IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT ARUSHA

DC CIVIL APPEAL NO. 4 OF 2017

(Originating from RM's Court Arusha in Civil CASE No. 57 of 2016)

JUSTUS NTIBANDETSE.....1ST APPELLANT

PETER NDILAHOMBA.....2ND APPELLANT

VERSUS

TANZANIA CROP CARE LTD.....RESPONDENT

JUDGMENT

S.M MAGHIMBI, J

This appeal arises from the decision of the Resident Magistrate Court of Arusha, the appellants were plaintiff and 2nd defendant respectively. Being dissatisfied by the decision of the RMS Court they have come to this court. They have filed four points memorandum of appeal as follows-

1. That, the learned trial magistrate erred in law and in fact by deciding that there was a contractual relationship between, the appellant and the 2nd appellant who were the plaintiff and the 2nd defendant in the trial court respectively.
2. That the learned trial magistrate erred in law and in fact by deciding against the 2nd appellant and favoring the respondent who was the 1st defendant in the trial court.
3. That, the learned trial magistrate erred both in law and in fact by admitting irrelevant documents to the case.

4. That, the learned trial magistrate erred both in law and fact by deciding that the 2nd appellant was not the agent of the respondent.

Before me appellants were represented by Mr. Mbise Learned advocate while respondent was represented by Mr. E.Kinabo learned advocate. The appeal was disposed off by the way of written submission, in his written submission it was Mr. Mbise submission that, the learned trial magistrate erred in law and in fact by deciding that there was a contractual relationship between the 1st appellant and the 2nd appellant who were the plaintiff and 2nd defendant in the trial court respectively, it was his submission that, the trial court decided that since there was a contractual relationship between the 1st appellant and 2nd appellant then the 2nd appellant should be the one to bear the burden of paying back all the claims from the 1st appellant, The issue which needs to be determined by Appellate Court is whether it was true that there was a contractual relationship between the 1st Appellant and the 2nd appellant. He further submitted that, the trial court deciding that there was a contractual relationship between the 1st Appellant and the 2nd Appellant was wrong. It is a known principle of law that an agreement is legally enforceable only when any of the parties to it gives something and another receives something. This something given or received in law is called **consideration**. From the evidence adduced it is clear that nothing moved from the 1st Appellant to the 2nd Appellant or vice versa to create a legal relationship between the two. The money moved from the 1st Appellant to the 2nd Appellant or vice versa to create a legal relationship between the

two. The money moved from the 1st Appellant to the Respondent's account. The 2nd Appellant received nothing from the 1st Appellant.

Submitting on the second Ground, that, the learned trial magistrate erred in law and in fact by deciding against the 2nd appellant and favoring the Respondent who was 1st defendant in the trial court, he submitted further that, going through the entire judgments and the evidence adduced to court there is nowhere on record which shows that the 2nd appellant did receive anything of value from the 1st Appellant. Exhibit P.1 shows that the money was deposited in the respondent's account by the 1st Appellant on 8th April 2015. The trial court said the 2nd appellant in this case effected the payment in April, 2015 sum of Tshs.14,310,000/= which is wrong because there is not proof on record that the 2nd appellant did deposit that to the Respondent account in April, 2015. The 1st appellant deposited the said amount of 14,310,000/= in the respondent's account hoping to get chemicals and other inputs which he has not received to date, the goods supplied to Mang'ola inputs and general supplies by the respondent which were collectively admitted in Trial court and collectively marked D.1 as it can be seen in the trial court judgment on page 4 were of 2014 and they were not for 1st appellant because by then the 1st appellant had not deposited his money in the 1st Appellant account and 1st and 2nd appellant did not know each other. They came to know each other after they met in Arusha town in 2015. There is no evidence on record to prove otherwise. One can also pose a question how could the 2nd

appellant receive the chemicals for the 1st appellant whom they had no contractual relationship neither in 2014 nor in 2015.

On 3rd Ground Mr. Mbise submitted that, the trial court erred both in law and in fact by admitting irrelevant documents, going through paragraph 2(1) of the first defendant's Written Statement of Defence it reads as follows:

> 2(1) *"That on divers dates between the month of February and April, 2015 the first defendant supplied various agricultural inputs, including chemical and fertilizer worth Tanzania Tshs.14,310,000/= to the 2nd defendant who was trading as Mang'ola inputs and G.S on the specific request by the 2nd defendant. Copies of the statement, invoices and delivery notes in respect of the said supplies are attached hereto and marked "A" collectively"*

It was his further submission that, actually the statement, invoices and delivery notes as mentioned in paragraph 3.1 above which were admitted by the court were of 2014 and not of months of February and April, regardless of Advocate for the 1st Appellant resisting the admission of the document as evidence the trial court continued admitting them and used them in the decision of the case while they were irrelevant to the case. The defence side could not produce documents showing that the 2nd appellant did actually take the said chemicals from the Respondent which as for the 1st Appellant. The 2nd Appellant did say plainly that he was not given the chemical for the 1st Appellant at any given time.

