

TANZANIA / JUDGMENT

Spherical Engineering Limited v Yusufu Salimu Katuga

Source: emaktaba.judiciary.go.tz · Research copy typeset by Esheria. Not court-issued or certified.

THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
AT DAR ES SALAAM CIVIL APPEAL NO. 000010384 OF 2026 SPHERICAL ENGINEERING
LIMITED COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF VERSUS
YUSUFU SALIMU KATUGA RESPONDENT / DEFENDANT

JUDGMENT

MORRIS, J IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM
SUB-REGISTRY AT DAR ES SALAAM CIVIL APPEAL NO. 10384 OF 2026 (From the Judgment and
Decree of the District Court of Kinondoni at Kinondoni in Small Claim No. 23261 of 2025, before
Hon. K.I. Josiah, SRM, dated on 27th March, 2026) SPHERICAL ENGINEERING
LIMITED..... APPELLANT VERSUS YUSUFU SALIMU KATUGA.....
RESPONDENT JUDGMENT Aug. 21st, 2026 Aug. 28th, 2026 Morris, J The Appellant above,
Spherical Engineering Limited has preferred this appeal challenging the judgement and decree
of the District Court of Kinondoni in Small Claim No. 23261 of 2025. In the mentioned small
claim, the Respondent, Yusufu Salimu Katuga won against the Appellant from which he was
awarded TZS 51,427,063.46/= as the outstanding commission; TZS 5,000,000/= general damages;
interest at the court rate from the date of filing the suit until full payment; and costs of the suit.
The Appellant is aggrieved Page. 1 by such decision and has lodged the appeal at hand. He has
raised six (6) grounds of appeal. I will state them later. The background of the present matter is
easy to account. Between 2024 and 2025, the Appellant and the Respondent formed a business
relationship whereby the Appellant appointed the Respondent as his agent for solicitation of
clients at an agreed commission. At the beginning, their relationship was somewhat informal,
without a written agreement. However, in February 2025, they executed an Agency
Commissioning Agreement (exhibit P1). The subject agreement, among other contents, related to
two projects of Star Oil Tanzania Limited. The above projects involved construction of Retail
Outlets stations in Mwanza and Tunduma which were secured and/or negotiated for the
Appellant by the Respondent at an agreed commission. It is also on record, through the
Appellant's own Exhibit D1 — the underlying works contract between the Appellant and Star Oil
Tanzania Limited — that the Appellant's own entitlement to be paid by the client for these same
projects was governed by a defined, staged schedule. Allegedly, matters turned out that payments
due to the Respondent from the Appellant were not made in time and/or according to the
agreement. This inconsistency gave rise to the dispute between them which culminated into the

