THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: LILA, J.A., KOROSSO, J.A., And KENTE, J.A.)

CIVIL APPEAL NO. 206 OF 2017

AIRTEL TANZANIA LIMITED ..... APPELLANT

VERSUS

OSE POWER SOLUTIONS LIMITED ..... RESPONDENT

(Appeal from the Decision of the High Court of Tanzania, Commercial Division at Dar es Salaam)

(Teemba, J.)

dated the 14th day of July, 2017
in
Civil Case No. 40 of 2012

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JUDGMENT OF THE COURT

12th July, 2021 & 20th December 2021

KOROSSO, J.A.:

This appeal arises from the judgment of the High Court of Tanzania, Commercial Division, where the respondent successfully sued the appellant for breach of contract related to supply of goods and services. A judgment was entered in favour of the respondent who was granted Tshs. 1,920,473,771.79 and USD 143,484.72 as costs of goods and services supplied and Tshs. 20,000,000.00 as general damages. However, the counterclaim filed by the appellant together with his written statement of defence was dismissed for lack of proof.

A brief background to the case is that: Between 2009 and 2012, the respondent supplied the appellant with goods and rendered some services that included generators, spare parts, fuel, electrical installation in the Airtel towers, other electrical and general services of the towers

and generators including supply of fuel and batteries to the sites. On 20/3/2012 the respondent filed a suit against the appellant through a plaint which later, with the leave of the court, was amended on 17/5/2013. When the original plaint was filed, it included annexures BLC 1-4. Upon lodging the amended plaint, new annexures to reflect additional claims were included. However, the annexures which had been part of the original plaint were not included. Nonetheless, the amended plaint alluded to adopting the annexures in the original plaint by referring to them in paragraph 5 of the amended plaint. Whilst the original plaint indicated that the principal amount claimed was Tshs. 1,506,190,715.99 and USD 117,119.98, the amended plaint indicated Tshs. 1,920,998,371.79 and USD 143484.72 for costs of goods supplied and service rendered to the appellant. The respondent also prayed for payment of damages for breach of contract amounting to Tshs. 300,000,000.00 plus interest and costs.

It was the respondent's case (the plaintiff then) through the testimony of Benedicto Tigahela (PW1), that the respondent did supply electrical installations in Airtel towers, provided other electrical and general services to the towers and generators and supplied fuel and batteries to the sites. PW1 contended that the respondent also provided services related to electrical installation at 39 sites in Dar es Salaam,

Iringa, Mbeya, Rukwa, Katavi, Kigoma and Coast Regions. According to PW1, supply of goods and services were effected in response to instructions received from the appellant by way of issuance of Local Purchase Orders (LPOs), telephone calls and emails which thereafter led the respondent to prepare and issue invoices for payment.

On the part of the appellant (the defendant then) through written statement of defence (WSD) denied all the respondent's claims and filed a counter claim for a refund of Tshs. 479,229,406.91 and USD 644312.50 alleging that they arose from overpayment for supply of 23 pieces of 20KVA generators. The appellant alleged further that instead of paying USD 808475.00, USD 1452787.50 was paid and that in 2010 ordered the respondent to supply fuel of Tshs. 75,205,139.70 and that they inadvertently, paid the respondent Tshs. 554,434,546.61. The trial court having heard the parties gave judgment in favour of the respondent which aggrieved the appellant, hence the current appeal.

The memorandum of appeal is predicated on 15 grounds of appeal which essentially address the following complaints: **one**, faults the trial judge for flouting established procedures when extending the life span of the case; **two**, faults the trial court for admitting photocopies of the documents without satisfying itself that the appellant held the original documents; **three**, faults the trial Judge for admitting inadmissible

evidence while failing to make a determination through a ruling on propriety of admitting photocopies of documents; **four**, faults the trial judge's failure to consider the appellants arguments on inconsistencies of the documents filed in court and those tendered without assigning reasons; **five**, faults the trial judge for finding that the respondent delivered goods and services to the appellant in the absence of signed delivery notes; **six**, faults the trial judge for admitting documents not attached to the amended plaint or any other pleading and those lodged after the suit had been lodged in court; **seven**, faults the trial judge for granting sums of money based on contradicting pleadings; **eight**, faults trial judge for considering respondent's evidence where the counter claim was not opposed; **nine**, faults the trial judge for holding that overpayment was not proved as alleged whilst receipt of the amount claimed was admitted by respondent; **ten**, challenges the 20% interest granted in both dollars and shillings and the 10% interest on decretal amount granted from the date of judgment to the date of settlement without any agreement between the parties; and **eleven**, faults the trial judge for awarding special and general damages to the 1st respondent in absence of proof.

