

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPEAL NO. 217 OF 2003

(Original Civil Case No. 536 of 1995 at Kisutu RM's Court, Luguru PRM)

OMARY SELEMANI AND ANOTHER APPELLANTS

VERSUS

TANZANIA POST CORPORATIONRESPONDENT

Date of last order – 23/8/2006

Date of Judgment - 29/9/2006

J U D G M E N T

Shangwa, J.

The appellants Omary Selemani and Bashiri J. Ulaya are appealing against the decision of the Court of the Resident Magistrate at Kisutu in Civil Case No. 536 of 1995 in which their claims against the respondent were dismissed with costs. The appellants' claims were for shs.1,066,000/= being the principal amount paid to the respondent or its agent by the 1st appellant to be sent to the 2nd appellant and shs.41,120/= being the amount paid by the 1st appellant to

the respondent or its agent in Newala as commission and advice of payment charges and shs.500,000/= being loss of profits expected from commercial use of the money by the appellants.

There are five grounds of appeal which have been raised by the appellants. However, the most pertinent grounds of appeal are the 2nd and 3rd grounds of appeal. I will deal with these grounds only in order to dispose of this appeal.

The 2nd ground of appeal reads as follows:

"That the trial magistrate erred in law and in fact in accepting that the appellants had been negligent in handling the transfer of the said money while they complied with all the procedures required by the respondent on sending EMOS."

The 3rd ground of appeal reads as follows:-

"That the trial magistrate erred in law and in fact in not accepting that the negligence was on the side of the respondent as they issued the said money to somebody else and not the 2nd appellant".

On the 2nd ground of appeal, I am of the considered opinion that the trial magistrate erred in holding that the appellants were negligent in handling the transfer of the money in issue.

Learned counsel for the respondent **Messrs City Advocates** supported the trial magistrate's holding. They submitted that the 1st appellant acted negligently by using the Postal Box which was not owned by the 2nd appellant.

For me, I think that the very fact that the 1st appellant used a Postal Box number belonging to another person namely P.O. Box 8311 does not mean that he was negligent. The said fact also does not mean that he contributed in any way to the loss of the money in issue. The aforesaid Postal Box number which was issued by him belongs to one Yusufu M. Mamulya. It is common practice of people who do not have private Box numbers to use Box numbers which belong to other persons known to them for sending letters, greetings cards, money registers and money orders to others. This is what the 1st appellant did in transferring the money in issue by express money orders to the 2nd appellant from Newala to Dar es Salaam.

In my view, the loss of the appellants' money cannot fairly be associated with the use of a Postal Box number which belongs to someone else. It has to be associated with the respondent's failure to make sure that it reaches the

intended person i.e. the 2nd appellant. In practice, before one is given money from the Post Office, he or she has to show his or her identity card which has to be examined very carefully by the respondent's officer at the Post Office Teller before money is issued to him or her. In this case, the respondent's officer namely D.W. 3 Francisca Maganga was not careful when she issued the money in issue to a person to whom it was not intended. The said officer must have been negligent in the execution of her duty. Her claim that she was very careful and that she issued the money in issue to the 2nd appellant has no basis. Had she issued the money in issue to the 2nd appellant, this case would not have been filed. The 2nd appellant did testify that when he went to the new Post Office Dar es Salaam to collect the money which was sent to him by the 1st appellant from Newala, he was informed that the money had been collected on the previous day by one Bashiri Juma. The said Bashiri Juma is the 2nd appellant himself. After being told so, he accepted the

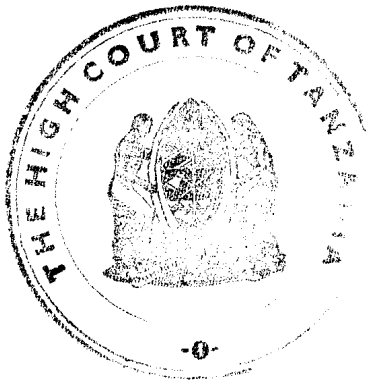
challenge. Later, the 1st appellant and himself decided to sue the respondent for recovery of their money. As the appellants were not negligent in any way for the loss of their money which was lost in the respondent's hands, I hold that the 2nd ground of appeal has merit.

On the 3rd ground of appeal, I am of considered opinion also that the trial magistrate erred in law and fact in holding that the respondent was negligent as the money in issue was issued to someone else and not the 2nd appellant.

I agree with the appellants that the respondent had a duty to make sure that shs.1,066,000/= sent by the 1st appellant at Newala to the 2nd appellant at Dar es Salaam through its own procedure is paid to the 2nd appellant and not any other person. When the 1st appellant handed over his money to the respondent's agent at Newala, he trusted the said agent with it and he believed that his money will be issued only to the 2nd appellant to whom he sent it and not

to any other person. I hold therefore that the 3rd ground of appeal has merit as well.

For these reasons, I quash the trial court's decision and I allow this appeal with costs.




A. Shangwa

JUDGE

25/9/2006

Delivered in open court this 25th day of September, 2006.


A. Shangwa

JUDGE

25/9/2006