

TANZANIA / JUDGMENT

# CIVIL APPEAL 130 OF 2024

## STRATON MROSO Final

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM SUB-REGISTRY) AT DAR ES SALAAM  
CIVIL APPEAL NO. 130 OF 2023 (Originating from the Resident Magistrate Court of Dar es  
Salaam, at Kisutu, in Civil Case No. 31 of 2021) STRATON PATRIC  
MROSO ..... APPELLANT VERSUS KASSIMU ABRAHAM  
KABUJI..... 1ST RESPONDENT ATHWAL'S TRANSPORT AND TIMBE  
LIMITED ..... 2ND RESPONDENT ALLIANCE INSURANCE LIMITED  
..... 3RD RESPONDENT

### JUDGMENT

15th July & 18th October, 2024 BWEGOGGE, J.: The above-named appellant commenced civil proceedings (Civil Case No. 31 of 2021) in the Resident Magistrate Court of Dar es Salaam against the respondent herein for breach of contract, claiming TZS 68,00,000/= being special damages; and TZS 200,000,000/= being general damages, among others. The trial court found that the appellant failed to prove his claim to 1 the standard required in civil proceedings. Eventually, the suit was dismissed. This is an appeal against the judgment and decree of the trial court. The facts of this matter are as follows: One Kassim Abrahmani Kabuji, the 1st respondent herein, was a driver employed by the 2nd respondent. He was engaged to drive the hauling vehicle with Reg. No. T. 338 AHY. The vehicle was insured with the 3rd respondent herein. On the fateful day of 09th November, 2019, the 1st respondent was involved in a road accident that occurred along Nyerere Road (Jet traffic lights). Allegedly, the 1st appellants drove through the red light and knocked a passenger vehicle causing some passengers therein to suffer debilitating injuries. Eventually, the 1st respondent was charged with four counts of causing bodily injuries through dangerous driving under the Road Traffic Act [Cap. 168 R.E. 2002]. The record has it that the 1st respondent pleaded guilty to the charges levelled against him and convicted forthwith. The appellant herein claimed to be among the victims of the accident who sustained injuries. His attempt to claim compensation from the 3rd respondent was rejected on the ground that he was not among the enlisted victims of the accident. Thus, the appellant resorted to institute a suit against 2 the respondents herein claiming compensation for the injuries he sustained during the accident. It was the appellant's case in the trial court that he was among the victims of the accident that occurred on the fateful day of 09/11/2019. That he reported the accident at Buguruni

Police Station and received treatment at Amana Hospital. And upon recovery, he was supplied with relevant documents to enable him to claim compensation from the 3rd respondent, the insurance company which insured the 2nd respondent's vehicle. It was alleged by the appellant in the trial court that the 3rd respondent, for no justifiable reason(s) refused to compensate him for injuries sustained during the accident. He called upon the trial court to order the respondents herein to pay him the entitled compensation. The appellant's case in the trial court was corroborated by E6669 Sergeant Jamada (PW1), the police officer who investigated the alleged accident. The respective witness tendered the charge sheet, copy of judgment, PF3 of the appellant, motor vehicle claim form (PF 90), cover note and PF 115 for proof which were admitted in evidence as exhibits P1, P2, P3, P4 P5 and P6 respectively. 3 Likewise, the appellant's case was augmented by the testimony of the witnesses namely, WP 3914 Sergeant Rose (PW2) who was on duty at the charge room, Buguruni Police Station, on the fateful day the accident occurred. The same supplied the appellant with the PF3 (exhibit P3) for treatment at the hospital. Lastly, the appellant case was supported by the testimony of the medical practitioner namely, Dr. Masoud Matange (PW4), the medical doctor who authored the medical report (exhibit P7). The 2nd and 3rd respondents vehemently contested the appellant's claim. They argued that the previous documents submitted to the 3rd respondent namely, the motor vehicle claim form (exhibit D1); the charge sheet and the judgment given by the trial court (exhibit D2 collectively) in respect of the traffic case preferred against the 1st respondent didn't comprise the name of the appellant herein. It was alleged by the 2nd and 3rd respondents that the charge sheet (exhibit P1) and motor vehicle claim form (exhibit P4) were forged/altered to encompass the name of the appellant in a bid to justify his claim for compensation which he was not entitled to. 4 The trial court, having evaluated the evidence brought to its attention, decided that the documentary evidence furnished by the appellant contradicted the same corresponding evidence adduced by the 2nd and 3rd respondents herein which the trial court considered to be authentic. Therefore, the trial court found the documents tendered by the appellant were seemingly altered in a bid to support his claim. Thus, the appellant suit failed in its entirety for want of proof. The appellant was not amused. Hence, this appeal. The appellant advanced seven (7) grounds of appeal as hereunder paraphrased:

1. That the trial Magistrate erred in law and facts in declaring that the exhibits tendered by the appellant were forged without allowing the appellant to be heard in respect of the alleged forgery.
2. That the trial Magistrate erred in law and fact in declaring the appellant not among the victims of the car accident irrespective of the strong documentary evidence suggesting that the appellant was among the victims in the said accident.
3. That the trial Magistrate erred in law and fact in dismissing the appellant's claims based on the evidence of individuals who were not eyewitnesses to the car accident. 5
4. That the trial Magistrate erred in law and fact in relying on the decision in the traffic case in dismissing the appellant's claim irrespective of the evidence adduced by the appellant.

5. That the trial Magistrate erred in law and fact in holding that the appellant was required to prove the case beyond reasonable doubt, the standard required in criminal proceedings, contrary to the law; hence, arrived at an erroneous

### conclusion.

6. That the Trial Magistrate erred in law and fact in holding that the PF-3 issued to the appellant does not bear the particulars of the motor vehicle involved in the car accident without taking into consideration that the PF3 is a standard form; hence, ended up deciding the first issue in negative.
7. That the trial Magistrate erred in law and fact in failing to determine the second issue framed by the parties herein which required the court to examine the extent of damage suffered by the appellant; hence, the extent of damage suffered by the appellant was not assessed at all. The appellant was represented by Mr. Frank Killian, learned advocate; and the 2nd and 3rd respondents were represented by Mr. Allen Nanyaro, learned advocate. The case was heard exparte against the 1st respondent who defaulted appearance. The appeal was argued by written submissions. In substantiating the 1st ground of appeal, Mr. Kilian charged that the trial magistrate erred in adjudicating that the charge sheet tendered by the 6 appellant was altered to encompass the name of the appellant. He contended that the charge sheet was meant to resolve the traffic case; hence, it was not necessary to include the names of all the victims. The counsel opined that the allegation of forgery levelled against the appellant was required to be proved beyond reasonable doubt; however, it was raised suo motto when the trial magistrate was composing judgment and the appellant herein was not given a chance to respond to the charge. Otherwise, the counsel argued that the appellant was admitted to the hospital; and having been discharged, the traffic case had been disposed of. The counsel maintained that the appellant established that he was among the victims of the accident; hence, entitled to be compensated. In respect of the 2nd and 3rd grounds of appeal, the counsel reiterated that the documentary evidence adduced in the trial court and corroborated by the evidence adduced by PW1, PW2 and PW3 established that the appellant was among the victims of the accident. Hence, the trial court was supposed to enter judgment in favour of the respondent. Regarding the 4th ground of appeal; the counsel contended that the criminal proceedings (Traffic Case No. 533 of 2020) were not intended to be the basis 7 of indemnity to the victims of the accident but to determine whether the 1st respondent was liable for the alleged accident. Hence, it was wrong on the part of the trial court to rely on the respective judgment in deciding the suit against the appellant. That the trial court, without cogent ground(s), denied credence to PW1, PW2 and PW4, who are government officials to the detriment of the appellant's case. Concerning the 5th ground of appeal, in substance, the counsel reiterated the charge made in the 1st ground of appeal in that the trial court erred in law in finding that the documents adduced in favour of the appellant's case were forged without evidence to that effect. That the allegation of forgery made by the respondents was required to be proved to the standard above the balance of probability, of which the respondents failed to discharge. The cases;