On the day of hearing, the appellant was represented by Mr. Hangi Chang'a, Principal State Attorney, Mr. Stanley Kalokola, learned State

Attorney and Dr. Alex Nguluma, learned Advocate. On the part of the respondent, Dr. Chacha Murungu, learned Advocate who was holding brief for Mr. Alfred Mgare, learned Advocate with instructions to proceed with hearing, entered appearance.

When hearing commenced, Mr. Chang'a sought and was granted leave of the Court for the Solicitor General to appear and represent the appellant in terms of section 17(1)(a) and (2)(b) of the Office of Attorney General (Discharge of Duties) Act, Cap 268 RE 2019 (the OAG Act). Thereafter, Dr. Nguluma provided an overview of the appellant's case and the background as summarized above. He contended that the appeal raises issues of burden of proof and the essence of damages where there is a breach of contract. He faulted the trial judge for omitting to properly interpret issues before her for determination as they relate to the law of evidence specifically on sufficiency of proof on alleged facts.

On the 1st complaint, the appellant's arguments are found in the filed written submission which the learned Principal State Attorney had adopted at the start of hearing. The appellant faults the trial judge for extending the life span of the case *suo motu* without specifying the speed track to guide the trial. The order by the trial judge for rescheduling of the life span of the case was challenged particularly on

the legality of the proceedings that took place between expiry date, that is, 22/9/2013 and the date of the ruling 12/4/2016 without providing any order on when the rescheduling order took effect. The appellant prayed that in view of the said anomaly, all proceedings and orders of the High Court made from 12/4/2016 onwards be declared a nullity and set aside.

In reply, the respondent through written submission argued that the decision of the High Court to extend the life span of the case was proper and thus the prayer for striking out part of the proceedings is improper and contravenes the spirit of Order VIIIA of the Civil Procedure Code, Cap 33 RE 2002 (the CPC). He also argued that the cited case by the appellant to bolster their position, that is, **National Bureau of Statistic vs The National Bank of Commerce and Another,** Civil Appeal No. 113 of 2018 (unreported) is distinguishable, maintaining that in that case the life span of the case expired before commencement of hearing while in the instant case the life span expired when the trial was still ongoing.

We have revisited the record of appeal (the record) and it shows that on 12/2/2016, when PW1's testimony was ongoing, the learned advocate who was then representing the appellant, alerted the trial Judge on expiry of the speed track guiding the trial and argued that this meant the court lacked jurisdiction to proceed with hearing of the case.

Responding to the prayer, Mr. Mgare, learned advocate who was then representing the respondent opposed the stated position and argued that the Court had the requisite jurisdiction to extend time and can depart from the expired scheduling order. On 12/2/2016, the trial court proceeded to vacate the order of 29/9/2013 and ordered that the suit be heard to finality (see pages 227-228 of the record Vol. I).

Noteworthy, is the fact that speed track 4 which had previously guided the trial pursuant to Order VIIIA rule 3(3)(4) envisaged the trial to be concluded within 24 months. As the order was delivered on 23/9/2013, it meant the life span of the case expired on the 22/9/2015. Evidently, when the rescheduling order was made, the life span of the case had already expired for more than four months. The issue for our deliberation is whether the trial judge had no jurisdiction to reschedule the expired speed track. This Court had occasions to address this concern and in the case of **National Bureau of Statistics vs NBC and Another** (supra), confronted with a similar situation, we held:

> *"... the spirit embraced in assigning a suit to a certain speed track is only to facilitate the expeditious disposal and management of the case. It is thus not expected that failure to adhere to a scheduled speed track will have consequences of having a suit struck out.*

Instead, a judicial officer presiding over the suit is enjoined to ensure that substantive justice is done to the parties by affording them opportunity to be heard and the matter to be determined on merit. Cognizant of that right, Order VIIIA did not directly impose any legal consequence in the event the scheduled speed track expires... That said, we need not overemphasize that the inescapable inference and conclusion is that striking out a suit is not a resultant effect envisaged by the law, for, had it been the intention, it would have expressly stated so. Instead, the trial court, either upon being moved by either of the parties or suo motu has to amend the scheduling order and where the highest speed is attained and yet the case is yet to be finalized to enlarge the time frame until the case is concluded. It is only by doing so, that we shall be according due regard to the dictates of the law."

