

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO.99 OF 2023**

**BETWEEN**

**PAULO W. CHACHA.....1<sup>st</sup> APPELLANT**  
**WILLIAM MLOLOWA MPUHIA.....2<sup>nd</sup> APPELLANT**  
**NATHAN MPANGALA.....3<sup>rd</sup> APPELLANT**  
**RUMISHA WILFRED KIMARO.....4<sup>th</sup> APPELLANT**  
**LUDOVICK KAKUSA.....5<sup>th</sup> APPELLANT**

**VERSUS**

**CREPIN BULAMU.....RESPONDENT**

**JUDGEMENT**

*9<sup>th</sup> & 30<sup>th</sup> November, 2023*

**MWANGA, J.**

The problem with unnecessarily obstructive neighbors needs to be handled carefully to avoid tensions rising high and the consequences thereat. Allegedly, this was a case of going to the neighbor's land. The appellants are residents of the Mtoni Kijichi area, within Temeke Municipality in Dar es Salaam Region. The respondent also owns a piece of land in the area described as Plot No. 588, Block E with certificate Title No. 56194.

From the records, it appears that the respondent purchased his landed property in two pieces. When he purchased the first plot No. 588, there was a narrow path/road where people used to pass by foot. After he had purchased the second plot on the other side of that path/road, the respondent decided to close that path, hence creating an alternative narrow path outside or around his plot. The appellants and other members of the communities living in the neighborhood faced some critical challenges with the newly created path due to its narrowness and the darkness caused by trees planted by the respondent. The record shows that thieves and robbers used to hide in the place and, in some instances, some members of the communities were caught with incidents of murder in the area.

The issue was reported to the District Commissioner and later to the Executive Director at Temeke Municipality who formed a team to resolve the dispute while noting that, the contested place was not surveyed. After the meetings of both sides, the respondent agreed to extend one meter to increase the road so that people and cars can pass through. The decision was reached on 21<sup>st</sup> April 2021.

However, unfortunately, for about nine months the respondent did not implement the decision. Thus, the appellants, on 4<sup>th</sup> January 2022 decided to implement it on their own. This led to the respondent's cry at

the trial court that, the appellants trespassed into his land and destroyed his wire fence constructed using concrete beams and metallic wire mesh. They also stole and converted them for their use. Further allegations were that the appellants broke therein and stole three metric tons of metallic rods which were kept in the building for construction purposes. He added that the appellants uprooted and stole eight neem trees which were later converted to timbers and firewood for their use.

Upon full trial, the court had the following observations; **One**, the trespass had been proved. **Two**, the theft has not been proven. **Three**, the appellants are to compensate the respondent Tshs. 10,000,000/= as general damages and 5,000,000/- as exemplary damages since the appellants extended beyond the agreed one meter plus the undisputed destructions to properties namely fence and trees in the course of the said road extension. **Fourth**, the respondent was awarded a 7% court interest rate from the date of judgment till the date of final payment. **Five**, the overextended meters be returned to the plaintiff.

The appellants were aggrieved by the decision of the Resident Magistrates' Court of Dar es Salaam at Kisutu, dated 10<sup>th</sup> May 2023 in Civil Case No. 41 of 2023 before **Hon. Y.R, Rugoboroga (PRM)**. They believed that it was the respondent's to be blamed for what had happened due to the prolongation of implementation of the agreement/decision.

