

TANZANIA / JUDGMENT

# yusuph sijaona karume vs maulidi mohamed dadi 2 others 2023 tzhc 21544 29 september 2023

COURT  
TZHCDECIDED  
29 September 2023

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA < (MTWARA DISTRICT REGISTRY). . AT MTWARA CIVIL CASE NO.3 OF 2022 YUSUPH SIMONA KARUME,.....PLAINTIFF MAULIDI MOHAMED DADI.....Ist DEFENDANT DISTRICT COUNCIL OF MASASI.....,2nd DEFENDANT THE ATTORNEY GENERAL..... . 3rd DEFENDANT

## RULING

./Y/? \$ 2F; September 2023. LALTAIKA, J. The Plaintiff, YUSUPH SIJAONA KARUME, has brought forth this suit against MAULIDI MOHAMED DADI, DISTRICT COUNCIL OF MASASI, and THE ATTORNEY GENERAL, collectively referred to as the first, second, and third defendants, respectively. The Plaintiff initiated these proceedings by filing his Complaint in this court, seeking redress against the first and second Page 1 of 11 Defendants. In response, the first, second, and third Defendants jointly filed the Written Statement of Defence. The Plaintiff asserts that the cause of this suit is the unlawful act committed by the first Defendant on the 27th day of October 2020, around 20:00 hours. The first Defendant, while driving a Motor vehicle with Registration-No. SM 12371) Make Toyota Hilux under the instruction of his employer (the second Defendant) and in the course of his employment at Masasi town, negligently collided with the Plaintiff and his motorcycle with Registration No. MC 793 BXM, make King Lion, causing severe bodily injuries, including a visible fracture, a broken right leg, and damage to the motorcycle. Following the incident, the Plaintiff was taken to Mkomaindo Hospital for initial medical treatment and later transferred to Ndanda Referral Hospital for extensive medical procedures, including a serious surgical operation. The Plaintiff alleges that he continues to attend the Surgical Clinic to date. Furthermore, the first Defendant faced charges in the District Court of Masasi, was found guilty, convicted, and sentenced to pay a fine of TZS. 50,000/-, with a default sentence of six (6) months in jail. The Plaintiff, recognizing the third Defendant as a necessary party under the law, joined them in this suit. The Plaintiff seeks several reliefs, including a Declaration Order stating the unlawful nature of the defendants' actions, a Declaratory Order affirming the Plaintiff's entitlement to TZS. 126,500,000/- as general damages, a Declaratory Order requiring the Page 2 of

11 defendants to pay the Plaintiff TZS. 5,500,000/= as specific damages, and costs of this suit. There is an English saying (and an equivalent to it in almost every culture), that there is a silver lining in every dark cloud. The silver lining in this case appeared when parties herein decided to settle: the matter amicably out of court. A decision was reached to pay the plaintiff an amount that I will mention later and finalize the matter once and for all. No sooner had the learned counsel for the defendants notified this court of such good news than the plaintiff beseeched the court not to take the offer for granted. He related how Legal Officers of the second defendant had been abusing him and wished he had died from the accident. Although this court badly needed to promote alternative dispute resolution, it was not easy to dismiss the plaintiff's claim. Consensus was reached by both parties and this court had to wait until the agreed amount had been paid in full before marking the casefile withdrawn for amicable settlement, to Subsequent to necessary adjournments, on 19/3/2023, the second Defendant made a partial payment of TZS. 5,000,000/=-, acknowledging the settlement through Payment Voucher' No. 00803049 V2302061, signed by originating officer (Lazini Ali Yusufu), examining (Zauda Abdcdlah Mnandi), and authorizing officer (Hafidhi Issa Mohamed), as well as the Payment Remittance Advice signed by the District Executive Director of Masasi through Mfurn.o waUJipaji Serikali [MUSE]. Page 3 of 11 The said money was paid into the account name of YUSUPH SDAONA KARUME [details removed for privacy and data protection]. The second Defendant stated on the Payment Voucher that; "Makpo ikiwa ni kwa afifi ya kuriiatiza kesi nje ya Mahakam shauri namba 2/2022 kati ya Yusufu Sijaona Karume dhidi ya Ha/imashauri ya wiiaya ya Masasi, Mwanasheia inkuu wa serikali na.Maubdi Dadi Hiopo Mahakama kuu Mkkara Dokezo iimeambatanishwa. " After the above payment; many days passed without any significant progress, This court, however, was willing to wait and tirelessly reminded the learned legal officers and the State Attorney to ensure the matter was dealt with carefully bearing in mind that the plaintiff was a Person with Disability (PWD) who had difficulties accessing the court. Initially the plaintiff was under the legal services of Mr. Mohamed Menyanga, a seasoned Advocate from Masasi. It appears however that at some point, the learned counsel differed with his client and decided to file a letter in this court for withdrawal of instructions. The plaintiff was left to carry his own cross, literally, and figuratively. It was obvious that he was losing hope. On 6/6/2023 three months after the last payment was made, the plaintiff was extraordinarily bitter. No sooner had he put down his clutches than he started narrating his misery. As a reader in therapeutic jurisprudence and a strong supporter of the right to freedom of expression., I gave the plaintiff undivided attention. I listened to everything he wanted to say without interruption. Not even asking a question for clarification. Page 4 of 11 Needless to say, that I could clearly see the level of tension decreasing as the plaintiff explained how he was so grateful to God that even though he had become disabled was still alive and there were attempts to help him finalize the court battle albeit with what he termed a "peanut" compared to the amount of money he spent to pay hospital bills alone. I think that is exactly what the concept of therapeutic jurisprudence is all about. The International Society for Therapeutic Jurisprudence provides as follows in their informative website <https://intitj.oorn/> "Therapeutic jurisprudence (TJ) is an interdisciplinary field of philosophy and practice that examines the therapeutic and anti-therapeutic properties of laws and public policies, legal and dispute resolution systems, and legal institutions. TJ values