We subscribe to the above position. In consequence, in the instant case, we affirm the decision by the trial judge on the matter, finding it to embrace the spirit envisaged by the law when a speed track is prescribed. Indeed, the record shows that the dictates of the law were followed by the trial judge in rescheduling the case life span. We are

thus of the view that the complaint is misconceived. Accordingly, complaint number one falls.

At this juncture, we find it prudent to deliberate on complaint number 8, which faults the trial judge for considering the respondent's evidence whilst the counterclaim was not opposed. Mr. Nguluma argued that since a counter claim pre-supposes existence of a contract therefore there was no necessity to prove its existence. In the written submissions, the appellant argued that even though the appellant's counterclaim was filed with the WSD, the respondent failed to counter in line with the requirements of Order VIII rule 11 of the CPC. With the said omission, the appellant argued that the proper way forward would have been for the trial judge to consider the provisions of Order VIII rule 14(1) of the CPC instead of allowing the respondent to defend the counterclaim during hearing. The case of **Joe RM Rugarabamu vs Tanzania Tea Blenders Ltd** (1990) T.L.R. 24 was referred to cement his argument on the consequences where a counterclaim is not opposed.

On his part, the respondent contended that the complaint is misconceived since after the respondent was granted leave to amend the plaint, upon filing the amended plaint and serving it to the appellant, in the absence of any court order to file an amended counterclaim, apart from the filing of the WSD in response, there was no legal requirement

for the appellant to file a new counterclaim. The respondent argued that a counterclaim being an independent suit remained intact and that the appellant miserably failed to prove the counterclaim.

In determining this complaint, we revisited the record and discerned that in the WSD filed by the appellant on the 24/5/2012, paragraphs 9-18 expounded counterclaims which were resisted in the respondent's reply to the WSD filed by the respondent on 18/6/2012. The amended WSD filed by the appellant on 29/5/2013 included a counterclaim, which was not responded to by the respondent in the amended reply to WSD filed on 6/6/2013. In discussing the propriety of filing counterclaims where the plaint and the WSD are amended, the trial judge observed:

> *"...let me agree with Mr. Galeba, learned counsel for the defendant that the plaintiff did not file a Written Statement of Defence for the Counter Claim although she filed Reply to the defendant's Written Statement of Defence it appears that the idea skipped the minds of both counsel and the court as well because none of them made any comment on the pleadings in respect of Counter-Claim until during trial and in the filing of their final submissions. For this reason, the consequences provided for under Order VIII Rule*

14(1) of the Civil Procedure Code, Cap 33 RE 2002 were not acted upon. However, without prejudice to the above provision, the agreed issue number 3 was framed before the commencement of trial and both parties gave evidence either to support or to deny the claims therein. I will therefore consider the counterclaim on the basis of evidence availed to the court during trial".

In essence, the trial court deliberated and made a reasoned finding that there was a counterclaim which parties did not address and then proceeded to determine it taking into account the evidence available before the Court. Undoubtedly, the finding of the trial court brought into play Order VIII Rule 14(1) of the CPC and what was held in **R M Rugarabamu** (supra), that upon failure to reply on the counterclaim within the time prescribed judgment should be pronounced on the counterclaim. In the case of **Ashraf Akber Khan** (supra), the Court addressed the contention that since a counter claim was an independent suit or a cross suit on its own and very much part of pleadings, therefore any amendment to the WSD should not affect the counter claim and it observed:

"*Admittedly, the appellant raised a counter claim in his written statement of defence lodged on 14th November, 2013 as reflected from pages*

18 to 41 of the record of appeal. Subsequently, the plaint was amended with leave of the court. In response, the appellant lodged his amended written statement of defence on 18th March, 2015 as shown from pages 52-93 of the record. This time, the defence contained no counter claim. But it seems the learned trial Judge and the parties believed that the appellants counter claim remained a part of the pleadings. On that belief, the court, with the agreement of the parties, framed six issues for trial, there of which (Issues 3, 4 and 5) were based on the counter claim. The above approach by the High Court was noticeably flawed. Upon the amendment of the written statement of defence by filing an amended written statement of defence, the previous written statement of defence, which carried the counter claim, ceased to have any legal effect as if it was never a part of the record." The Court was guided by the decision in ***Tanga Hardware and Autoparts*** *(supra)."*

On the import of an amendment to the WSD, the Court stated that:

> *"... the previous written statement of defence which carried the counterclaim, ceased to have any legal effect as if it was never a part of the record."*

In determination of what is before us, we have been inspired by the above holding. In the instant case, the trial judge while noting the fact that the respondent did not file the WSD to the counterclaim raised in the appellant's amended WSD, proceeded to consider and determine an issue raised in the counterclaim and found that the counterclaim was not proved relying on the evidence before the court. Indeed, as rightly propounded by the respondent's counsel, and seen from the cases referred to above, the settled position is that upon filing an amended plaint, the original plaint ceases to exist. The same when an amended WSD is filed inferring the end of the original WSD.

