INTHE COURT OF APPEAL OF TANZANIA
AT TABORA

(CORAM: MUNUO, J.A., KIMARO, J.A. And MJASIRI, J.A.)

CIVIL APPEAL NO.100 OF 2010

AHMAD ULEDI .....APPELLANT

VERSUS

HASSAN SUNZU.....RESPONDENT

(Appeal from the judgment of the High Court of Tanzania at Tabora)

(Kaduri, J.)

dated 14th September, 2010

in

Civil Appeal No.32 of 2009

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JUDGMENT OF THE COURT

16 & 23 May, 2012

KIMARO, J.A.:

The appellant sued the respondent in the District Court of Kigoma for recovery of USD 5000 being the principal sum. This amount comprised of USD 3000 that the appellant advanced to the respondent on 17th April 2006 and USD 2000 being interest that accrued after the respondent defaulted to refund the money as promised by 10th January, 2007. The suit was filed on 9th March, 2007. In his written statement of the defence the

respondent admitted the claim. The suit was called on for mention on 4th April, 2007. On that day Mr. Mpoki, learned advocate, appeared for the appellant. He informed the trial court that the respondent had paid the amount of USD 3000. He prayed to the trial court to grant the appellant judgment under Order XII r.4 of the Civil Procedure Code, 1966 as prayed for in the plaint. The respondent resisted the prayer which was made by Mr. Mpoki on the ground that they had settled the matter amicably.

In the plaint the appellant who was the plaintiff prayed for:

1. Payment of USD 5,000 being the principal sum
2. Interest on the principal sum at commercial rate of 30%.
3. Interest on the decretal sum from the date of judgment to the date of payment in full.
4. Any other relief the court may deem fit to grant at court's rate.

In his ruling, the trial magistrate entered judgment for the appellant for the amount of USD 3000 only and rejected the rest of the prayers. The appellant was aggrieved and appealed to the High Court. His basic

complaint in the High Court was that the trial magistrate erred in rejecting the rest of the prayers in the plaintiff's plaint because the respondent admitted the claim. His appeal was dismissed. In upholding the decision of the trial court on the prayers for interest and costs, the learned judge on first appeal held that, since the respondent paid the amount of USD 3000 before the suit had been called on for the first mention, that was an out of court settlement and hence there was no decretal amount. He also said that the documents that were annexed to the plaint as annextures A and B did not show that the respondent had to pay interest on the amount of USD 3000 advanced to him. He held further that Order XX Rule 21 allows interest on judgment debts from the date of judgment till satisfaction.

Still aggrieved, the appellant filed this appeal. He has three grounds of appeal but substantially his complaint is on the rejection of the amount of USD 2000 which the appellant said was interest on the amount of USD 3000 because of the appellant's failure to pay the principal amount in time and costs.

At the hearing of the appeal Mr. Mugaya Mtaki learned advocate appeared for the appellant. He was assisted by Mr. Daimu Alfani, learned advocate. For the respondent, Mr. Kamaliza Kayaga , learned advocate appeared for him. In compliance with rule 106(1) and 106(8) of the Court of Appeal Rules 2009, both advocates filed written submissions to support their respective positions in the appeal.

In a summary form what the learned advocate for the appellant is contending in the written submissions is that Order XII Rule 4 of the Civil Procedure Code 1966 entitles a party to a civil suit to apply for judgment where an admission made in the pleadings or otherwise by the other party. Since the respondent admitted at paragraph 3 of his written statement of defence the amount of USD 5000, argued the learned advocate, the appellant was entitled to judgment on admission for that amount, as well as interest and costs. He cited Mulla on the Code of Civil Procedure and Sarkar's Law of Civil Procedure to augment his submissions. He prayed that the appeal be allowed.

The learned advocate for the respondent on the other hand supported the judgment of the High Court. He said the proceedings in the trial court showed that Mr. Mpoki learned advocate acknowledged that the respondent paid the debt he borrowed, which was USD 3000. Regarding interest, the learned advocate said that in terms of Order XX Rule 21 it is charged on the decretal sum from the date of judgment to the date of satisfaction. Since the debt was paid, the appellant was not entitled to interest. He prayed that the appeal be dismissed with costs.