psychologically healthy outcomes in legal disputes and transactions, without claiming exclusivity in terms of policy objectives.

See also Wexler, David B. (2014) "Two Decades of Therapeutic Jurisprudence" *Touro Law Review*. Vol. 24: No. 1, Article 4. Available at: [https://www.tourolawreview.com/article.php?id=TLR-V24N1-A4](#)

At this juncture, let me openly say that I really wanted to try and make, sure this judgement is focused on issues (as opposed to events and people). I wanted to avoid mentioning any names including the learned State Attorneys involved to ensure concerned offices deal with issues as they emerge rather than waste much time on personalities but let me transgress for a moment I cannot avoid providing the much-needed link to the orders that will follow. Here we go! It appears that the learned State Attorney Ms. Getfuda Spngoi, for no apparent reasons, HATED listening to the plaintiff narrating his Page 5 of 11 misery. Ms. Songoi got furious. She spoke in a high voice as if she was not in a courtroom and demanded that the plaintiff stopped abusing "the government" because she was the sole representative of "the government." It was very dramatic. In hindsight, it is still totally unbelievable that a learned lawyer, in a court room, would scold a plaintiff, worse still a person with disability, in an attempt to stop him from expressing himself. I was dumbfounded, to say the least. Since it was my first time seeing the learned State Attorney in such a perplexing mood, I decided to take it easy in order to protect the court's decorum. Hearing such a high-pitched voice, a passerby could easily mistake the Court chamber for a pomb club. After a few minutes, peace was restored, and the matter was adjourned for mention for necessary orders. On the 27th of July 2023, lo and behold, the learned State Attorney was still in her vengeful mood, She advised the court that the defendants were no longer interested in amicable settlement of the matter hence the case file should proceed with litigation. The declaration from the learned State Attorney came as a surprise to this court. Again, in the spirit of protecting the court's decorum, the matter was adjourned. Apparently, this court thought that given a few more weeks, the learned State Attorney would come back to her senses and allow the matter to proceed but to no avail. On 19/09/2023 the learned State Attorney appeared extraordinarily arrogant, in her opening sentence she told the court that she didn't know what the matter in court was whether for mention or necessary order. Her only wish was that the matter be allowed to proceed with litigation. Page 6 of 11 Fortunately, by then, this court had taken time to reflect on the situation and study the matter more closely. Everything, in my opinion, boils down to the quest for recognition and unquenchable hunger for praises that has befallen many young people in Tanzania and beyond. According to One pundit "vijana wengi wanapenda kusifwa mi tatizid (Many young people are obsessed with praises [and recognition] ...it is such a great problem/" The commentator believes that obsession for praise and recognition is a new form of corruption. It appears that the plaintiff, in ail that he narrated to this court, never acknowledged the "helping hand" extended by Ms. Songoi. This brings to my mind what Jesus told his disciples in the seventeenth chapter of the Gospel according to St. Luke as reproduced below: "...So, you also, when you have done everything, you were told to do, should say, We are unworthy servants; we have only done our duty/" (The Holy Bible, New International Version NIV Luke 17:10 emphasis added) : :

