

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL APPEAL NO. 280 OF 2020

*(Originating from the Judgment of Resident Magistrate Court of Kinondoni at Kinondoni
delivered on the 30th day of October 2020 before Hon. Jacob, RM in Civil Case No. 05 of 2018)*

JUMA MAKOTI MSHERIELA ----- APPELLANT

VERSUS

MANAGING DIRECTOR OF TANESCO ----- RESPONDENT

J U D G M E N T

Date of last order: 18/11/2022

Date of Judgment 24/03/2023

MGONYA, J.

This is an Appeal from the Judgment and Decree of Kinondoni District Court in **Civil Case No. 05 of 2018**. The Appellant herein **JUMA MAKOTI MSHERIELA** filed a suit against the Respondent on claims total amount of **Tshs. 48,000,000/=** being compensation for injuries sustained as he was involved in an accident which occurred at work place while he was on duty and hired by the Respondent herein. The suit was dismissed for failure to prove the case on balance of probability. The Appellant was

neither awarded specific damages nor general damages. The Appellant being dissatisfied with the whole Judgement and Decree of the trial court, is now appealing at this Honourable Court on the following grounds: -

- 1. That the learned trial Magistrate erred in law and fact in disregarding the fact that the Appellant is injured while in the course of employment, he is entitled to compensation;***
- 2. That the learned trial Magistrate misdirected himself by ignoring the fact that the Appellant claimed Tsh. 2,000,000/= as general damages from Tsh. 48,000,000/= claimed as specific damages;***
- 3. That the learned trial Magistrate erred in law and fact in disregarding the weight and substance of evidence made by the Appellant which shows how he was affected by injuries; and***
- 4. That the learned trial Magistrate erred in law and fact by failing to give strong and sufficient grounds made the Resident Magistrate Court of Kinondoni to decide the claim in favour of the Respondent.***

In the event therefore, the Appellant prayed for the following orders:

1. That the Judgment of the Resident Magistrate Court of Kinondoni be set aside.

2. That, an order for compensation in the tune of Tshs. 48,000,000/= together with general damages of not less than Tshs 2,000,000/=;

3. That the Costs of this appeal be provided for; and

4. That, any other relief(s) the Honourable Court deem properly fit, just and equitable to grant.

When the matter came before this Honourable Court for hearing, the same was disposed off by way of written submissions as directed by the Court. The Appellant was unrepresented whereas the Respondent was represented by **Elias Mkumbo, Learned Advocate.**

The Appellant submitted on the **first ground** and **third ground** respectively that, the trial court has no doubt that the appellant was an employee of the Respondent and in the course of the employment in the Respondent's Company at Ifakara on the 31st December 2017 he sustained injuries. On the trial Court, the Appellant brought three witnesses who testified that the Appellant was a Co-worker in the Respondent's company in Emergency Department and Respondent admitted the course of his duties, but

the trial Magistrate did not award a compensation to the tune of **Tshs. 48,000,000/=** as a specific damages suffered by the Appellant. Cited **Article 107A (2) (e) of the Constitution of United Republic of Tanzania, 1977 as amended time to time**. It was submitted that, the Constitution of the United Republic of Tanzania is reminding the Judiciary of Tanzania to dispense justice without being tied up with undue technicality rather than looking on substantive justice.

The appellant submitted on **second ground of appeal** that, the evidence adduced by the Respondent together with his witnesses are less sufficient to shake the evidence adduced by the Appellant, DW1, DW2 and DW3 where it was admitted that the Appellant was a Co-worker employed by the Respondent and got injuries in the course of doing their work. Furthermore, DW2 stated that the Appellant was not compensated for injuries he sustained which is legally entitled from the Respondent.

In reply, the Respondent counsel herein stated that on **first ground of appeal**, in the typed Judgement especially from page 4, 5 and 6, the trial Magistrate evaluated the evidence on record, as his duty requires. Further the trial Magistrate underscored the fact that the Appellant sustained injuries during the course of employment, as adduced by his three witnesses brought before the

trial court. But the trial Court was short of succumbing to the demands of payment of **Tshs. 48,000,000/=** because the damages were not specifically proved as require by the law which requires specific damages to be specifically proved before the Court.