Again, since there was no proof of loss suffered, the respondent was not entitled to anything. Thus, on the 19<sup>th</sup> of June, 2023 the appellants appealed to this court against the whole judgment and decree on the following grounds;

- 1. That, the learned trial Magistrate erred in law and fact by entertaining a matter in which the trial court had no jurisdiction despite the preliminary objection raised by the Appellants.*
- 2. That, the learned trial Magistrate erred in law and fact by holding that the Appellants trespassed on the Respondent's land in disregarding the Respondent's consent through settlement and it was a matter of public interest.*
- 3. The learned trial Magistrate erred in law and fact by making a decision on matters which were never pleaded by the Respondent in his Pleint.*
- 4. The learned trial Magistrate erred in law and fact by awarding TZS 10,000,000/= as general damages and TZS*

*5,000,000/= as exemplary damages to the respondent arbitrarily.*

*5. The learned trial Magistrate erred in law and fact by entertaining a civil matter which is mixed up with criminal allegations in its pleadings, proceedings, judgment, and orders.*

*6. The learned trial Magistrate erred in law and fact by failing to consider the testimony and evidence of the Appellants' witnesses and relied on the Respondent's testimony which was of more hearsay.*

*7. The learned trial Magistrate erred in law and fact by failing to evaluate and reconsider the strong evidence adduced by the Appellant's Witnesses and it only relied on the weaker evidence adduced by the Respondent's Witnesses which did not even prove the allegations.*

The appellants were represented by the distinguished learned advocate Mohamed Maulid Nokolage, while the respondent was ably represented by learned advocate Benson Mpasu.

By consent of the parties, the grounds of appeal were argued by way of written submissions. The scheduling order was diligently followed,

resulting in the filing of the appellants' in-chief submission and the respondent's comprehensive reply, and finally, a rejoinder submitted by the appellants.

After careful examination of the trial court records, and the submission of both parties, I have concluded that the ground of appeal No. 4 and 5 argued together disposes off this appeal. These are;

*(4). That the learned trial Magistrate erred in law and fact by awarding TZS 10,000,000/= as general damages and TZS 5,000,000/= as exemplary damages to the respondent arbitrarily; and*

*(5). That the learned trial Magistrate erred in law and fact by entertaining a civil matter that is mixed up with criminal allegations in its pleadings, proceedings, judgment, and orders.*

Submitting on the point of general damages, the counsel for the appellant argued that, the general damages in the trial court were awarded on the baseless grounds. According to him, there was no proof at the trial court that the Respondent suffered any loss worth being compensated. Again there was no evidence given by the Respondent regarding Mob justice. Further to that, it was contended that the Respondent consented to the road extension and that only he did not have money to effect the road extension, he ought not to be awarded the general damages as such. In

response to that counsel for the Respondent cited case of **P.M. Jonathan vs Athuman Khalfan [1980] TLR 175**, stating that general damages are compensatory in character and take care of loss of reputation as well as mental pain and suffering. In substantiating his argument, he complained of having suffered damages due to the act of the appellants for the tort of trespass into the respondent's land and destruction, the issue which was proved by the trial court. The Respondent's fence was demolished to justify the damages. He argued further that the amount awarded was too small compared to the loss suffered. In his rejoinder counsel for the Appellants insisted that, they were acting to assist the Respondent to honor his agreement of road extension.

In the 5<sup>th</sup> ground, the Counsel for the Appellants contends that, in the pleadings, the Respondent alleges stealing of his properties such as gates, trees, metallic rods etc. also the same was raised as an issue by the trial court but was concluded The Respondent did not prove his allegation which were criminal in nature and that regard the trial court had no jurisdiction to decide criminal allegation into civil case and involving civil procedure. In his reply to the submission in chief counsel for the Respondent stated that, the trial court raised four issues. And according to the case of **Sheikh Ahmed Said versus The Registered of Manyema Masjid (2005) TLR 61**, the court insisted that the trial court

must make specific finding on every issue framed in a case, even where some of the issues covers the same aspects. Therefore, he invited the court to dismiss this ground of appeal. In his rejoinder Counsel for the Appellant stated that, criminal allegations have their special forum and proceedings far beyond what trial court employed.

