent wrote a letter to the first respondent seeking for a work of collecting their debts and the said letter was replied by the first respondent. He said the second respondent was given a list of debtors of the first respondent but those documents were not admitted in the case because of technicalities. As for the amount of debt claimed from the appellant the counsel said that, although DW1 said the debt was Tshs. 12,400,000/= and notice issued to the appellant shows she was supposed to pay Tshs. 27,929,000/= but that amount was arrived after being added with interest and costs.

He insisted that, the evidence of DW3 supported the evidence DW2 as DW3 said the DW1 stopped DW2 to continue to claim debt from him. He argued further that, despite the fact that DW2 said he followed the law in attaching the properties of the appellant but the act of attaching her properties while she was not indebted defamed her. At the end he prayed

the court to allow the appeal and enhance the amount of general damages awarded to the appellant.

Having carefully considered the rival arguments advanced to this court by both sides to support and oppose the grounds of appeal reproduced at the outset of this judgment and after keenly going through the record of the trial court the court has found proper to determine this appeal by dealing with each ground of appeal separately. I will starting with the first ground of appeal which states the trial court misdirected itself in holding there was no principal and agent relationship between the respondents.

The court has found proper to state at this juncture that, as rightly argued by the counsel for the appellant, relationship of a principal and agent is a type of contract recognized by our Law of Contract Act, Cap 345 R.E 2019 and is governed by Part X of the above cited law. The said relationship of a principal and agent is defined under section 134 of the Law of Contract Act to be as follows:

> *"An "agent" is a person employed to do any act for another or to represent another in dealings with third persons and the*

person for whom such act is done, or who is so represented, is called the "principal"."

As also rightly stated by the counsel for the appellant the difference of the contract of the principal and agent relationship and other types of contract as provided under section 137 of the law of contract is that, there is no consideration required to create a contract of the principal and agent relationship. That being the meaning of the principal and agent relationship the court has found the issue to determine in relation to the first ground of appeal is whether the first and second respondents entered into a relationship of a principal and agent.

The court has found that, as stated by Cheshire and Fifoot in the book titled the **Law of Contract**, 4th Edition, published in London by Butterworth & Co. (Publisher) Ltd in 1956 the relationship of the principal and agent can be formed in many ways. The Authors of the cited book states at page 382 of the book that:

"The relationship of principal and agent may arise in any one of five ways: by express appointment, by virtual of the doctrine of estoppel, by the subsequent ratification by the principal of a contract on his behalf without any authorization from him, by implication of law in case where it is urgently necessary that

one man should act on behalf of another, and by presumption of law in the case of cohabitation."

That being the ways upon which a principal and agent relationship can be formulated the court has found in relation to the case at hand that, the evidence adduced before the trial court to establish whether there was a principal and agent relationship between the respondents is the evidence of DW1 and DW2. The court has found that, in establishing there was a principal and agent relationship between the respondents, DW2 stated in his evidence that, he wrote a letter to the first respondent seeking for a job of collecting debts from the customers of the first respondent and their application was granted by the first respondent.

That means by following the ways of formulation of a relationship of principle and agent stated in the above quoted extract, the evidence of DW2 was intended to establish the alleged relationship of principal and agent between the first and second respondents was by way of express appointment. The court has found DW1 admitted in her evidence that the second respondent applied for a job of collecting their debts from their customers and they appointed the second respondent to do the work of collecting their debts. However, DW1 said categorically in her testimony

that, after receiving the application of the second respondent and appointed them to be their debt collector they required the second respondent to go to their office for further instruction about how they should have done the work.

The court has found that, although the evidence in the record of the trial court shows DW2 said he went to the office of the first respondent and meet DW1 and after discussing how the work should have be done he was given the list of the debtors from whom the debts were supposed to be collected and told to continue with work but DW1 denied to have met with DW2 or any other person from the second respondent and discussed with him about how they should have done the work of collecting their debts from their customers.