Respondent filing the Small Claim No. 23261 of 2025 at the District Court of Kinondoni (the suit). He won on the strength of, among other things, his own bank statement (Exhibit P3) and a demand notice (Exhibit P2). The Appellant was aggrieved hence this appeal. The appeal is anchored on six (6) grounds that; - 1.The trial Court erred in law and fact by disregarding the overwhelming evidence tendered by the Appellant proving payments made in favour of the Respondent through his bank account despite the fact that, the transaction reflected to the responded bank account. 2.The trial Court erred in law and fact by shifting the burden of proof to the Appellant on an allegation made by the Respondent that, the Appellant had already been paid the full amount from Star Oil Tanzania Limited and thus liable to pay the Respondent his commission as per their contract, despite the fact that the respondent clearly stated in his evidence that he had not sure if the appellant was fully paid by star Oil Tanzania Limited. 3.The trial Court erred in Page. 2 law and fact by its failure to properly analyses the agency Commission agreement (exhibit - P 1) leading to an unjust and unfair decision. That the payments were not conditional. 4.The trial Court erred in law and fact by holding based on the completion of the projects instead of payments from the client as per the contract. 5.The trial Court erred in law and fact by entertaining the case contrary to mandatory requirement of the law which mandates all pleadings and proceedings which are in English shall be translated into Kiswahili language. 6.The trial Court erred in law and fact by holding that some transactions lacked clear narration or identification of the recipient despite the bank statements clearly explaining the sender and receiver of the said payments. As it will become apparent later, some of the above grounds were argued conjunctively by the parties owing to the interrelation between them. Accordingly, the Appellant's Advocate, Mr. Gasper Mwakanyemba grouped the grounds into four clusters. Grounds one and six were argued concurrently; also, grounds three and four were taken jointly; while the second and fifth grounds were argued independently. Naturally, the reply submissions from the Respondent's Counsel, Heriel Munisi adopted the said pattern. So was the Appellant's rejoinder. The above pattern notwithstanding, the Court finds that three groups of combined ground suffice to discharge this appeal. In this regard, grounds one, two and six from the first category. In essence, the trio challenge the trial Court's evaluation and analysis of evidence in respect of the existence of an outstanding debt, if any; the amount thereof; the payment pattern; and the applicable conditions precedent. Their facet is a single evidentiary question. The second group comprises of grounds three and four while the third and last group consist of a single ground – number five. Essentially, the sole ground in the last group challenges the trial Court on the basis that the suit was entertained in the absence of the Kiswahili version of the pleadings. Further, I take the second group first. By way of recap, the grounds therein are three and four which relate to the construction of Exhibit P1. Besides, sitting as a first appellate court, I bear in mind that I am under a duty to re-appraise the evidence on the record and reach my own conclusions of fact, giving due allowance for not having seen the Page. 3 witnesses testify – see *Amratlal Damodar Maltaser & Another t/a Zanzibar Silk Stores v. A.H. Jariwalla t/a Zanzibar Hotel* [1980] T.L.R. 31. Mr. Mwakanyemba's submissions, in- chief and rejoinder alike, addressed the first category above densely. He argued that the trial Court disregarded the Appellant's evidence regarding payments to the Respondent. That, the trial Court accorded lesser weight to the evidence that proved transfers of money from the Appellant to the Respondent. In particular, he referred the bank

statements (Exhibits D2 and P3) and argued that both indicated that the Respondent received money through his accounts as part payment of the commissions under the agreement. On such basis, he invited this Court – being the first appellate judicial body, to re-evaluate such evidence in line with *Deemay Daati & Two Others v. R.* [2005] T.L.R. In addition, the Appellant contended that the agreement between the parties herein (Exhibit P1) was clear regarding the payment pattern. That is, pursuant to Clauses 2.3 and 2.4 thereof, the Respondent could only be paid commissions only after the Appellant received the money from the client. To him, the Respondent was not entitled to claim any payment because the client (Star Oil Tanzania Limited) had not paid the Appellant; and that the trial Court erred to hold otherwise. The other limb of attack to the trial Court's decision was that the same was based on the completion of the projects as sufficient evidence to warrant the Respondent's payment, while the suit was filed before the projects were completed; and the payment condition was not subject to completion of the projects but the receipt of the payment from the client. On such foundation, he referred to the cases of *Simon Kichele Chacha v. Aveline M. Kilawe*, Civil Appeal No. 160 of 2018 [2021] TZCA 43; and *Abualy Alibhai Azizi v. Bhatia Brothers Ltd.* [2000] T.L.R 288 to the effect that parties to a contract are bound by terms therein. On his part, the Respondent contested the Appellant's assertions in total. To him, the trial Court was correct to hold as it did in the light of the evidence that was availed to it. In this connection, it was his specific contention that the Appellant has failed to demonstrate the specific parts of Exhibits P3 and P2, that were not properly evaluated or analysed by the trial Court. He added that the Appellant's evidence did not establish the purpose for which Page. 4 the payments were made. He added that, DW2 himself conceded that the absence of narration on certain entries in Exhibit D2 was attributable to bank error rather than any ambiguity as to purpose, and that the Appellant called no witness from the bank to clarify the point despite bearing the means to do so. Besides, he argued that the Respondent had worked for the Appellant in several project such that the latter was obliged to prove the purpose for the entries in the bank statement tendered in evidence. That is, it fell to the Appellant to show which payments related to the Mwanza and Tunduma commission as opposed to other dealings between the parties. He recited the common principle under section 117 (1) and (2) of the Evidence Act, Cap 6 R.E. 2023 that he who alleges must prove. He also faulted the Appellant's evidence from DW3 for being hearsay without any probative value. His clear conclusion was that, the Court cannot do better than disregarding hearsay evidence, as it did in this matter. Hence, he prayed for dismissal of the appeal for want of merit hereof. Within the above rivalry of the parties lies one point for determination namely, whether the Respondent proved, on a balance of probabilities, that the condition precedent to payment under clauses 2.3 and 2.4 of Exhibit P1 receipt by the Appellant of payment from Star Oil Tanzania Limited had been satisfied; and, if the Respondent did not directly prove that fact, upon which party the burden of proving it properly lay. It is to that point, and its subsidiary questions of quantum, that I will turn after stating undisputed aspects thereof. Matters of common understanding are about five. One, it is not in dispute that the Respondent was entitled to payment in form of commission from the Appellant for the project secured from Star Oil Tanzania Ltd. Two, the payment stated in point one above resulted from the net revenue earned by the Appellant from the project. Three, undisputed is the fact that the Respondent acknowledges receipt of part of the total commission. That is, his claim