Therefore, upon failure of the respondent to oppose the counterclaim filed with the amended WSD within the prescribed time, the trial court rightly applied Order VIII Rule 14 of the CPC and made the necessary orders guided by the law and various decisions of this Court as shown above including the case of **John Lessa vs Zamcargo Limited and Another**, Civil Appeal No. 61 of 1996 (unreported). We find no fault in the way the trial judge analyzed and determined what was before her considering the obtaining circumstances. In the premises, we are of the view that the appellant's contention that the trial court failed to determine the matter nor provide reasons is misconceived and thus complaint number 8 to lack merit.

We now move to grievance number six which in essence faults the trial court with respect to admissibility of evidence, that is, admissibility of exhibits which were not part of the amended plaint. Mr. Kalokola who commenced the appellant's submission on the same argued that there was violation of the law in admitting various exhibits, that is, the purchase order, invoices, site checklist and printed copies of emails referred and used by the respondent. With regard to complacency shown by the learned counsel for appellant then, who had failed to object to admissibility of such documents, after the trial court had overruled the objection on propriety of admitting some of the documents prayed to be tendered by the respondent. Whilst, conceding to the same Mr. Kalokola stated that the passive behaviour by the appellant's counsel was in-appropriate notwithstanding, the duty of the trial court to ensure that the conditions requisite in admitting exhibits was not at any time vacated. He emphasized that the trial court was expected before admitting into evidence any exhibit, to ensure that the process is guided by the test of relevance and suitability of the exhibit as expounded by the decisions of the Court, such as the case of **A.A.R Insurances (T.) Ltd vs Beatus Kisusi**, Civil Appeal No. 67 of 2015 (unreported). In addition, he contended that had the trial judge considered the anomalies shown, she would have not relied on the documents which were improperly admitted

as exhibits and in essence, arrived at a different conclusion. The case of **Tanzania Cigarette Company vs Mafia General Establishment**, Civil Appeal No. 118 of 2017 (unreported) was cited to underpin his arguments.

When amplifying on complaint number six, Dr. Nguluma argued that the trial court misdirected itself when admitting exhibits since as can be discerned from the record at pages 98, 240, 246, 253 and 256 of Vol. 1 of the record, the annexures which were relied upon to prove the respondent's claims were not part of the amended plaint. That the amended plaint only included few documents as found at pages 123 and 181 of Vol. 1 of the record. He urged the Court to allow the appeal with costs since the respondent failed to prove the claims sought.

Mr. Chang'a who further amplified on complaint six, argued that the documents annexed as BLC1-4 in the original plaint were admitted into evidence by the trial court despite not being annexed in the amended plaint. He sought the Court to find the anomaly to be fatal and cited the case of **Ashraf Akber Khan vs Rarji Grud Varsan,** Civil Appeal No. 5 of 2017 (unreported) to bolster his stand.

Dr. Murungu's response on complaint number six was that the documents relied on to prove the respondent's claims were not part of

the amended plaint, and that admissibility of the relevant exhibits was proper since it complied with section 65A of Evidence Act, having been specifically stated, as found in pages 98, 100 and 101 of the record. He maintained that after being granted leave to amend the plaint, the respondent was allowed to refer to the annexures in the original plaint and that in any case there was no objection to their admissibility when they were tendered. He further argued that, besides, it was within the discretion of the trial court on whether or not to admit an exhibit, after parties have been heard after an objection was raised on their admissibility. He implored the Court to find the cases cited by the appellant to be irrelevant to the instant case having regard to the different circumstances obtaining. The appellant's rejoinder by Mr. Kalokola was to reiterate earlier submissions by the appellant's counsel.