That being what was stated before the trial court by DW1 and DW2 the court has tried to go through the record of the trial court to see whether there was any evidence adduced by the second respondent to establish the first and second respondents met and discussed about how the work of collecting debts should have been done but failed to see any evidence supporting the evidence of DW2 that he went to the office of the

first respondents to discuss with DW1 about how the second respondent should have done the work.

To the view of this court and as provided under sections 110, 111 and 112 of the Evidence Act, Cap 6 R.E 2019 the second respondent had a duty to prove he went to the office of the first respondent and discussed and agreed on how the second respondent should have collected the debts from the debtors of the first respondent. The court has found that, as rightly argued by the counsel for the first respondent the second respondent was required to establish by adducing evidence which would have shown that, if the first and second respondents met, discussed and agreed on how the work of collecting debts should have been done, what were the terms and conditions of doing the work they had applied for of collecting debts from the debtors of the first respondent and how the second respondent would have been rewarded for his service.

The Court of Appeal of Tanzania had an occasion to deliberate on the issue of requirement of establishing what were the terms and conditions of the relationship of a principle and agent in the case of the **Registered Trustees of the Cashewnut Industry Development Fund V. Cashewnut Board of Tanzania,** Civil Appeal No. 18 of 2001, CAT at Dar

es salaam (unreported). The Court of Appeal quoted a passage from the book written by Sir. Willian Anson titled **The Principle of the English law of Contract and Agency in its Relation to Contract**, 22nd edition, published by the English language book society and Oxford University Press where the author states at page 536 that:

> *"The relation of the principle and agent inter se [between or among themselves] are made up of ordinary relation of employer and employee and of those which spring from the special business of an agent to bring two parties together for the purpose of making a contract to establish privity of contract between his principle and third parties.* ***The rights and duties of the principal and agent depend upon the terms of the contract, whether express or implied, which exist between them.****"*[Emphasis added].

The above quoted extract and specifically the bolded part shows clearly that, the relationship of the principal and agent has terms and conditions which shows the rights and duties of the principle and agent. The court has found it was not stated anywhere in the case at hand what were the terms and conditions of the agency relationship alleged was established between the first and second respondents. Instead of giving evidence to show what were the terms and conditions of the agency

relationship alleged was established between the first and second respondents, DW2 told the court at the hearing of this appeal that, he was not supposed to be supervised by the first respondent in doing the work as the first respondent do not know the law. DW2 said that as the second respondent is a court broker they know the law and they followed the required legal procedures in collecting debts of the first respondent.

The court has considered what is stated in the first ground of appeal and the argument made to the court by the counsel for the appellant that the first respondent admitted at page 39 of the proceedings of the trial court that there was a principal and agent relationship between the first and second respondents but failed to see the alleged admission anywhere in the evidence adduced before the trial court by DW1. To the contrary the court has found DW1 stated at the said page 39 of the proceedings of the trial court that, it is not true that they sent the second respondent to collect their debt from the appellant. She stated at the last paragraph of the mentioned page of the proceedings of the trial court that:

> *"I know the entity known as Majembe Auction Mart. I knew it through the person known as Mwasomola. Mwasomola brought to my office a letter requesting to collect debts and I replied it*

by letter and appointed the said entity to be our debt collector but ***I need him to come to our office for more instructions (mazungumzo zaidi)****. But no one appeared from that Majembe Auction Mart. Due to the reason that he did not come as I instructed, it showed that, we did not enter into agreement of collecting our debts."* [Emphasis added].

The court has found that, as rightly argued by the counsel for the first respondent the above quoted part of the evidence of DW1 shows clearly that, although DW1 said they appointed the second respondent to collect their debts but the said appointment was subject to further discussion and instructions about how the work would have been done and DW1 said that was not done as the second respondent did not go to their office as they directed them. That being the evidence of DW1 available in the record of the trial court the court has found that, there is no evidence to establish the first respondent admitted there was a relationship of a principal and agent which was concluded between the first and second respondents.