The cases of Omary Yusuf vs. Rahma Ahmed Abdulkadir

(1987) TLR 169 and International Commercial Bank Limited vs. Jadecam Estate Limited (2021) TZCA 673 were cited to bolster the point. Otherwise, the counsel contended that even without the documentary evidence, there remains sufficient evidence in support of the appellant's claim which the trial court failed to consider. 8 In validating the 6th ground of appeal, the counsel reiterated that the trial magistrate unreasonably alleged PW2 for lying to the court based on the mere ground that the PF3 (exhibit P3) doesn't indicate the particulars of the motor vehicle alleged to have been involved in the accident. The counsel contended that the medical report/PF3 which was duly filed, signed and stamped by the medical practitioner (PW4) is a standard form without room for the additional facts erroneously suggested by the trial court. He concluded that the trial court misdirected itself in disregarding the medical report on the ground that it was forged. Lastly, in substantiating the 7th ground of appeal, the counsel charged that the medical report ascertains that the appellant's shoulder was dislocated, resulting in the appellant being unable to work for several months. The counsel alleged that this fact, among others, was not considered by the trial court in reaching its impugned decision. On account of the above grounds, the counsel prayed this court to re-evaluate the evidence adduced in the trial court and make its independent decision thereto. Equally, the counsel prayed this court to allow the appeal in its entirety. 9 In reply to the 1st ground of appeal, Mr. Nanyaro submitted that the allegation of forgery was neither raised by the trial magistrate suo moto nor raised as an issue for determination by the trial court; but brought up by the defence witness namely, Jonas Joseph (DW2). Hence, it was the respective witness who alleged the appellant for forgery, not the trial court. However, the counsel admitted that, having evaluated the evidence, the trial court concluded that the documents tendered by the appellant were forged. Further, the counsel contended that the appellant had annexed the charge sheet in his pleading and duly adduced the same in proof of her claim; hence, the trial court was entitled to scrutinize and discredit the respective documentary evidence. In respect to 2nd and 3rd grounds of appeal, the counsel contended that the documentary evidence adduced in support of the appellant's claim lacked evidential value/credibility. Hence, the corroborating evidence from the public servants could not rescue the case. The counsel argued that PW1 was not at the scene of the accident when the accident occurred; hence, could not prove that the appellant was among the victims of the accident. That it is in the record that PW1 was informed about the accident by his superior, Inspector Stanley, who was not called to testify in court. That this court 10 should draw adverse inference on the part of the appellant for failure to bring the particular witness to testify for him. The cases; Aziz Abdallah vs. Republic [1991] TLR1 and Hemed Said vs. Mohamed Mbilu [1984] TLR 113 were cited to validate the assertion. Further, the counsel argued that the appellant's case depended on him establishing that he was involved in the accident and among the victims thereof, of which he failed. Thus, the trial court answered the 1st and pertinent issue in the negative. The counsel asserted that the appellant failed to discharge his burden of proof. The case of Barelia Karangirangi vs Asteria Nyalambwa (Civil Appeal

No. 273 of 2015(2019) TZCA, among others, was cited to buttress the point. Concerning the 4th ground of appeal, the counsel argued that, in totality, the evidence adduced by the prosecution in the trial court was hearsay. That the tortious claim commenced by the appellant originates from the traffic case in which the 1st respondent was arraigned before the court of law and pleaded guilty. Hence, the argument made by the appellant's counsel that the traffic case should not have been considered by the trial court is misleading. The counsel asserted that the 1st respondent was charged and 11 convicted of dangerous driving whereas the victims of the accident were identified by their names and the appellant was none of them. Hence, the appellant was not entitled to be compensated by the respondents. Pertaining to the 5th ground of appeal, the counsel reiterated that, in substance, the appellant failed to establish that he was among the victims of the road accident in which the respondents were responsible for compensating him. That the appellant's case was supported by the documentary evidence of which, upon evaluation, the trial magistrate found that they contradicted the corresponding evidence adduced by respondents herein which was considered credible. Hence, the trial court was right in arriving at the conclusion that the appellant failed to discharge his burden of proof. And regarding the 6th ground of appeal, the counsel contended that the PF 3 (exhibit P3) purported to have been issued to the appellant lacks necessary particulars as rightly found by the trial court. That the lack of the signature of the issuing police officer on the purported PF 3, among others, invites a host of questions respecting its credibility. 12 Lastly, responding to the 7th ground of appeal, the counsel argued that the trial magistrate was not obliged to dispose of all the issues raised during the trial as the 2nd and 3rd issues raised in the case depended on the 1st issue being answered in the affirmative. Thus, as the 1st issue was answered in the negative, it was needless for the trial court to canvass the remaining

## issues.

The counsel concluded that the 2nd and 3rd respondents herein adduced evidence which established that the appellant was not among the victims whom they were obliged to pay compensation for injuries sustained. Thus, the trial court was constrained to decide the case against the appellant. He urged this court to dismiss the appeal in its entirety with costs. At this juncture, I would canvass the grounds of appeal raised hereto sequentially commencing with the 5th grounds of appeal herein which necessitates a re-evaluation of the evidence adduced in the trial court. The question arising herein is whether the appellant established his claim on the balance of probabilities as opposed to the requirement of proof beyond reasonable doubt imposed on the appellant by the trial court. 13 Foremost, I find it pertinent to highlight that it is settled law in our jurisdiction that he who alleges must prove. See also the cases; Godfrey Sayi vs. Anna Siame (as Legal Representative of the Late Mary Mndolwa), Civil Appeal No. 114 of 2014, CA (unreported) and Barelia Karangirangi vs. Asteria Nyalwamba (supra), in this respect. And, it is likewise settled law that the standard of proof in civil proceedings is on the balance of probabilities. See also the cases; Jackson Sifael Mtares & Others vs. The Director of Public

