

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA
CIVIL APPEAL NO. 56 OF 2016

(C/F Civil Case No. 39 of 2016 in the Resident Magistrate's Court of Arusha)

MELEMBUKI KITESHO MOLLELAPPELLANT

Versus

POP VRIEND (TANGANYIKA) LIMITED.....RESPONDENT

JUDGMENT

DR. OPIYO, J.

The appellant Melembuki Kitesho Mollel having been aggrieved by the judgment and decree in Civil Case No 39 of 2016 in the Resident Magistrate Court of Arusha, he has preferred the present appeal on the following grounds:

1. That, the trial magistrate grossly erred in law and fact for entering judgment and decree against the appellant without respondent proof by tendering in court a written contract of agricultural inputs between the appellant and the respondent. In alternative the court misdirected itself in law and fact by allowing the respondent to prove a written contract of agricultural inputs by oral evidence without

ascertaining judiciously reasons for the respondent's failure to tender written contract between the appellant and the respondent.

2. That, the trial magistrate erred in law and fact for implying without real evidence terms of written contract by oral evidence that, appellant and respondent has a valid contract for agricultural inputs in terms of section 10 of the law of contract Act R.E 2002 through exhibit PI and P2 collectively and exhibit P3.
3. That, the trial magistrate grossly erred in law and fact for improperly admitting exhibit P3 (a financial summary) and attaching too much weight to exhibit P3 as a contract, primary evidence tendered in court by PW1 in form of a carbon copy.
4. That, the trial magistrate erred in law and fact for basing its judgment and decree against the appellant payment of the principal sum of Tshs. 52,376,197/= on the strength of exhibit PI, P2, P3, and P4 which were strongly contradicted by the respondent's evidence for forgery of the respondent's signature, not tallying with total claim in plaint and were out of period context of agricultural inputs business relationship between the appellant and the respondent.
5. That, the trial magistrate erred in law for disallowing the appellant to prove his signature in court against exhibit P1, P2 and P3.

6. That, trial magistrate erred in law and fact for referring and relying in the judgment the motor vehicle mortgage contract and motor vehicle registration certificates for motor vehicle T 878 AYG and T 172 ALP which were not admitted as evidence in court to support respondent's claim.
7. That, the trial magistrate seriously failed to evaluate evidence and consequently occasioned miscarriage of justice on the party of the appellant.
8. That, trial court magistrate erred in law and fact for making a
9. That, the trial magistrate erred in law to enter the judgment in favor of the respondent, the pleadings which were verified and signed by incompetent.
10. That, the judgment of the trial magistrate is the mockery of justice, not appealing and satisfactory for want of reasoning of facts, evidence and applied law.

Before me, the appellant was represented by Mr. Shilinde of the Legal and Human Right Centre, Arusha while Respondent was represented by Mr. Boniface, Learned advocate. The appeal was disposed of by the way of written submission.

In their written submission the parties have submitted at length on the merit of the appeal, however before going to the merits of the case, the Court noted a matter which needs its consideration first. The appeal at hand originated from the civil case No 39 of 2016 before the Resident Magistrate's court of Arusha at Arusha. In that suit respondent herein Pop Vriend (Tanganyika) Limited prayed for the judgment and decree against the appellant Melembuki Kitesho Mollel, for payment of TShs. 52,376,197/=, Commercial interest at 33% on Tshs 52, 376, 197 /= per month from 01/12/2013 to 04/02/2016. Interest on Tshs 52,476,197/= from the date of the suit to the date of judgment and thereafter at the rate of 12% per annum till payment in full. After full trial the trial court decided in favor of the respondent and appellant was ordered to pay respondent Tshs. 52,376,197/= an interest rate of 7% per annum of Tshs 52,376,197/= and the costs of the suit.

After assessment of the pleadings and particularly the plaint, I found out that the claim against the appellant was vague for the trial court to know if in the first place, it had pecuniary jurisdiction to try it or not, paragraph 3 of the plaintiff plaint, supposedly specifying the claim reads as follows:

*"that the plaintiff's claims against the defendant is for payment of the sum of Tanzania Shillings fifty two million three hundred seventy six one hundred ninety seven only (TZS 52,376,197) being recovery charges on supply of agricultural inputs being fuel, bean cleaning charges, transport charges, chemicals, stock seed, **interest, general damages and costs of the suit**"*

From the above paragraph the amount of Tshs. 52,376,197 was not pleaded as substantive claim, it was the claim inclusive of the general damages, interest and costs of the suit. It is trite law that it is the substantive claim which determines the pecuniary jurisdiction of the court. When the substantive claim is vague, it is difficult for the court to know whether it has jurisdiction to try it or not, in the matter at hand the specific claim is so vague as it is not at all known be able to be determined, the amount claimed by the respondent has included the interest and general damages and the costs of the suit. By this, it so hard to know what exactly is claimed by the respondent on the plaint, the respondent/plaintiff ought to have pleaded the specific claim separate and not as he did in the plaint.

In the upshot the plaint is ought to have been rejected in the first place. Thus the proceedings, judgment and decree of the Resident Magistrate Court of Arusha in respect of civil case NO 39/2016 emanating from

defective plaint are nullified. Respondent who was the plaintiff in the lower court is at liberty to file a suit in the court of competent jurisdiction.

Ordered Accordingly

(Sgd)

DR. M. OPIYO,

JUDGE

28/08/2018

I hereby certify this to be a true copy of the original.



S.M. KULITA

DEPUTY REGISTRAR

ARUSHA.

05/09/2018

