

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC. CIV. APPEAL NO. 33 OF 2013

HAJI ALI BACHOO.....APPELLANT

versus

MAKUNJA C.B. & CO. ADVOCATES.....RESPONDENT

JUDGMENT

11th & 30th August, 2021

RUMANYIKA, J.:

Pursuant to order of 9/8/2016 of this court (De-mello, J) appeal being dismissed due to, contrary to order of 15/9/2015 failure of Haji Alli Bachao (the appellant) to file amended memorandum of appeal, but end of the day on application, by way of review the same was restored, the back log appeal was, now by way of audio teleconference called on 11/08/2021 for hearing.

Mr. E. Katemi learned counsel appeared for the appellant. Mr. Makunja appeared on behalf of Makunja C.B. & Co. Advocates (the respondent). I heard them through mobile numbers 0688 368 634 and 0763 451 189 respectively. With regard to the dismissal order one having

had appealed but at the instance the Court of Appeal of Tanzania marked it withdrawn on 18/06/2020.

The six grounds of appeal revolved around, and they could be reduced to 4 points essentially:-

One, that now with the pleadings complete the trial court should not have made ex parte judgment against the appellant.

Two, that the interest of 30% awarded by the trial court was excessive and illegal.

Three, that there was no justification for the amount of damages awarded to the respondent.

Four, that the trial court erred in law and in fact not holding that between the parties the retainer agreement wasn't exclusive of such other clients.

Mr. Katemi Erick learned counsel appeared for the appellant. Mr. Makunja C.B. appeared for the respondent.

In a nutshell, Mr. Katemi Erick learned counsel submit; **(1)** that on such terms and conditions it was an undeniable fact that being counsel and client respectively the parties had a retainer agreement but 12 months

compensation of shs 13.70m had no connection with the agreement because the damages was not either specifically pleaded or proved much as looking at the terms and conditions the agreement had no such exclusivity. Contrary to S.110 (1)(2) of the Evidence Act therefore, irrespective of exparte proceedings and order the respondents did not, on the balance of probabilities prove his claims **(2)** That contrary to provisions of Order XX Rules 21 of the Civil Procedure Code Cap.33 RE. 2019 interest chargeable was limited to a range of 7% - 12% and therefore 30% was excessive and illegal. That the appeal be allowed with costs. That is all.

The respondent simply submitted that the appeal was misconceived and confusing therefore it ran short of merits because the latter's case was proved on the balance of probabilities and he prayed the court to declare it as such with costs.

A brief account of the respondent's evidence ran that following the order of attachment and sale of the defendant's (now respondent's motor vehicle with Reg. No. T. 768 AJM make Toyota Land Cruiser Prando (vehicle)) in execution No. 18 of 2021 between the present appellant and Joseph Nyamu (Decree Holder) and judgment debtor respectively, and still under the retainer agreement the appellant having had done all the

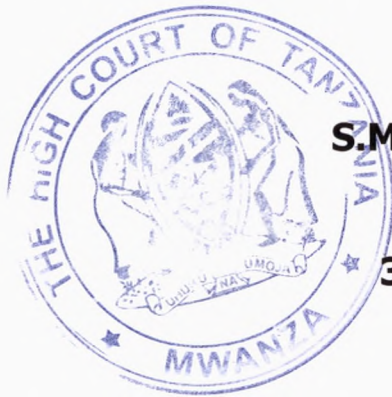
damages of shs. 2,000,000/= (two million only). Each party shall bear their costs. It is so ordered.

Right of appeal explained.

S.M. RUMANYIKA
JUDGE

23/08/2021

The judgment delivered under my hand and seal of the court in chambers this 30/08/2021 in the absence of the parties.



S.M. RUMANYIKA
JUDGE

30/08/2021