Submitted on the **second ground of appeal** that, the trial **Magistrate had no option other than relying on the Respondent's evidence as it was strong, watertight than the evidence adduced by the Appellant's witnesses,** Respondent counsel submitted that, the evidence by 3rd Respondent witness was equally stronger. Further the Appellant failed to comply within the requirement time to report the alleged injuries timely to the Labour Office hence disqualified him to claim for damaged afterward, and that the Appellant did the proper option to pursue his claims through civil case.

Submitting the **third ground of appeal**, that the **trial Magistrate erred by properly guided by legal principles in arriving to the decision on the case.** The counsel said, the principle of requiring to prove of specific damages is legal and not a legal technicality, requirement which must be complied and the Court has the duty to see that, it is complied. Since the Appellant had failed to comply with the legal requirement, enshrined under

section 13 of the **Worker's Compensation Act, Cap. 263 [R. E. 2002]**, he cannot seek refuge under the provisions of **Article 107A (2) (e) of the Constitution of the United Republic of Tanzania (1977)**.

The Respondent's Counsel further submitted that, there was no rejoinder marched, the trial Court properly entertained the suit on the reason that the **Workers Compensation Act, 2015** does not limit or in any way affect any civil liability of an employer or any other person in respect of an occupational injury or disease occurred at work places, as provided under **Section 30 (1)** of the **Workers Compensation Act, 2015** which is couched in the following words:

"Nothing in this Act shall limit or in any way affect any civil liability of an employer or death of an employee if the injury or disease was caused by negligence, breach of statutory duty or any other wrongful act or omission of the employer, or any person for whose act or omission the employer is responsible, or of any other person."

Upon perusal of the lower Court records and considered the submissions made by the parties, it is plain from the raised ground of appeal and the Appellant's submission that the major battle was

against the trial court's Judgment that, the Magistrate fail to award a specific damages to the Appellant. I understand that, specific damages must be proved and evidence be given and in terms of **Order VII Rule 7 of Civil Procedure Code Cap 33 [R. E. 2019]** and general damages are awarded at the discretion of the court as it was stated in the case of ***COOPER MOTORS CORPORATION VS. MOSHI/ ARUSHA OCCUPATIONAL HEALTH SERVICES*** [1990] TLR 96. It is however the requirement of the law that such discretion must be exercised judiciously with a clear and proper reasoning. It is also settled that; the Appellate court should rarely interfere with the exercise of the discretionary power of the trial court in awarding general damages. But it could do so if it is satisfied that the court was unable to explain the basis of its decision.

The Appellant herein did not testify and tender any documentary evidence to prove that he suffered serious injuries which caused his nose broken, his right eye was hurt and he lost consciousness for about 23 hours after the incident. In order for the Plaintiff to be entitled to damages for medical expenses, it was crucial for him to have produced medical records and bills to establish such medical expenses. There must have been some evidence of the cost of the treatment. Clearly, Court records

indicate that there was no proof of expenses incurred by the Appellant therefore cannot be awarded special damages. Further he did not satisfy requirement of section 110 of the **Evidence Act Cap 6 (R.E. 2002)** which provides that:

"Whoever desires any court to give judgment as to any legal right or liability depend on the existence of facts which he asserts must prove that those facts exist"

Since this Court is dealing with the Appeal as the first Appellate Court and as held by the Court of Appeal of Tanzania in the case of ***SUGAR BOARD OF TANZANIA VS. AYUBU NYIMBI & 2 OTHERS, CIVIL APPEAL NO. 53 OF 2013, CAT AT DAR ES SALAAM (UNREPORTED)***, it has the duty to review the record of evidence of the trial court in order to determine whether the conclusion reached upon and based on the evidence received, for re-evaluation in relation to the referred framed issues to see if the finding reached has been properly determined.

From the above, I would not attempt to alter the trial court's findings, as hereby **dismiss the Appeal in its entirety as it lacks merit.**

I make no order as to costs as the Appellant was under Legal Aid.

Right of Appeal explained.



L. E. MGONYA

JUDGE

24/3/2023

ORIGINAL