is not on one hundred percent (100%) basis. Four, the payments from the Appellant to the Respondent were being channeled through the latter party's bank accounts. Five, the parties have no issues with regard to this Court re-evaluating the evidence on record because this is the first appeal. Regarding the first issue framed above, the specific Page. 5 clauses of Exhibit P1 are considered. Clauses 2.3 and 2.4 of Exhibit P1 provide, respectively, that the commission is payable within 90 days after the Appellant receives payment from the client; and that, where the client's payment "remains unpaid," the Appellant is not obliged to pay commission. These are clear terms, freely agreed between two contracting parties, and it is not for this Court to rewrite them. See for instance, *Simon Kichele Chacha v. Aveline M. Kilawe*, Civil Appeal No. 160 of 2018, [2021] TZCA 43; and *Abualy Alibhai Azizi v. Bhatia Brothers Ltd*, [1999] TZCA 21 ([2000] T.L.R. 288), regarding the sanctity of contract. The trial Court's finding that Exhibit P1 contained no clear condition of this kind cannot be sustained against its plain wording. The said Court's further reliance on completion of the projects as the operative trigger was equally misconceived. Throughout the Agreement, completion is nowhere made the trigger therein under the Agreement, and the suit was, on the Appellant's own case, instituted before the projects were even completed. To this extent, the third and fourth grounds are well founded on the law in so far as the misdirection of the trial Court. Nonetheless, regarding the conclusion whether such misinterpretation of the Agreement misapplication of the law lead to an unjust and unfair decision, the other grounds too have to be considered first. That is, the finding hereof does not, however, dispose of this appeal, for it resolves only what clause 2.3 requires, not who bore the burden of proving whether it was met. Principally, section 117(1) and (2) of the Evidence Act, Cap. 6 R.E. 2023 places the general burden of proving a claimed legal right on the party who asserts it. That is the holding in *Hemedi Saidi v. Mohamedi Mbilu* [1984] T.L.R. 113 too. Section 122 of the same Act, however, provides that "in civil proceedings, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him". In this Court's considered opinion, whether and when Star Oil Tanzania Limited paid the Appellant is a fact arising entirely within the Appellant's own commercial relationship with its client, to which the Respondent, an outside commission agent, is a stranger. The latter possessed no means of independently ascertaining it. The Agreement between him and the Appellant did not give him such advantage either. As the Respondent Page. 6 was not privy to the contract between the Appellant and Star Oil Tanzania Limited, the mode of payment, pattern, duration and condition precedent, if any, were outside his mandate or knowledge. I am thus, satisfied that the Respondent laid a sufficient foundation to bring section 122 (supra) into operation. It was not disputed that a valid Agreement existed with a clear commission mechanism, as explained above. Similarly, PW2, the client's own station manager, confirmed, and the Appellant did not seriously contest, that both projects were completed and handed over to Star Oil. Considerable time had by then elapsed, and the Appellant continued remitting instalments to the Respondent throughout the relationship, including a further payment of TZS 1,386,052.91/= made after suit was filed. This conduct, in itself, sat uneasily with a genuinely and consistently maintained position that nothing was owed. On the above foundation, the evidential burden shifted to the Appellant to prove, by cogent evidence, that he had not received payment from the client sufficient to trigger clause 2.3. The Appellant did not discharge it. DW1 conceded on cross-examination that no documentary

