

IN THE HIGH COURT OF TANZANIA

AT TABORA

PC CIVIL APPEAL NO. 44/2007

**(Arising from Bariadi District Court Civil appeal
No. 36/2004 and Original Civil Case No. 22/2004 From
Sagata Primary Court)**

KIKOMBE MABULA APPELLANTS

VERSUS

MWENYEKITI CHAMA

CHA IFOGONG'HO HABIYA RESPONDENT

31st May, 2013, 12th June, 2013.

J U D G E M E N T

HON. S. B. LUKELELWA, J.

This is a second appeal for the appellant Kikombe Mabula against the concurrent judgments of the Primary Court of Bariadi District at Sagata, and Bariadi District Court in first appeal.

Both courts found as a fact that the appellant was liable to the respondents Msenyekiti Chama cha Ifogongiho Kijiji cha Habiya.

Briefly state the appellant Kikombe Mabula had joined a business ground dealing in cattle known as “ Kikundi cha Wafanayabiashara wa ng’ombe tawi la Itaibya. The chairman of the group was PW1 Kitabo Sulile.

On 27/02/2002 the appellant obtained a loan of Twenty nine thousand shillings, from the group. The loan carrier interest of ten percent. The loan had to be paid by 1/3/2002. However it was until 1/7/2002 when the wife of the appellant paid back Fourteen thousand, four hundred and Sixty shilling only.

The appellant remained indebted to the group at the tune of thirty two thousand shillings only.

On 4/4/2003 a meeting of the group was convened to discuss the debt of the appellant who did not appear at the meeting. The meeting reached a conclusion to send a member of the group to trace the appellant.

The appellant was found on 10.4.2003 at Meatu District. At that the debt and interest had cumulated to One hundred and three thousand, a hundred and eight four shillings. The appellant paid fifty thousand shillings only on that day, claiming that he had to take care of a sick relative.

The appellant did not enjoy good relations with his group until the debt accumulated to shs. 250,193.00 when the group had to report to Bumera Ward Executive officer and the appellant had to be arrested. On 29.02.2004. The village leaders and leader of the group examined the books and found that the appellant was correctly indebted as claimed by the group.

The appellant effused to pay the debt. He was taken to the office of Nkololo Ward Executive officer.

On 1.3.2004 the appellant was sent court. However before appealing in court the appellant talked with the Chairman of the group who conceded to the request of the appellant to deduct fifty thousand shillings so that he remain indebted to shs 200,000/= only. The appellant brought his motor-vehicle from Kilulu village as security for the debt. The motor-vehicle was in a state of breakdown, so it has to be towed by another motor-vehicle, which had to be hired by the group at a cost of eighty thousand shillings.

The debt rose again to shs. 310,080/= which he promised to pay by 18/03/2004.

The trial Court found that the appellant was indebted to shs. 250,000/= and that as security of the loan he had surrendered his motor-vehicle Datsun Tz 82079.

The appellants appeal to Bariadi District Court was unsuccessful. The appellant had submitted that he did not freely surrender his motor-vehicle as a guarantee to the debt of shs. 250,193/= but he was forced by the Ward Executive Officer who had detained him in a lock up.

The appellant is undaunted he is still insisting that the two courts below erred. He has paid the debt through his wife, and the letter of agreement tendered in the trial court was different from a copy which was in his possession.

This is a second appeal, as rule of practice, a second appellate court should be slow to overturn a concurrent judgments of two courts on factual issues unless it is clearly established that the judgments were reached without adhering to principles of law.

An appellate court shall only interfere in a concurrent judgment if it is shown that the judgment was so repugnant that the courts should have disregarded principles of law.

In the instant case, I find nothing to warrant this court to interfere into the judgment's of the two courts below.

I therefore dismiss the appeal.

No order as to costs made, as the respondents did not appear.

Order accordingly.


S. B. LUKELELWA,
JUDGE.

12th June, 2013

Date: 12/06/2013

Coram: Hon. S. B. Lukelelwa, J.

Appellant: Absent

Respondent: Absent

B/c: Mary Mpululu

Order: Delivered of judgment which is ready adjourned to
27/06/2013. Appellant to be notified.


S. B. LUKELELWA,
JUDGE.

12th June, 2013

Date: 27/06/2013

Coram: Hon. S. B. Lukelelwa, J.

Appellant: Absent

Respondent: Absent

B/C: Mary Mpululu

Order: The judgment to be transmitted to Bariadi District Court
for delivered to the parties.


S. B. LUKELELWA,
JUDGE.

27th June, 2013