The facts of the case are straight forward. The learned advocate for the appellant admitted that the rule on the pleadings does not allow a party to combine the principal amount of the claim with interest. They must be pleaded separately. The appellant /plaintiff pleaded at paragraph 3 of the plaint thus:

> *"That the plaintiff claims from the defendant the sum of 3000 USD (three thousand USD) and interest accruing therefrom at the sum of US $ 2000 a sum which was advanced by the plaintiff to the defendant on the 14th day of April 2006 of which the defendant promised to refund the money by*

10/1/2007 or even before that date, copy of the agreement is annexed hereto marked A to which the plaintiff crave leave to refer as part of the plaint."

The learned judge on first appeal upheld the decision of the trial court on granting only USD 3000 as the principal amount on the ground that annexture A to the plaint which formed part of the plaint did not speak of interest on the amount of the debt the respondent was given. He said even Annexture "B" which was the notice served to the respondent requiring him to settle the amount of debt, showed that the appellant claimed for only USD 3000 and not more.

As indicated in this judgment, in the reliefs which the appellant claimed, he indicated the principal amount to be USD 5000. He also prayed for interest on the principal amount of USD 5OOO at the rate of commercial rate of 30% from the date the cause of action arose to the date of judgment. The appellant omitted to include in the record of appeal both annextures A and B. The learned judge on first appeal said that the documents only spoke of the amount of USD 3000 as being the principal amount and it was paid to the appellant before the case was

called on for the first mention on 5/4/2007. It is true the respondent filed a written statement of defence. His written statement of defence is that of a layman and he disputes at paragraph 4 that the debt had any specific date for repayment. Nevertheless, the proceedings of the record of appeal at page 9 shows that the respondent admitted being indebted to the appellant the tune of only USD 3000. The learned judge on first appeal said that this was the amount reflected on annextures A and B.

Rule 4 of Order XII provides that:

> *"Any party may at any stage of a suit, where admissions of fact have been made either on the pleadings, or otherwise, apply to the court for such judgment or order as upon such admissions, he may be entitled to, without waiting for determination of any other question between the parties, and the court may upon such application make such order or give such judgment, as the court may think fit."*

Since the respondent made an admission of the amount of USD 3000 and that is the amount which was reflected in the annextures to the plaint, the learned judge on first appeal was right to uphold the decision of the

trial court that the appellant was only entitled to judgment on admission of the amount of USD 3000 only. The amount of USD 2000 that was pleaded as interest that accrued on the principal amount of USD 3000 had to be proved by evidence. That is so because the respondent disputed that amount. We agree that the learned judge on first appeal erred in saying that there was no decree because the respondent made an admission before the case was called on for mention and that had to be regarded as an out of court settlement . The record of appeal at page 14 shows that judgment was entered for the appellant on admission for the amount of USD 3000. That was the decree in the case.

Regarding the question of interest, the learned judge on first appeal observed that both annextures A and B to the plaint did not mention anything on the amount of interest on the principal amount of USD 3000. The respondent could not be condemned to pay interest of USD 2000 without any evidence being led to establish that the appellant was entitled to such interest in the plaint it is pleaded that the amount of the loan had to be repaid by 10/1/2007. The suit was filed in Court on 9/03/2007 and by 3/04/2007 the respondent had already paid the principal amount the

appellant was entitled to. Under such circumstance we do not think that the appellant is entitled to any interest.

We thus allow the appeal only to the extent of costs. The appellant is entitled to costs in the trial court and in this court.

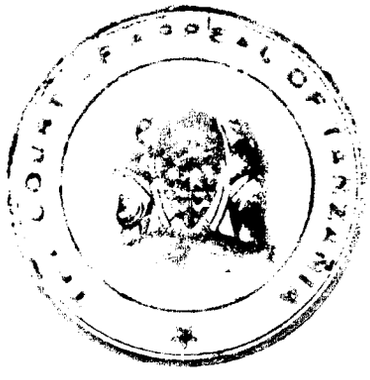
DATED at **TABORA** this 19th day of May, 2012

E. N. MUNUO
JUSTICE OF APPEAL.

N. P. KIMARO
JUSTICE OF APPEAL.

S. MJASIRI
JUSTICE OF APPEAL.

I certify that this is a true copy of the original.



(Z. A. Maruma)
DEPUTY REGISTRAR
COURT OF APPEAL