As there is no evidence adduced and believed by the trial court that there was a discussion which was conducted between the first and second

respondent about how the work would have been done and what would have been the terms and conditions of the relationship together with what would have been the rights and duties of the parties the court has found that, it cannot be said the relationship of the principal and agent was conclusively created between the first and the second respondents. That makes the court to find it has not been convinced the trial court erred in holding there was no principal and agent relationship which was established between the first and second respondents as alleged in the first ground of appeal.

Having found there was no prove of formulation of the relationship of the principal and agent between the first and second respondents the court has found the issue of revocation of the alleged relationship of agency between the first and second respondents as required by section 159 of the Law of Contract Act raised in the second ground of appeal and argued by the counsel for the appellant cannot have legs to stand on. Therefore the argument that the first respondent was required to be found liable for the act of the second respondent as the agency relationship between the first and second respondents had not been expressly or impliedly revoked by the first respondent has not merit.

Coming to the third ground of appeal the counsel for the appellant said there are some matters which cannot be said they occurred by a shire coincidence. He said matters like the amount of debt DW1 said the first respondent was claiming from the appellant are similar to the principal debt the second respondent claimed from the appellant. The court has found that, although the counsel for the first respondent said the amount claimed from the appellant by the second respondent is different from the amount of debt stated by DW1 but the court has found the amount stated by DW1 at page 39 of the proceedings of the trial court as the debt of the appellant to the first respondent was Tshs. 12,400,000/=. That amount is similar to the amount of principal debt stated in the notice issued to the appellant by DW2 which was admitted in the case as exhibit PE.B. The additional amount which caused the debt to reach more than twenty seven million shillings was interests and various costs claimed by the second respondent.

However, the court has been of the view that, a mere similarity of the amount of debt the first respondent was claiming from the appellant when compared with the amount stated in exhibit PE.B cannot be a sufficient reason to find the second respondent was instructed by the first

respondent to collect the stated debt from the appellant. The court has arrived to the above view after seeing that, DW1 denied and stated categorically in her testimony as recorded at page 39 and 40 of the proceedings of the trial court that they didn't instruct the second respondent to collect their debt from the appellant.

DW1 stated in her testimony that, if they instructed the second respondent to go to collect the said debt from the appellant they would have gave them a letter of doing so but there is no such a letter issued to the second respondent by the first respondent. In addition to that the court has found DW1 denied to have issued a letter containing the list of their debtors to the second respondent and said she don't know how DW2 managed to know how much the first respondent was claiming from the appellant. The above stated evidence of DW1 makes the court to come to the view that, as the trial court disbelieved the evidence given by DW2 and believed the evidence of DW1 and as the court has not been given any convincing reason as to why it should arrive to a different finding from the one arrived by the trial court, the issue of similarity of the debt stated by DW1 in her testimony and the amount stated in exhibit PE.B cannot be used as a sufficient reason to find the trial court erred in finding the second

respondent was not instructed by the first respondent to go to the appellant to claim for their debt.

The court has also arrived to the above finding after seeing that, DW2 said in his testimony that, after attaching the properties of the appellant he took them to the first respondent but the first respondent refused to receive them and that caused DW2 to take those properties to their office. It is the view of this court that, if DW2 or the second respondent for this matter had been instructed by the first respondent to go to attach the properties of the appellant and there was an agreement as to how the work of collecting debts would have been done the stated situation of the first respondent to refuse to receive the properties attached from the appellant and taken to the first respondent by DW2 would have not arose. That cement the finding of the trial court that the second respondent was not working under the instruction of the first respondent.

