IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL APPEAL NO. 28 OF 2018

(Appeal from the judgement and decree of the Kinondoni District Court in Civil Case No. 22 of 2013 delivered on the 6th November, 2017)

Latifa Mulika ..... Appellant

Versus

Doreen Pondamali .....Respondent

JUDGEMENT

Date of Last Order: 23.04.2020

Date of Ruling: 26.06.2020

Ebrahim, J.:

The respondent herein successfully sued the appellant herein at the District Court of Kinondoni at Kinondoni claiming a refund of Tshs. 7.5 million being the purchase price of the motor vehicle make Toyota Chasser with Registration No. T.123 BFS she bought from the appellant. As the proceedings from the record would reveal, soon after the respondent has bought the motor vehicle from the appellant, the motor vehicle was impounded by the police on the allegations of evasion of importation revenue to the government (exhibit P3). After hearing the evidence from both sides, the trial magistrate was convinced that the respondent was a bonafide purchaser deserving to be refunded the purchase price of Tshs. 7,500,000/-.

Aggrieved by the such decision, the appellant has preferred the present appeal raising two grounds of appeal as follows:

1. The trial magistrate erred in law in his failure to take into consideration the appellant's evidence in respect of the sale of motor vehicle to the respondent.
2. The trial court erred in law and fact in delivering judgement in respondents favour without taking into consideration the evidence adduced by the appellant's witnesses.

In this appeal the appellant was represented by Mr. Musa Kiobya learned advocate and the respondent was represented by advocate Hendrick Shaluli.

On 18th march 2020 I ordered the appeal to be argued by way of written submission and set a schedule thereat. Both parties adhered to the set schedule. I shall however refer to parties submissions in the course of determining the grounds of appeal.

This is first appeal. The court is therefore obligated to subject the entire evidence into scrutiny and come up with its own findings of facts if any. This principle was stated by the Court of Appeal in the case of **Charles Mato Isangala and 2 Others V The Republic**, Criminal Appeal No. 308 of 2013). I have dispassionately gone through the proceedings

in record. I shall address the grounds of appeal in general which are predicated on the issue of weight of evidence on whether the respondent managed to discharge the burden of proof from the evidence adduced in court to establish liability to the appellant.

Counsel for the appellant basically argued in his submission that the respondent conducted a search at Tanzania Revenue Authority to satisfy herself on the ownership and compliance of the governing laws. The compliance includes payment of taxes and registration. He contended further that the respondent found out that there were no any encumbrances to the said motor vehicle, hence proceeded to purchase the said motor vehicle. Counsel for the appellant submitted also that in the absence of the decision or order from the relevant tribunal or court; and in the absence of the concrete information on the whereabouts of the said motor vehicle, it cannot be said that the motor vehicle has been impounded by TRA. He made reference to **Section 17(2) and (3) of the Motor Vehicles (Tax on Registration and Transfer) Act**, Cap 124 RE 2006 on the powers of the Commissioner General to seize and detain the vehicle until the provisions of the law have been complied with; and the powers of the Commissioner General to cause the vehicle that the tax has not been paid within six

months to be sold by public auction. He argued therefore that if the disputed motor vehicle has been sold then there would be a certificate from TRA to confirm the same. He urged the court to find that the respondent failed to prove that the motor vehicle was seized and show where the vehicle is. He also challenged on the failure by the respondent to call witnesses from the police and TRA to prove that the car was ceased.

In response to the arguments by the counsel for the appellant, counsel for the respondent mainly insisted that the appellant's witnesses admitted to have been called at the police pertaining to the said motor vehicle and that the trial court considered the whole evidence including the evidence of the appellant's witnesses. He challenged the cited provisions of **sections 213(4) and (5) of the East African Community Customs Management Act, Act No. 1 of 2015** on the requirement of the police officer who seize or detain a commodity or property required for use in the proceedings to keep the commodity in custody of the police until the proceedings are complete or until it is decided that no proceedings shall be instituted that the said provision of the law do not show that the trial magistrate did not consider the appellant's evidence.

The above assertion prompted me to re-visit the evidence on record. **PW1**, the respondent (plaintiff) admitted to have bought a car from the appellant in 2011 and did a search at TRA where she found that the appellant was a lawful owner. She admitted also to have been availed with the car registration card **(exhibit P1)** and entered into a sale agreement on 02.05.2011 **(exhibit P2).** She said she used the car until 23.12.2011 when the car was impounded by the police. She also tendered a letter from police Dar Es Salaam Zone (exhibit P3) addressed to Fredrick Pondamali. When cross examined, she admitted that the motor vehicle registration card showed that the appellant was the owner. She said also that the car was taken by police because no tax was paid.