Interestingly, the word "watumishi" used in the Union Version of the Kiswahili Bible is the same word used for civil servants in Tanzania "watumishi wa umma." Impliedly, no public servant,- including me, should demand, as of right, accolades, tributes, awards, or any form of praises for

facilitating acquisition of a given right or access to some social services to a mwanaridii. We are unworthy servants TUWATUMISHI TUSIO FAIDA. We have only done what the GOVERNMENT on behalf of the PEOPLE has told us to do. Page 7 of 11 Back to the grux of the ruling .Contract law in our country recognizes and enforces both written and unwritten contracts. Although, akin to procedure governing this court while conducting mediation namely to avoid taking proceedings that would become prejudicial to either party in the event that the matter proceeds to litigation, there is overwhelming evidence that a contract was entered upon by the parties. As reproduced earlier, the plaintiff had received five million shillings from the defendants. As a result of such a transaction, the defendants are estopped from denouncing the agreement It is very unfortunate that the learned State Attorney and legal officers of the second defendant, thought that since the matter was still at mediation stage and a copy of the draft deed of settlement was yet to be filed in court, there would be no "evidence" to hold the defendants liable. Nothing can be far from the truth. The defendants must honor their part of the agreement in a timely manner. Before I pen down, I am inclined to provide albeit in passing that there is a need for concerned authorities In our country particularly the Office of the Solicitor General of the United Republic of Tanzania to develop a comprehensive NATIONAL LITIGATION POLICY. Borrowing from India a National Litigation Policy: "Is based on the recognition that government and its various agencies are the predominant litigants in courts and tribunals in the country. Its aim is to transform government into an efficient and responsible litigant, "] Admittedly, mere development Of a National Litigation Policy is not enough. The policy must be backed up with a concrete IMPLEMENTATION Page 8 of 11 PLAN. In the words of the High Court of Delhi speaking through a bench of Chief Justice Chandra Sharma and Justice Sanjeev Narnia stated as follows as reported by one of the world's most read newspaper Tty\*Hindu Of 23rd September 2023 in an article titled "Implement 'National Litigation Policy' in time-bound manner: hIC to Center" by Sai bam Rocky •Sihcjh. I take the liberty to reproduce a part of the informative article. "The Delhi High Court has order the Centre to prepare a time- bound action plan for implementation of the 'National Litigation Policy' noting that overwhelming majority of cases currently dogging the judicial system involve either the Centra/Government, State Governments, or public sector undertakings (PSUs)...The bench highlighted that "there is thus an urgent need for a system that prevents unnecessary litigation by engaging in an audit of the decision-making process which leads to such litigation The High Court said... "The checks and balances should, at outset, involve mandatory consultations between: the concerned .officers of the- government body/ Giganisation and legal expaits towards ensuring that cases, involvingwell-settled issues are not sought to berelitigated... The government, as the largest litigan t in the country, bears an intrinsic responsibility — a duty that goes beyond traditional roles...An effective litigation policy or guideline is not merely an admirubtrafive tool; it is a powerful statement of intent, reflecting the government 's unwavering commitment to the rule of law, equity, andjustice/" the High Court said. (Emphasis added) A useful post on WIKI titled National Litigation Policy provides as follows on what [a government as an] efficient litigant means: "4 litigant who is represented by competent and sensitive legal persons: competent in their skills and sensitive to the fact that government is not an ordinary litigant and that a. litigation does not have to be won at any cost." (Emphasis added) Page 9 of 11 The phrase "competent and sensitive" as used in the above quote carries a

deep meaning. It goes beyond academic qualification and professional accreditation/certification. It is, I think, more of a mindset issue. Some really competent lawyers come to court with experiences acquired from working with other institutions that require so much verbal arguments. Some quickly adopt new ways of thinking and others refuse to change. There should also be a mechanism of identifying lawyers who cannot distinguish between a courtroom and some other /idea where ten or more individuals can speak at the same time even if it means climbing up on a table. Such lawyers, in my opinion, can be recategorized and assigned duties in combative workplaces that need no negotiation skills. Premised on the above I hereby order that the respondents jointly and severally, as hitherto agreed:

- (1) Within sixty days from the date of this judgement, to pay the plaintiff a total amount of TZS 5,000,000 (read five million Tanzanian Shillings) being the remaining amount of consolation for damages caused.
- (2) Within ninety days from the date of this judgement we have to provide the plaintiff with a brand-new Motorcycle MAKE KING LION as compensation for the motorcycle destroyed by the 1st defendant. JUDGE 2.9,09,2023 Page .10' of 11 Court: This ruling is delivered under my hand and the seal of this Court this 29th day of September 2023 in the presence of the Plaintiff who has appeared in person, unrepresented and in the absence of the cefendants. Page 11 of 11

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