

# **IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM  
CIVIL APPEAL NUMBER 85 of 2011**

**(From the Judgment of the Resident Magistrate's Court of Dar es Salaam at  
Kisutu-Civil Case No. 236 of 2009-L.M. Chamshana-RM)**

**BETWEEN**

**MOHAMED ATHMAN BODO.....APPELLANT**

**VS**

**THE MANAGING DIRECTOR**

**C.G.M. CMA TANZANIA LTD .....RESPONDENT**

## **JUDGMENT**

Date of last Order: 30-04-2012

Date of Judgment: 02-07-2012

**JUMA, J:**

This is an appeal by MOHAMED ATHMAN BODO who lost his Civil Case No. 236 of 2009 which he had filed at the Resident Magistrate's Court of Dar es Salaam at Kisutu. The MANAGING DIRECTOR C.G.M. CMA TANZANIA LTD (the present respondent) was the defendant in that suit.

The appellant had sued the respondent seeking immediate return to him of seven containers numbers SCLU-895755-1, TOLU-170257-5, TOLU-765458-6, PONU-771218-9, IEU-412941-1, INCU-285488-6 and MEAU-804659-8] which he bought from a Company known as GULLESH CONSTRUCTION (T) LTD. Appellant also exhibited documents in the form of receipt and sale agreement to prove his ownership. Appellant claims that he was away in Tanga, when these containers were taken by the police from his offices at Kigogo and Shekilango Ubungo. The appellant also sought general damages, interests and costs.

In its written statement of defence, the respondent maintained that the six of the seven containers belonged to the respondent company but were stolen while on transit from Tanzania Road Haulage to Kurasini Inland Container Depot. This theft was reported to police who traced and retrieved the stolen containers from the appellant's two yards at Kigogo and Shekilango Ubungo. In addition to its written defence, the respondent had also filed its own counter claim stating that the appellant should be made accountable to the damage on the six containers.

With the appellant and respondent both claiming ownership of the containers, the learned trial magistrate was of the considered opinion that on the basis of evidence before him, it was not possible for the trial court to issue a declaratory order regarding who, between the appellant and the respondent is rightful ownership of the containers. Dismissing both the appellant's and respondent's claim and counter claims; the trial court further noted that the police who seized the containers from the appellant's yard did not testify in order to assist the court to determine whether the containers were still subject of any criminal investigations.

In his memorandum of appeal the appellant preferred nine grounds of appeal. But upon my closer examination of record of proceedings, the main ground of appeal centres on the claim that the learned trial magistrate erred for declining to declare the appellant to be the rightful owner of the seven containers.

At the hearing of this appeal on 30<sup>th</sup> April 2012, appellant and respondent were both represented by learned Advocates. Mr. Mwambeta appeared for the appellant while Mr. Rutenge represented the respondent. Mr. Mwambeta submitted that the exhibits which the appellant had tendered were not taken into

account by the trial magistrate. And by his exhibition of the evidence of the Sale Agreement and receipts evidencing sale, the appellant had proved that he owned the containers. In his replying submissions, Mr. Rutenge contended that evidence on record shows that it was the police who confiscated the containers and appellant should have joined the police as party to the civil case at the subordinate court. Mr. Rutenge further submitted that having claimed and testified that containers were confiscated while he was away in Tanga, he should have brought specific evidence to show how the police specifically seized the containers. Mr. Rutenge was also concerned about the failure by the appellant to summon as his witness, the person who sold the containers. This person, Mr. Rutenge submitted, would have helped to prove appellant's claim of ownership. The Sale Agreement which the appellant exhibited as his evidence did not, according Mr. Rutenge, meet the legal requirements for its registration and payment of stamp duty thereon. Mr. Rutenge also submitted that the Sale Agreement did not meet the legal requirement of witnesses recognized by the law. Mr. Rutenge believes that the trial magistrate reached the right conclusion that he could not determine ownership

because there are other persons out there like the police, the vendor and witnesses who were not summoned to testify on ownership of the containers.

In my re-evaluation of evidence, the resolution of the question whether the learned trial magistrate erred for declining to declare the appellant to be the rightful owner of the seven containers, depends entirely on the nature of the evidence presented at the trial and the relative preponderance thereof. Records show that only two witnesses, i.e. the appellant-Mohamed Athuman Bodo (PW1), and Aldo Ndomba (DW1) testified. In his evidence, appellant claims that his seven containers were taken from his office premises while he was away in Tanga. Appellant testified that it was the police who phoned to inform him that they were at his premises taking the containers. Upon his return, appellant reported to the police and his statements were taken down. Aldo Ndomba was the only witness for the respondent. He was employed by the respondent as security guard. Mr. Ndomba testified on how the containers stolen from the respondent were recovered by the police at an office in Kigogo Dar es Salaam.

In my opinion, the Sale Agreement and purchase receipts which the appellant exhibited did not by themselves constitute sufficient proof of ownership of the seven containers. The Sale Agreement shows that it was concluded on 04/09/2009. One Abraham Gullesh and appellant herein are respectively cited as the "Vendor" and "Purchaser" in the agreement. Two other persons, Abdu Said and Yahaya Mamta witnessed the signing of the Sale Agreement. While the appellant testified on his own behalf, neither the vendor nor the witnesses testified to support the appellant's claim of ownership. Failure of the appellant to bring evidence of at least those who witnessed the signing of the Sale Agreement diminished the probative value of Sale Agreement.

In his evidence the appellant testified that the seven containers were taken by the police from his yards while he was away in Tanga. Neither the police who seized the containers nor appellant's employees who witnessed the seizure were summoned to testify.

The evidence before the trial court was clearly not sufficient to establish who the owner of disputed containers was. The learned trial magistrate was therefore entitled to reach

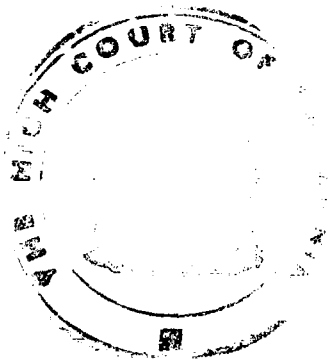
the conclusion he reached. For all the foregoing reasons, it is my finding that this appeal is devoid of merit and is hereby dismissed with costs.

It is ordered accordingly.

**DATED at DAR ES SALAAM this 2<sup>nd</sup> day of July, 2012**

  
**I.H. Juma**  
**JUDGE**

JUDGMENT is delivered in the presence of Mr. Mwambeta, Advocate (for the Appellant).



  
**I.H. Juma**  
**JUDGE**  
**02-07-2012**