

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY**

AT MWANZA

APPELLATE JURISDICTION

H.C. CIVIL APPEAL NO. 47 OF 2008

*(Originating from the District Court of Musoma
Civil Case no. 9 of 2007)*

TAIFA N. GAMAHA APPELLANT

VERSUS

WEREMA CHACHA RESPONDENT

J U D G M E N T

13/10 & 11/12/2009

Sumari, J.

The respondent Werema Chacha successfully sued the appellant in the District Court of Musoma. The respondent is said to have advanced as a loan Tshs. 4,000,000/= (4 Millions) to the appellant subject to repayment by the end of 30th June 2007 on which the defendant/appellant is said to have agreed to pay the interest of Tshs. 1,000,000/= per month from the month of February 2007 to the end of June 2007. The defendant/appellant defaulted the agreement, thus led the plaintiff/respondent to file a suit in a court of law demanding for repayment of the loan advanced and the interest.

The trial magistrate discounted the interest agreed from 1,000,000/= to Tshs. 200,000/= which makes the interest to be Tshs. 1,000,000/= instead of the would be interest of Tshs.

5,000,000/= as agreed. So appellant was thus ordered to pay to the plaintiff/respondent a total of Tshs. 5,000,000/= (five million), 4,000,000/= as principal amount for loan refund and 1,000,000/= for the interest. Appellant was aggrieved by the decision, hence this appeal.

At the hearing both appellant and respondent had nothing substantive in addition to their grounds of appeal and the reply to grounds of appeal.

Appellant's complaints if summarized are that the trial magistrate ought to have rejected the whole claim by respondent/plaintiff since he rejected the evidence on the issue of 5,000,000/= as interest. Also that the whole case was fabricated against the appellant as there was no written contract and the Exh.P1 was not a genuine one.

I had ample time to revisit the evidence available on record. There is no doubt that appellant and respondent entered into a written contract on which the respondent/plaintiff advanced a loan of Tshs. 4,000,000/= (4 million) to the appellant/defendant on which the (appellant) agreed to repay the same with an interest of 1,000,000/= (1 million) per month within five months, that is in total Tshs. 5,000,000/= (five millions) interest plus the loan of Tshs. 4,000,000/= (four million) totaling Tshs. 9,000,000/= (9 million). This also proved by Exh.P.1. So as well founded by the trial magistrate the defendant/appellant lied before trial court as far as Exh. P1 is concerned. Appellant's signature on the said Exh.P1 was

not controverted by defence evidence. The appellant's complaint that there was no written contract to that effect is unfounded.

As for the complaint that appellant had returned the principal amount of the loan to the respondent/plaintiff (Tshs. 4,000,000/=), there is no evidence to support the appellant's version. This also is unfounded ground.

The trial court was very correct in deciding that the interest agreed upon to be paid monthly i.e. Tshs. 1,000,000/= every month was unsound conditions of contract despite the fact that the defendant agreed to it.

Having said that much, I see no reason to fault the trial court's decision. The appeal is devoid of merit. It is hereby dismissed with cost.


A.N.M. SUMARI
JUDGE

Delivered in the presence of both parties.

At Mwanza
11/12/2009