Prosecutions (Criminal Appeal No. 180 of 2019) [2021] TZCA 612; and Attorney General & Others vs. Eligi Edward Massawe & Others, Civil Appeal, No. 86 of 2002, CA (unreported), among others. And in this respect, I am constrained to borrow a leaf from the case of Crescent Impex (T) Limited vs Mtibwa Sugar Estates Limited (Civil Appeal No.455 of 2020) [2023] TZCA 17501 wherein it was aptly held: “It is also elementary that the standard of proof, in civil cases, is on a balance of probabilities which means that the court will sustain such evidence which is more credible than the other on a particular fact to be proved. Likewise, it is the law that the burden of proof never shifts to the adverse party until the party on whom the onus lies discharges his/her burden to prove and the said burden is not discharged or diluted on account of the weakness of the opposite party's case.” 14 Reverting to the matter at hand, the appellant herein sought to recover a total of TZS 68,000,000/=, being specific damages for the injuries sustained during the road accident caused by the 1st respondent who was the employee of the 2nd respondent. Likewise, the appellant claimed TZS 200,000,000/= being general damages, among others. Primarily, based on the pleading and evidence adduced by both parties to this case, it is not disputed that the appellant herein sustained injuries which he alleges were caused by the car accident. And it is not disputed that on the material date, the 1st respondent herein, the employee of the 2nd respondent, caused injuries to some passengers who boarded the passenger vehicle through dangerous driving. The pivotal question, as rightly raised by the trial court, is whether the appellant was among the victims of the accident caused by the 1st respondent herein to justify payment of compensation by the 3rd respondent. It was the appellant's testimony in the trial court that on the fateful day the accident occurred, there was no traffic policeman near the scene of the accident. Thus, each victim found his own means to report the accident and reach the nearby hospital for treatment. The appellant enlightened the trial court that he was afforded transport assistance by a good Samaritan who 15 rushed him to Buguruni Police Station where he obtained PF3 and proceeded to Amana Hospital for treatment. He was discharged from the hospital after one week and reported to the police station where he was supplied with necessary documents to enable him to claim compensation from the 3rd of which he was unreasonably denied. The appellant tendered the medical report which was admitted in evidence as exhibit P7. One E6669 Sergeant Jamada (PW1), the police officer who investigated the case, supported the appellant's claim deponing that the appellant was among the victims of the accident who was entitled to be compensated by the respondents. As aforementioned, PW1 tendered the charge sheet, copy of the judgment, PF3 issued to the appellant, motor vehicle claim form (PF 90), cover note and PF 115 as exhibits which were admitted in evidence as exhibits P1, P2, P3, P4 P5 and P6 respectively. Suffices to mention that, PW1 conceded the fact that he was not an eyewitness to the alleged accident. He was merely informed about the accident by his superior namely, ASP Stanley who was not called to testify in court. Likewise, one WP 3914 Sergeant Rose (PW2), the policewoman on duty at the charge room of Buguruni Police Station on the fateful day the accident occurred, ascertained that the appellant reported being the victim of the 16 accident whereas she supplied him with PF3. In the same vein, one Dr Masoud Matange (PW4), deponed that on the fateful day of 09/11/2019, he attended the appellant at Amana Hospital. Contrary to what was deponed by the appellant, PW4 enlightened the trial court that the appellant was discharged the same day he was brought to the hospital. The defence case in the trial court was