On the Last Ground, Mr Mbise submitted that, The trial court erred both in law and in fact by deciding that the 2nd appellant was not an agent of respondent as it is clear that, the 2nd appellant instructed the 1st appellant to deposit Tshs.14,310,000/= in 2015 in the account belonging to the respondent. From the evidence on record the business relationship between Respondent and 2nd appellant had started before or in 2014. This impliedly shows that the 2nd appellant was an agent of the respondent otherwise 2nd appellant would have told the 1st appellant to deposit that amount of money to 2nd appellant's account or he could have received cash from the 1st appellant. So, saying that there was no agency relationship between the 2nd appellant and the respondent is wrong, and Whether there is an agency relationship between the 2nd appellant and the respondent or not still the respondent is obliged to pay back the money to the 1st appellant taking into consideration the reasons aforementioned in grounds 1,2 and 3 above. Moreover basing on quasi-contract principle that no one should be allowed to enrich himself unjustly at the expense of another Section 72 of cap 345 declares this:

> **"A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it"**

It was his further submission that, accordingly if one party under mistake pays party money which is not due by contract or otherwise that money must be repaid. He urged this court to allow the appeal with costs.

In his reply submission, Mr. Kinabo submitted that, the first ground of appellant complaint is on the trial magistrate decisions that there was a

contractual relationship between the first appellant and second appellant, it was Mr. Kinabo contention that, the counsel for the appellants relied on the provision of section 25 of the Law of Contract Act, Cap 345 R.E.2002 and that the contract between the two was void for want of consideration, it was Mr. Kinabo submission that it is a misdirection as in the present case the second appellant promised to supply agricultural inputs including chemicals and fertilizers to the first appellant in consideration of the sum of Tshs. 14,310,000/- The arrangements constituted an agreement or contract. Thus the trial court properly directed itself in holding that there was a contractual relationship between the two.

On the second, third and fourth grounds of appeal, Mr. Kinabo stated that, they are based on matters of facts for which the trial court was in better position to assess and determine. The learned counsel for the appellant has not advanced any valid reason as to why this honourable court should interfere with the findings, in so far as there was no agency relationship between respondent and second appellant the former cannot be liable to the fist appellant. He urged this court to dismiss the appeal with costs.

The crucial issue is whether the first appellant deposited Tshs 14, 310,000/= in respondent accounts and did not receive agricultural inputs to date? Before Arusha Resident Magistrate Court of Arusha, the first appellant filed a claim against the 2nd appellant and respondent herein for payment of Tshs. 14,310,000/= being the money deposited to the respondent account for first appellant to be supplied with chemicals for agricultural purposes. It is on record that, on 08th April, 2015 the first appellant transferred a total of Tshs. 14,310,000/= from his personal

account to the respondent's account as per exhibit P1 but he never received the chemicals he paid for.

DW1 on his testimony, he clearly stated that he is a manager of the respondent, he does not know the first appellant but acknowledge the receipt of Tshs. 14, 310,000/= on April, 2015 and they thought the payment was done by the second appellant as they did supply fertilizers and chemicals to the 2nd appellant on credit, from Exb D1 which is the statement of accounts it is reflected that, the amount deposited by the 1st appellant was received but respondent never supplied agricultural inputs to the first appellant to date.

Furthermore, from the evidence there was no proof that the 2nd appellant deposited the amount of Tshs. 14,310,000/= to the respondent Account in April, 2015 the conclusion is that, the money deposited was from the first appellant.

Therefore, the evidence in totality the first appellant was able to prove on balance of probability that he deposited money in respondent's account but received nothing from them instead the goods were supplied to Mang'ola inputs and general supplies.

In the result, the appeal is allowed, respondent to pay the first appellant

1. Tshs. 14,310,000/= being the total amount due.
2. Interest of 7% commercial rate from December, 2015 to the judgment date.

3. Interest of decretal sum at court's rate of 12% per year from the date of judgment to the date of full payment.
4. General damages of Tshs. 5,000,000/=
5. Costs of the suit in the two courts.

SGD: S.M.MAGHIMBI
JUDGE
30/08/2018

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

S.M. KULITA
DEPUTY REGISTRAR
ARUSHA
05/09/2018