evidence was produced to show that Star Oil still owed the Appellant, or that contract sums had been reduced, or that the projects had been halted by regulators. This conclusion is reinforced, and in my view more weight is placed on the Respondent's side of the scale of justice, by four further matters on the record. Apparently, neither the trial Court nor, with respect, the ordinary course of this appeal appears to have engaged them fully. First, Exhibit D1 itself, the Appellant's own works contract with Star Oil, provides at clause 3(c) that 25% of the total consideration was payable as an advance after commencement, that only 5% was tied to a completion certificate retained for one year after hand-over, and that the remaining 70% was payable progressively, based on work done. On the face of the Appellant's own document, therefore, as much as 95% of the consideration was payable before completion, and construction had been underway for roughly eleven (11) months by the time suit was filed. Against that structure, DW1's bare assertion of having received nothing from the client is difficult to credit. Second, the Appellant's own case is internally inconsistent across the record: his Reply to the Statement of Claim pleaded full payment, Page. 7 presupposing a debt that existed and was discharged. However, DW1's oral evidence instead denied any debt had accrued at all, because the client had allegedly not paid. Also, the Appellant's rejoinder submissions offered yet a third account, that certain payments were made from "other sources of income" to avert harassment, rather than from proceeds received from the client. These three positions are difficult to reconcile, and/or cannot all be true. More so, their coexistence further undermines the Appellant's credibility on the very fact section 122 places upon it to prove. Third, Exhibit P2, the Respondent's demand notice, shows that he sought payment directly before suing, consistent with a genuinely and reasonably held claim. Fourth, and by contrast, nothing on this record shows that the Appellant ever demanded payment from Star Oil Tanzania Limited, corresponded with it about the alleged arrears, or threatened it with recovery proceedings, notwithstanding that non-payment by that same client is the very foundation of his defence in this suit. A party that maintains, as his central defence, that his own client has failed to pay it a sum large enough to excuse non-payment of the Respondent's commission, yet cannot point to a single letter chasing that very debt, invites the inference that the assertion is not genuinely held, or that payment had in truth already been received. For these reasons I find that the Appellant failed to discharge the burden that shifted to him under section 122 of the Evidence Act, and that the condition precedent in clause 2.3 of Exhibit P1 must be taken, on a balance of probabilities, to have been satisfied. The second ground is answered on this corrected basis. On quantum, the Respondent's bank statement, Exhibit P3, is a direct and verifiable record of sums received. The Appellant's compiled statement, Exhibit D2, drawn from multiple accounts including a director's personal account, contained entries lacking narration which no bank official was called to explain, though it lay within the Appellant's power to call one. Where an interested party's internally compiled record conflicts with a verifiable statement from the recipient's own account, and the discrepancy is not resolved through available independent evidence, the verifiable record is ordinarily to be preferred. I find no reason to disturb the trial court's assessment that the Respondent's reconciled figure Page. 8 of TZS 51,427,063.46/=, already reflecting the further sum paid after institution of the suit, represents the outstanding commission proved on a balance of probabilities. The first and sixth grounds accordingly fail. That leaves only the fifth ground,

