

TANZANIA / JUDGMENT

ally said bakari vs managing director tanesco 2019 tzhc 246 13 december 2019

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TZHCDECIDED
13 December 2019

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
CIVIL APPEAL NO. 147 OF 2018 (Originating from Worker's Civil Case No. 38 of 2017 at Kinondoni
Resident Magistrate Court) ALLY SAID BAKARI..... APPELLANT VERSUS THE
MANAGING DIRECTOR TANESCO.....RESPONDENT Date of last order: 15/11/2019 Date
of Judgment: 13/12/2019

JUDGMENT

MGONYA, J. The Appellant herein ALLY SAID BAKARI being aggrieved by the Kinondoni Resident Magistrate's Court decision in Civil Case No. Case No. 38 2017 delivered on the 30th day May 2018 appealed to this Honorable Court. In the Memorandum of appeal, the Appellant presented three grounds of appeal as it appears below: 1. That the Honorable Magistrate erred in law and in fact in failing totally to give a well reasoned judgment as required by the law. Thus, the judgment erroneously deprived the Appellant the right to compensation arising from the Respondent's negligence;

2. That the Honorable Magistrate erred in law and fact by not considering the evidence and facts tendered by the Appellant; and
3. That, the Honorable Magistrate erred in law and in fact by concluding that the Appellant is not entitled to other compensation benefits as claimed without taking into consideration that there is tort liability on the Respondent. In the event therefore, the Appellant prayed for the following orders:
 1. That the Appeal be allowed;
 2. That, the dispute be determined on merits;
 3. That the Cost be borne by the Respondent; and
 4. That, any other relief(s) the Honourable Court deemed fit, just and equitable to grant. When the matter came before this Honourable Court for hearing, the Appellant prayed that the matter be heard by way of written submission for he is under the service of legal Aid. The Respondent had no objection hence the Court granted the prayer and the matter proceeded

by way of written submission. In the written submission for the Appellant, the Appellant on the 1st ground of appeal revealed that the court failed to make analysis of the witnesses' statements and evidence adduced by the Appellant. The statement being that the accident had occurred as the result of failure of the Respondent in failing to take his duty of protecting his employees at their work place. That the Respondent was duty bound to make sure that the employees are protected and safe in due cause of working. Therefore apart from the medical expenses being footed by the employer, the Appellant is entitled to further compensation for the accident as a result of negligence on the part of the Respondent. On the 2nd ground of appeal, the Appellant submits that the Magistrate gave the judgment on technicalities without considering the evidence and facts tendered by the Appellant. The evidence and facts tendered by the Appellant proved that the accident occurred as the result of failure on the part of the Respondent to fulfil his duty of ensuring safe working environment for the workers. The Statement of the Appellant and witnesses proved that there was negligence on the part of the Respondent that resulted to the accident. In reference to the 3rd ground of appeal the Appellant averred that it was obvious that the Appellant got the accident when he was performing his contractual duties. Further, the accident occurred as failure of the Respondent making sure there is safety in the working environment. Therefore the Appellant is entitled to compensation because the Respondent breached the duty of care. And in conclusion the Appellant urged this Court that the Respondent must not be allowed to escape his liabilities. Responding to the Appellants submission Counsel for the Respondent Ms. Angela Kingu opposed the submission by the Appellant by stating that the decision of the trial Court was proper and that the Court could not have decided otherwise from the reasons stated in the decision. Further the learned Counsel stated that the Appellant was an employee of the Respondent, employed as an Artisan on specific task. That in due cause of performing his contractual duties for the Respondent, an electric pole fell on his hand which led to sustaining injuries where the Appellant had to undergo a surgery and his last finger amputated as it could not be treated. Ms. Kingu further adhered that, the Appellant was treated until full recovery and all hospital bills were footed by the Respondent as well as compensation paid to him as per the workers compensation Act. It is from there that the Appellant filed a suit at the Kinondoni Resident Magistrate Court alleging the Compensation to have been inadequate. The decision of the Court was in favour of the Respondent hence this appeal. In reply to the 1st ground of appeal, the Respondent states that the Magistrate did give a reasonable Judgment as required by law. Further, the Appellant did submit insufficient evidence to support his case hence argument that the judgment was not reasonable is not a favourable reason. Again, Counsel for the Respondent averred that, proof in civil cases is on balance of probabilities. Therefore the Appellant failed to have weighed his evidence as a result no compensation was awarded since the onus of proof laid to the Appellant who had alleged. On the 2nd ground of Appeal, Ms. Angela Kingu stated that the Magistrate was correct in the judgment since the Appellant did not produce any document which showed the monthly earnings nor the Doctor's report to enable the Magistrate determine whether the compensation was inadequate or not. Further, the counsel said, Section 110 (1) and (2) of the Evidence Act [Cap.