Having considered the submissions of both counsels and records available, I wish to take note of the findings in the case of **Vidoba Freight Co. Limited Versus Emirates Shipping Agencies (T) Ltd Emirates Shipping Line**, Civil Appeal No. 12 of 2019. The court held that, it is a trite law that when awarding general damages, the trial court must provide the reason to justify the award. See also the case of **Anthony Ngoo versus Davis Anthony Ngoo**, Civil Appeal No. 25 Of 2014 Unreported) where it was stated that: -

*"The law is settled that general damages are awarded by the trial court after consideration and deliberation on the evidence on record able to justify the award. The judge has discretion in awarding general damages although the judge has to assign reasons in awarding the same."(emphasis is mine).*

Having gone through the respondent's plaint paragraph 3 stated that he claims against the defendants jointly and severally special,



exemplary, and general damages for torts of trespass to land, and trespass to property by conversion.

Given the above, the trial court in awarding general and exemplary damages had this to say;

*"As to the prayers for general damages in item (c) this court has considered the fact that the defendants extended into the plaintiff's land beyond the agreed one meter as confirmed by DW2 that they extended about three, plus the undisputed destructions to properties namely the fence and trees in the course of said road extension, and order the defendants jointly to compensate the plaintiff with Tshs, 10, 000,000/= say Tanzania Shillings ten million as general damages and for exemplary damages in item ( d), as a way of admonishing and discouraging mob justice incidents. I order the defendant jointly to pay the plaintiff Tshs. 5000,000/=:, say Tanzania shillings Five million".*

The question now is whether the observation of the trial court justifies the award. In the case of **P.M. Jonathan vs Athuman Khalfan [1980] TLR 175**, the court had this to say;

*"The position as it therefore emerges to me is that general damages are compensatory in character. They are intended to take care of the plaintiff's loss of reputation, as well as to act*

***as a solarium for mental pain and suffering.” [Emphasis supplied]***

Because of the above, I am of the considered view that, the respondent did not meet the threshold of what the law requires to entitle him to general damages. There was no loss suffered justified the compensation, neither loss of reputation nor mental pain and suffering. The awarding of the general and exemplary damages was based on mob justice. Mob justice is a criminal law concept that connotes several persons taking the law into their own hands to kill or injure a person.

In addition to that, the plaint and issues raised were a combination of the two branches of law; public law (criminal law) and private law (civil law). The four (4) issues framed were as follows.

- i. ***whether the defendants jointly or severally committed the tort of trespass into the plaintiff's land;***
- ii. ***whether the defendants stole from the plaintiff's land three tons of metal rods@ nondo and trees hence trespass to property by conversion;***
- iii. ***whether the defendants destroyed the plaintiff's wire mesh fence; and***
- iv. ***What reliefs are parties entitled to?***

In the second issue above, on whether the appellants broke and stole three metric tons of metal rods worthy of Tshs. 6,000,000/= is purely a criminal issue that ought to be determined by the criminal court. Likewise, the respondent under paragraphs 7 and 8 of his plaint pleaded that the appellants herein stole the said material from his house. These allegations are purely criminal and no proof was ever produced to incriminate the appellants beyond reasonable doubt. The trial Magistrate proceeded to even test the standard of proof on that issue to be on the preponderance of probability, which is wrong. Because the facts as pleaded and the testimony thereof were criminal in nature, and the standard of proof in criminal cases is beyond reasonable doubt. The plaintiff can prevail in a civil case only if each element of the legal claim is proved by a preponderance of the evidence and not on proof beyond reasonable doubt.

Given the above, I think the appellants were right in saying that the trial court magistrate had no jurisdiction to raise and deal with the criminal matters raised in a civil suit because these are two different legal claims or causes of action. With such observation, in my view, the act of raising and determining criminal issues in a civil suit renders the whole proceedings and judgment of the trial court a nullity. In that respect, those

two grounds of appeal are sufficient to dispose of the remaining grounds of appeal.

That being said and done, the appeal is allowed. The judgment and proceedings of the trial court are quashed and set aside. To enhance virtuous relationships as neighbors, I make no order to costs to the parties.

Order accordingly.



A handwritten signature in blue ink, appearing to read "H. R. Mwangi".

**H. R. MWANGA**

**JUDGE**

**30/11/2023**