constituted by the testimonies of the 3rd respondent's employees namely, Jonas Joseph (DW1) and Boniphace Mbogo (DW2). In substance, DW2 enlightened the trial court that earlier they received claims from the victims of the accident namely, Asha Hamis, Ebiola James and Mary Mwita of which they acted upon. That the above victims submitted documents namely, the charge sheet, motor vehicle claim form, and judgment given by the trial court in respect of the traffic offence preferred against the 1st respondent, in which the names of the respective victims were mentioned. DW2 tendered the respective motor vehicle claim form submitted by the victims mentioned above which was admitted in evidence as exhibit D1. Likewise, DW2 tendered the charge sheet in respect of the traffic offences preferred against the 1st respondent and judgment given by the trial court, which were admitted in evidence as exhibits D2 collectively. DW2 alleged that the respective documents didn't comprise the 17 name of the appellant herein. Likewise, DW2 alleged that the charge sheet (exhibit P1), and motor vehicle claim form (exhibit P4) tendered by PW1 were forged/alterd to encompass the name of the appellant to justify his claim for compensation of which he didn't deserve. I have anxiously scrutinized the evidence adduced by both parties in the trial court. And I observed the following matters: First, there is no corroborating eyewitness evidence supporting the appellant's claim in that he was among the victims of the accident caused by the 1st respondent which involved the 2nd respondent's vehicle insured by the 3rd respondent. Secondly, the documentary evidence adduced by PW1, specifically the charge sheet (exhibit P1) and motor vehicle claim form (exhibit P4) purporting that the appellant was among the victims of the accident caused by the 1st respondent contradicts the corresponding evidence adduced by DW2 (exhibit D1 and D2). In substance, the motor accident claim form (exhibit P4) tendered by the appellant herein bears four names of the victims of the alleged road accident, the appellant's name being the 4th in the list. However, the same document tendered by the respondent (exhibit D1) bears only three victims of the accident (in exclusion of the appellant) whose names validly appear in the charge sheet and judgment of the trial court 18 (collective exhibit D2). Suffice it to mention that the documentary evidence tendered by the appellant directly contradicts the evidence tendered by the DW2 herein. Third, the appellant deponed in the trial court that he was admitted to Amana Hospital for one week. It was not until he was discharged that he made a follow-up of the necessary documents from the police and made a claim to the 3rd respondent. The medical practitioner (PW4), told the trial court that the appellant was discharged the same day he was attended. The medical report (exhibit P7) likewise, support the fact that the appellant was not seriously injured. Hence, seemingly, the appellant exaggerated the extent of injuries suffered. It is worth reiterating that the trial court found credibility in the evidence adduced by DW1 and DW2; and opined that the documents tendered as evidence by the prosecution were altered to include the appellant's name to support his claims. Based on the evidence on record afore revisited, I find myself constrained to agree with the decision of the trial court. It is apparent that the trial magistrate asserted that the contradictory documents adduced by the appellant were forged. I am of the settled opinion that the trial magistrate meant to convey his suspicion that the respective documents were altered. 19 Needless to say, it remains unsubstantiated whether the appellant herein was among the victims of the road accident involving the 2nd respondent's vehicle to obligate the 3rd respondent to compensate him for injuries sustained. Hence, I find no cogent ground to fault the

finding of the trial court in that the appellant failed to discharge his burden of proof to the standard set by law (proof on the preponderance of the evidence). Thus, I find the 5th ground of appeal unmerited. Likewise, the discussion above equally disposes the 1st, 2nd, 3rd, and 4th grounds of appeal. The 6th ground of appeal alleges that the trial Magistrate erred in law and fact by holding that the PF3 issued to the appellant does not bear the particulars of the motor vehicle involved in the car accident without taking into consideration that the PF3 is a standard form which gives much emphasize on doctor's findings rather than the particulars of the motor vehicle involved in the car accident; hence, ended up deciding the first issue in negative. Admittedly, the trial resident magistrate strayed into an error in asserting that for proof that the 2nd respondent's vehicle was involved in the accident, the PF3 provided to the appellant should have borne the particulars of the respective vehicle. This is not only a non-legal requirement but also 20 impracticable based on the circumstances under which the accidents occur. However, I refuse the argument that the misconceived view of the trial court solely inclined it to decide against the appellant. It is apparent on the record that the trial court decision was hinged on the contradictory documentary evidence revisited above. The 6th ground of appeal lack footing; hence, collapses as well. At this juncture, I proceed to tackle the 7th and last ground of appeal. The charge herein is that; the trial court erred in law and fact in failing to determine the second issue framed by the parties which required the court to determine the extent of injuries suffered by the appellant during the alleged accident. This ground of appeal need not detain me. I find it pertinent to put it clear that the issues formulated and certified by the trial court for the determination of the dispute between the parties were thus:

1. Whether the plaintiff was among the victims of the accident.....”
2. (If the 1st issue is answered in the affirmative then) Whether the plaintiff suffered any injuries.
3. To what reliefs the parties are entitled to. 21 The 2nd and 3rd issues raised depended on the 1st issue being answered in the affirmative. Unfortunately, the 1st issue was answered in the negative for reasons already given herein above. Hence, the trial court was right to find that it was needles to canvass the 2nd issue pertaining to the extent of injuries suffered by the appellant. Thus, the charge in the 7th ground of appeal lacks substance as well. Given the foregoing, I find the appeal herein bereft of merit. Accordingly, the appeal herein is hereby dismissed with costs. I so order. DATED at DAR ES SALAAM this 18th October, 2024. O. F. BWEGOGGE JUDGE 22

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