6 R.E. 2002] provides for burden of proof as quoted by the Respondent. Hence failure to have produced documentary evidence for his case, the Magistrate was right when analyzing evidence to have referred to his oral evidence alone. Lastly on the 3rd ground of appeal it is the learned Counsel's assertion that the Appellant is not entitled for compensation for failure to have proved his case to the required standard. It was further the learned Advocate's concern that, the Appellant did not produce any evidence which could be determined to entitle him compensation; and that the Appellant sued for specific damages to the tune of Tshs. 35,000,000/ = without verifiable evidence to prove the said loss. Ms. Kingu declared that, it is trite law that special damages/loss of business ought to be strictly proved. Further, that the treatment of what the Appellant referred to special damages from the way they were pleaded and proved fell short of standard laid down in the above cases. In concluding the matter the Counsel for the respondent stated that no one disputes that the Appellant was injured in the cause of discharging his duties and the Appellant was compensated adequately as per the Workmen's Compensation Act. Venturing to the grounds of appeal lodged before this Honourable Court, I will determine the same in sequence as they appear in the Memorandum of Appeal. Beginning with the 1st ground of Appeal, the Appellant averred that the Court erred in failure to have a well-reasoned judgment as required by law and therefore depriving the Appellant's right to compensation from the Respondent's negligence. It appears to me that the judgment by the trial Court has covered the major requirements of a judgment in accordance to law as per Order XX Rule 4 of the Civil Procedure Code [Cap. 33 R.E. 2002]. However it was the Magistrate's observation that she/he failed in analyzing the evidence at hand at the trial court since the Appellant failed to have tendered documents evidencing the Appellant's earning at the time of the accident so as to enable the court to analyze the same for determination in making necessary orders as to compensation. Moreover, the act of the Appellant in failing to produce before the Court the Doctor's report that indicated the extent of injury that the Appellant had sustained contributed to the decision. From the reasoning of the Magistrate to the circumstances of this case, I find the Magistrate to have misled herself in due process of making the decision. It is the averments of the Appellant that he had been injured in the cause of work. The Respondent in her submission also admits that the fact is true and there is no any dispute to such fact. I join hands with Ms. Kingu the learned Counsel that, it is trite law that the onus of proof in civil cases is on the balance of probabilities. The injury complained by the Appellant is a physical injury that can physically be noticed and is admitted by the witnesses and the Respondent to have occurred in executing contractual duties. The Appellant being a lay person not being supplied with the Doctor's report should not be an obstruction to be granted his rights since the fact of his injury is undisputed. It is a matter of prudence to have evaluated the evidence adduced and admission of the Respondent to the matters claimed by the Appellant. Therefore this ground of appeal is meritorious. Upon the 2nd ground of appeal that there was an error by Court on law and fact by not considering evidence and facts tendered by the Appellant; it is in record that the Appellant had 8 testified on how he incurred the injury and even how it arose to the point of being amputated. Further, the Appellant tendered the evidence of the demand notice that was attached to the Plaint; and

the same corroborates that the suit was initiated at that extent. As a matter of law and practice, I don't dispute that it was the duty for the Appellant to have tendered the Doctor's report and other necessary documents to prove his case. However, since the issue at hand is compensation for injuries incurred in fulfilling contractual duties, the witnesses testified to have seen the act of the Appellant being injured and the Respondent firmly concedes to the facts pleaded by the Appellant. Hence forth, I also believe that the court during trial saw the Appellant's hand and the extent of injury from a physical point of view. I find the absence of documentary evidence not logical to the extent of denying the Appellant's right for that reason. Hence this ground has merit and sensible. The claim upon the 3rd ground of appeal that the Magistrate by concluding that the Appellant is not entitled to other Compensation benefit as claimed without considering that the injury is a tortuous liability on the Respondent; now having gone through the records of the trial Court, it came to my knowledge that in the Complaint, specifically the Appellant had claimed for among other things general damages which was to be denied or granted upon court's discretion according to the circumstances at hand. General damages in the Black's Law Dictionary 7th Edition at page 394 is defined as: "Damages that the law presumes follow from the type of the wrong complained of general damages do not need to be specifically claimed or proved to have been sustained" It is in the circumstances of the case at hand that the Appellant prayed to be awarded general damages to the tune of Tshs. 15,000,000/= and the Court did not in any chance determine the prayer on general damages it was a misconception by the trial court. It trite law and decided by a number cases that general damages claimed do not have to be neither specifically pleaded nor proved. It is a cardinal principle that in awarding damages is restitution in interregnum, the above principle entails to cater for the meaning "Restoration to the previous condition or the status quo". It is not disputed that the Appellant suffered injuries and big pain and loss of a body part. It goes without saying that a loss of a body part affects one psychologically too. And that the victim is not at the status of living his normal life again. Paying the 10 Appellant the compensation paid as claimed by the Respondent and denying the Appellant general damages is cold - hearted and insensitive. In the case of TANZANIA SARUJI CORPORATION VS AFRICAN MARBLE COMPANY LTD [2004] TLR 155 the Court held that: "General damages are such as the law will presume to be the direct, natural or probable consequences of the act complained of, the defendant's wrongdoing must, therefore have been cause of damage, it is discretion of the Court/" Further, in the case of LONDON AND NORTHERN BANK LIMITED VS. GEORGE NEWES LTD [1900] 16 TLR 433, the same drew a line on the same status on damages as in the case above. Since general damages are to be determined by the Court and lie under the discretion of the Court, the Magistrate ought to have weighed the Appellant's injury and the loss incurred from the injury and from the circumstances award the Appellant general damages. It is my firm view that I decline the averments and defence of the Respondent that the Appellant had been compensated and there are no claims entitled to the Appellant. The assertion that ii As the end result therefore, the Appellant is hereby granted the total sum of Tshs. 20,000,000/= in respect of this matter. In the light of the above, this Court finds the Appeal to have merits. In the event therefore, I proceed set aside the decision of the Kinondoni Resident Magistrate

Court and all orders emanates thereto without costs as the Appellant was under Legal Aid. It is so ordered. Right of Appeal explained. JUDGE 13/12/2019 Court: Judgment delivered in chamber in the presence of Ms. Angela Kingu, Advocate for the Respondent, the Appellant in person and Ms. Veronica RMA this 13th day of December, 2019. L. E. MGONYA JUDGE 13/12/2019 13

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