We have diligently considered the oral and written rival submissions relating to grievance number six addressing propriety of admitting various documents relied upon by the trial court to find judgment in favour of the respondent. Evidently, in the instant case, various documents were tendered for admission into evidence by the respondent. Noteworthy, is the fact that admissibility of documents is the domain of the court as held in the case of **A.A.R. Insurance (T) Ltd vs Beatus Kisusi**, Civil Appeal No. 67 of 2015 (unreported) that:

> *"... the function of admission of documentary exhibit is the domain of the trial court and not the parties to the proceedings. It is the trial Judge or magistrate who will have to apply the governing law of admissibility of exhibits like whether the document is a primary or secondary evidence (See S. 60-67 of The Law of Evidence, Cap 6 R.E. 2002)."*

We align ourselves with the above stated position and that the duty of the court on admissibility of documents is never wavered. Our starting point will be to deliberate on the complaint that the trial court admitted and relied on documents which were not part of the amended plaint. The issue for our determination is the propriety of admitting documents which were not annexed to the amended plaint but were part of the original plaint. A scrutiny of the record shows that in the ruling delivered on the 15/12/2016 (at pages 667-675 of the record) on whether the plaint and its annexures survive an amended plaint, it was held:

> *"... that the original/former plaint is not rendered pointless even when it is amended. At some point it is a relevant document for reference as it initiated the proceedings. The documents in dispute were all presented at the time of filing the suit and they are referred to in the Amended*

plaint. In my considered view, these documents were again presented with the Amended plaint by referring to them and specific date they were filed in court. The court fees were paid and indeed, there was no reason to pay twice for the same documents. So, in my view, the defendant is not taken by suprize (sic). She was made aware of the annextures right from the filing of the plaint and the same were specifically adopted in the amended plaint on different paragraphs."

Essentially, the import of the above Ruling was that the annexures which were not part of amended plaint were good evidence since the rationale of attaching them is to ensure that the other party is informed and made aware of the contents of the annexures that the amended plaint referred to and adopted annexures BLC-1-4 and 6-7 in paragraph 5 of the amended plaint. The issue pertaining is whether the finding by the trial court was the correct position of the law. Suffice to say, Order VII Rule 14 of the CPC requires documents to be relied upon by parties to be attached in the pleadings to form part of the pleadings.

In the current case, there is no dispute that annexures BLC 1-4 were attached to the original plaint filed on 20/3/2012. Having gone through the record of appeal, we hold that the argument by respondent's counsel that the appellant failed to object when annexures BLC1-4 were

tendered is misconceived since it is the said objection which gave rise to the ruling above by the trial judge. Essentially, paragraph 5 of the amended plaint filed on 17/5/2014 with the leave of the court which includes annexures BLC-5 reads:

> *"That on diverse dates, the Defendant contracted the Plaintiff to install power and/or other electrical services at 39 different Defendant's sites located at various locations in Tanzania, names are mentioned in the table. Copes of purchase Orders issued by the Defendant to the plaintiff to authorize the execution of the agreed works are attached to the plaint filed on 20.3.2012 and collectively marked annexture "BLC-1" and part of the purchase orders and copies of emails are annexed hereto and marked {BLC-5" and the Plaintiff crave for leave to refer to them collectively as forming part of this amended plaint."*

The High Court found that paragraph 5 of the amended plaint was sufficient for annexures BLC1-4 to form part of the amended plaint. With due respect, we are of the view that the above line of thought is flawed. This is because, as it has been held by various decisions of the Court, upon amendment of a pleading the previous pleading ceases to have any legal effect. In **Tanga Hardware and Autoparts Ltd. and 6 Others**

vs CRDB Bank Ltd, Civil Application No. 144 of 2005 (unreported), the Court referred to the observations made in the case of **Warner vs Sampson and Another [1959]1 Q.B. 297** that:

> *"... once pleadings are amended, that which stood before amendment is no longer material before the court."*

The above holding has been followed in **Ashraf Akber Khan vs Ravji Govind Varsan** (supra); **Morogoro Hunting Safaris Limited vs Halima Mohamed Mamuya,** Civil Appeal No. 117 of 2011; **General Manager, African Barrick Gold Mine Ltd. vs Chacha Kiguha and 5 Others**, Civil Appeal No. 50 of 2017; and **Sarbit Singh Bharya and Another vs NIC Bank Tanzania Ltd and Another**, Civil Appeal No. 94 of 2017 (all unreported).