As for the fourth ground of appeal which the counsel for the appellant argued together with the third ground of appeal the counsel for the appellant told the court that, although DW3 turned hostile but his evidence shows he corroborated the evidence of DW2 that, whatever was done by the second respondent was done under the instruction of the first

respondent. The court has considered the above argument and after going through the evidence of DW3 the court has failed to see how DW3 corroborated the evidence of DW2. The court has found DW3 is recorded to have stated in his testimony as appearing at page 52 of the proceedings of the trial court that, after instructing his advocate to inquire from DW1 whether they had sent the second respondent to him to claim for a debt DW1 denied to have sent the second respondent to him to claim for a debt.

The court has been of the view that, a mere fact that DW3 said DW1 phoned to DW2 and stopped him to go to DW3 cannot be taken he corroborated the evidence of DW2 that DW2 was working under instruction of DW1 or the first respondent. The court has arrived to the above view after being of the view that under normal circumstance and as rightly argued by the counsel for the first respondent the evidence of a witness is required to be considered in its holistic and not by picking a single sentence from the evidence of a witness and said that is the evidence of a witness. The above stated finding make the court to find there is nowhere the evidence of DW3 shows he corroborated the evidence of DW2 that the

second respondent was working under the instruction of the first respondent.

As for the fifth ground of appeal it states that, the trial court erred in awarding manifestly un-proportionately low amount of general damages to the appellant as compared to the injury suffered by the appellant. The court has found that, the appellant prayed in her plaint to be awarded Tshs. 200,000,000/= as a general damages for the loss, humiliation, degradation and injury to reputation suffered because of the act of the second respondent but the trial court awarded her Tshs. 3,500,000/= instead of the claimed amount.

The court has found proper to state at this juncture that, as held in the case of the **Cooper Motors Corporation Ltd V. Moshi/Arusha Occupational Health Service** [1990] TLR 96 the appellant was not required to state the amount he was claiming to be awarded to him as general damages as he was only required to ask for the same by a mere statement as the award of general damages is on the discretion of the court. The amount to be awarded to the appellant was supposed to be estimated by the court basing on the evidence adduced before the trial court to establish the damages suffered because of the injury caused to

her. The above position of the law is being bolstered by the observation made in the case of **Anthony Ngoo & Another V. Kitindi Kimaro**, Civil Appeal No. 25 of 2014, CAT (unreported) where the Court of Appeal held inter alia that:

> *"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."*

That being the position of the law in relation to the award of general damages in a case the court has found that, the evidence adduced before the trial court to establish the amount of general damages which the appellant was entitled because of the injuries caused to her by the act of the second respondent is that the appellant was defamed by innuendo. The appellant said the people who witnessed the said event thought she was a thief or a person who borrowed money and failed to repay the debts. The evidence of the appellant was support by the evidence of PW2 and PW3 who said they thought the appellant was a thief or a chronic debtor.

When the above stated evidence is applied in the circumstances of the appellant's case and in the injuries alleged was suffered by the appellant because of the alleged tort of defamation by innuendo which was found by the trial court was established against the second respondent it has caused the court to come to the view that, the amount awarded by the trial court to the appellant as a general damages for the alleged injuries was not low as argued by the counsel for the appellant. The court has also arrived to the above view after seeing there is no material argument advanced to the court to convince it to find the amount awarded by the trial court was low.

In totality of all what I have stated hereinabove I have found all grounds of appeal filed in this court by the appellant have not been able to convince the court the trial court erred in arriving to the decision which the appellant is challenging before this court. In the premises the appeal of the appellant is hereby dismissed in its entirety for being devoid of merit and the costs to follow the event. It is so ordered.

Dated at Songea this 3rd day of December, 2020

I. ARUFANI

JUDGE

03/12/2020

Court:

Judgment delivered today 3rd day of December, 2020 in the presence of the appellant and her counsel Mr. Edson Mbogoro, learned advocate. Mr. Abdallah Issa Ally, learned advocate is holding brief of Melkion Mpangala, learned advocate for the first respondent and the second respondent is represented by Mr. Nelson Mwasomola, Zonal Manager. Right of appeal is fully explained.

I. ARUFANI

JUDGE

03/12/2020