concerning the use of English in the proceedings of the Court below. The Appellant argued that the law requires all pleadings, proceedings or decisions where English Language is used to be translated and authenticated in Kiswahili. Reference was made to sections 53(2) and 84A of the Law of Interpretation Act, Cap.1 R.E. 2023; rule 4 (1) of the Interpretation of Laws (use of English Language in Courts) (Circumstances and Conditions) Rules, GN NO.66 2022; and Shabani Iddi Jololo and Three Others v. Republic, Crim. Appeal No. 200 of 2006) [2009] TZCA 136; particularly the use of the compulsive word “shall” in a statutory provision. On his part, the Respondent opposed this ground strongly. To him, the Appellant's reliance on section 84A of the Interpretation of Laws Act, is misconceived, as the said Act contains no such provision. Further, he argued that the learned trial Magistrate duly complied with the requirements of section 86 thereof; and that the proceedings before the trial Court were instituted under the Small Claims Procedure Rules, with own special procedural framework. Moreover, to him, as the dispute emanated from the Agreement drafted and executed in the English language, and the Appellant actively participated in the proceedings without raising any objection whatsoever, this ground should be overruled. This rivalry of the parties is resolved by determination of one question, namely, if the non-use of the Swahili translation in the trial Court vitiates the entire trial. The overriding consideration hereof, in this Court's take is whether and how the other party has been prejudiced by the complained infraction. Hereof, I am guided by the general principle that, not every non-compliance with the procedural law vitiates the proceedings, especially if no prejudice is occasioned to the adverse party. To fortify the above position, reference is made to Fatuma S. Bassebe v Jason Mutagulwa Rwiza, Civil Appeal No. 4 of 2021; Ibrahim Pius Kagansha & Another v Bera Karuma & Another, Land Appeal No. 8 of 2022; and, Zahara Kitindi & Another v. Juma Swalehe and 9 Others, Civil Application No. 4/05 of 2017 (all unreported). In the present Page. 9 matter, it is the finding of this Court that, the complained omission is neither fatal nor did it prejudice the Appellant. Apart from the procedure of pleadings in the suit from which this appeal emanates being governed by the specific law, the Appellant has not exhibited to this Court how the omission caused prejudice on his part. In fact, manifestly he does not seem to have been prejudiced by the exclusive English version, at all. I will give a couple of points to account for the foregoing stance. One, in both the trial and this Court he was/is under the legal representation. Two, his defence documents were also in English language. Three, the annexures appended to the pleadings upon which the case was hinged were in English. It thus defeats logic if only the documents to be translated are the pleadings and no equal scale of compulsion is applicable to the annexures which prove or disprove the claims. Four, this ground is intrinsically a preliminary matter which, not being a jurisdictional issue, ought to be raised at the inception of the impugned proceedings. The record does not reveal that the parties raised this point or argued it before the trial Court anyhow. In all fairness, it will be unjustifiable to fault the trial Magistrate for a point not raised before such Court for determination. On the analysis and reasoning given above, I decline the Appellant's invitation to this Court to explore the ground any further. Consequently, I desist to fiddle around. The fifth ground is not passed too. For the foregoing reasons, all the six (6) grounds of appeal fail, though not for the reasons given by the trial Court. I find that the trial Court materially misdirected itself on the construction of Exhibit P1, wrongly holding that clauses 2.3 and 2.4 contained no clear condition of payment. That misdirection does

not, however, alter the result, because on a correct application of section 122 of the Evidence Act the burden of proving non-satisfaction of the condition precedent lay with the Appellant, and the Appellant manifestly failed to discharge it. In fine, the appeal is dismissed. The Judgment and Decree of the District Court of Kinondoni in Small Claim No. 23261 of 2025, delivered on 27th March 2026, are hereby affirmed, but on strength of the reasoning of this Court instead of that of the trial Court. The Respondent shall have the costs of this appeal, in addition to those already awarded Page. 10 below. It is so ordered. Right of appeal is fully explained to the parties. C.K.K. Morris Judge August 28th, 2026 Dated at DAR ES SALAAM this 28th of August 2026 . C. K MORRIS JUDGE OF THE HIGH COURT Page. 11

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://emaktaba.judiciary.go.tz/judgements/cmtp2xg1q0jot031dwpmkhuad
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/spherical-engineering-limited-v-yusufu-salimu-katuga-2026

Prepared on 27 October 2026 · Esheria