DW1 Nassoro Miraji Mulika testified for the appellant that he bought the motor vehicle for the appellant on 20.07.2010 from one Bakari Musa and they signed all the agreements. He denied knowing whether the motor vehicle was a transit car. **DW2 Bakari K. Musa** admitted to have sold the car to the appellant. He said he was summoned by police who told him that the car has been impounded by TRA. The appellant testified as **DW3**. She told the court that after having done their due diligence at TRA, the respondent bought a

motor vehicle for Tshs. 7,500,000/-. She said it was 2012 when the respondent's husband went to her office with a police claiming that the tax for the motor vehicle has not been paid. She said she was told the investigation was ongoing and the car still reads her name at TRA system. She insisted that when she bought the car, it was not stolen and TRA registered it in her name and the duty to transfer the ownership lies to the buyer.

Having gone through the evidence on record the question is whether there is concrete proof that the vehicle has been impounded by TRA due to nonpayment of relevant tax.

Indisputably is the fact that the respondent bought the said motor vehicle from the appellant after having done her due diligence and found that the same is registered in the name of the appellant at TRA. The respondent admitted to have been availed with the registration **(exhibit P1)** of the motor vehicle. The question now comes is there concrete proof that the car is in police custody or TRA or that the decision by the relevant authority has been reached on non-payment of tax? The respondent tendered a letter from the police saying that the car was sent to TRA. Would that be a conclusive proof that the car

is at TRA? Definitely not. I am saying so because, there is no doubt that when the respondent bought the car from the appellant nothing came from the system to show that the appellant has sold her either a stolen car or a car that has not complied with the tax requirement. All there is so far is allegations with no proof. The respondent apart from insisting that she should get her money back, she has not conclusively prove that the car is indeed with the TRA. There is no seizure certificate or any document to show where exactly the car is being stored. The purported letter from the police only states that the car has been given to TRA but there is no any document tendered in court by the respondent to show that indeed the car was received and it is impounded at TRA. More so there is no any document from the same TRA which there should have been availed to the court to show the basis of impounding the car, whether there are ongoing proceedings or investigation and what is the charge or claim. All I see here is mere assertion that the car has been impounded by TRA. The fact that DW2 and DW3 were called at the police does not conclusively prove that the car was not released to the respondent or that it has been conclusively proved that the appellant fraudulently sold the car to the respondent to justify the refund of Tshs. 7,500,000/-. I join hands with the

counsel for the appellant here in invoking the provisions of section **17(2) and (3) of Cap 124 RE 2002** that if the car has been impounded by TRA due to none payment of Tax, the Commissioner General may sale the car and issue a certificate to the new owner. More so there would be documents to show that the car is with TRA.

Again, to prove all those scenarios and in the absence of the documents to prove her assertion the respondent could have at called the police who impounded the car or an officer from TRA to show that there are ongoing investigation on the allegation. In the absence of any other contrary findings from the competent authorities, so far there is no proof that the motor vehicle tax has not been paid and that the appellant was aware of such inadvertent act since the respondent herself admitted to have conducted due diligence with the regulatory authority and found the motor vehicle to be legal and in order. That being the position therefore, I cannot say that the appellant breached the agreement.

In this case the appellant claimed that the respondent sold him a stolen car. The appellant therefore had a duty to prove on the balance of probabilities that the car was indeed stolen property. So

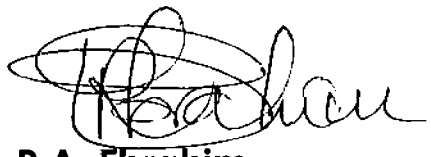
far even in the absence of the said criminal case, there is no such proof from the appellant.

That being said, in the absence of any other proof, the contract between parties was concluded and unfortunately the calamity occurred whilst the property is already in the hands of the respondent. All the respondent is required to do, being the owner of the said motor vehicle is make follow up of her car with the relevant authorities.

For all purpose and intent, since there is no proof that the car is impounded and that there is tax evasion; the respondent is not entitled for a refund from the appellant.

I therefore allow the appeal and set aside the judgement and decree of the Trial Court with costs.

Accordingly ordered.



R.A. Ebrahim

Judge

Dar Es Salaam

26.06.2020