In the instant case, the record shows that the trial court's decision that found that special claims were proved, relied on documents found in annexures BLC1, BLC2, BLC3 and BLC4 apart from those supported by annexure BLC-5. In paragraphs 3, 5, 6, 7, 8, 10, 12, 14 and 18(a) of the amended plaint, all the claims are referred to jointly notwithstanding the fact that the invoices and purchase orders of those supported by annexures BLC1-4 were not attached in the amended plaint. In the judgment found in Vol. 3 pages 638-655 of the record of appeal, the trial

court relied on the tendered exhibits that is, invoices and purchase orders to find that the respondent claims were proven. The trial Judge found that the claims in the invoices reflected the same amount quoted in the purchase orders admitted into evidence which included those in BLC1-4, which was, as stated above erroneous. We are of the view that had the trial judge carefully considered the law which governs the process where there is an amended plaint, she would not have arrived at the conclusion she did. In essence, relying on documents not attached to the plaint before her was a fatal anomaly.

Considering the restated position in the cited cases above, as regards to the original pleading when amended, it suffices to say that in the case under scrutiny, upon filing the amended plaint, the consequences were that the original plaint with its annexures BLC 1-4 ceased to exist and had no legal effect. The amended plaint could not be resuscitated by any paragraph in the amended plaint, it be by way of reference, adoption of unavailable pleading or otherwise. In essence, what is obvious is that the trial judge erred in admitting and relying on evidence which was essentially not before the court within the framework of Order VII Rule 14 of the CPC to support the respondent's claims found in the amended plaint.

We are alive to the law and established practice that requires us as the first appellate Court to re-evaluate the evidence presented at the trial court to arrive at our own conclusion subject to the deference to the trial court's advantage having had the opportunity to see the evidence tendered firsthand as expounded in Rule 36(1)(a) of the Tanzania Court of Appeal Rules, 2019 (the Rules). In the case of **Jamal A. Tamim vs Felix Francis Mkosamali and the AG**, Civil Appeal No. 110 of 2012 (unreported) the Court, restated the above position.

In the instant case, going through the record, undoubtedly, annexures BLC1-4 were for the purposes of proving special damages claims amounting to Tshs. 1,506,190,715.99 and USD 117,119.98 as found in the original plaint. In the amended plaint, the claimed amount for special damages was Tshs. 1,920,998,371.79 and USD 143,484.74. As alluded in paragraph 5 of the amended plaint the claims relied upon by the respondent, purchase orders issued to appellant to authorize execution of the agreed works were collectively annexed BLC-1 and some in BL5 amount to Tshs. 990,701,277.78. The said purchase orders are listed on page 98 of the record. On the part of supply of materials and spare parts and installation of machinery, copies of purchase orders are found in BLC-2 and some in BLC-5 amounting to Tshs. 137,661,805.48 and for supply of fuel, purchase orders are found in

annexures BLC-3 and partly in BLC-5 and amount to Tshs. 792,635,288.53 at page 99 and 100 of the record. Other materials supplied including spare parts and installation of machinery purchase orders were annexed as BLC-4 and some in BLC-5 with claims of USD 143,484.72 (page 100 of the record).

As it can be discerned all the claims relied on exhibits P1-P12 which included documents annexed to original plaint and the amended plaint to prove claims shown. Proof of all the claims was dependent on documents attached to the amended plaint means the claims remained unproved. In essence, in relying on the improperly admitted documents, all the claims against the appellant were not proved and had the trial judge considered this fact, she would have found the same. This is also reflected in the judgment of the High Court where it is impossible to separate claims found and supported by annexure BLC5 only, since the exhibits referred to by the trial judge and tendered to prove the claims are those from BLC1-4 and BLC5. Therefore, complaint number 6 has merit

For the foregoing, taking into consideration our holding above on complaints number one, two, four and six, we are of a firm view that, we have sufficiently disposed of the appeal and find no further need to consider and determine the remaining complaints. Undoubtedly, the trial

court erred in considering and relying on documents that included invoices related to various transactions improperly admitted which led to findings that there was a breach of contract and that the respondent's claims both specific and general had been proven. The subsequent effect of this meant that all the reliefs granted lacked requisite justification.

All in all, we find merit in the appeal and therefore are constrained to allow it with costs.

DATED at **DAR ES SALAAM** this 13th day of December, 2021.

S. A. LILA
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

The Judgment delivered this 20th day of December, 2021 in the presence of Ms. Norah Marah, learned counsel for Appellant and Mr. Yusuph Mathias, learned counsel holding brief for Mr. Alfred Mgare, learned counsel for the Respondent is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

H. P. NDESAMBURO
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL