

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(Kigoma District Registry)**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**PC. CIVIL APPEAL NO. 8 OF 2020**

*(Arising from Civil Appeal No. 13 of 2019 Kasulu District Court before Hon. I.D. Batenzi  
– RM, Original Civil Case No. 105 of 2019 of Kasulu Urban Primary Court before Hon.  
H.H. Nyumbamkali – PCM)*

**ASIA D/O ONESMO MLANZI.....APPELLANT**

**VERSUS**

**NEEMA D/O GODFREY.....RESPONDENT**

**J U D G M E N T**

*23/07/2020 & 13/08/2020*

**I.C. MUGETA, J.**

Appellant sued the respondent for recovery of Tshs 5,390,000/= being value of seventy seven sacks full of maize sold to her at Tshs 70,000/= each. The trial court found that the case was not proved. She appealed to the District Court which confirmed the decision of the Primary Court. Undeterred, she has preferred this appeal on two grounds of appeal as hereunder, even though not reproduced verbatim:-

- (i) *That the trial court failed to record all her evidence particularly the admission in evidence the judgment in criminal case No. 157/2018 of the District Court of Kasulu which convicted the*

*respondent which was enough proof that the respondent obtained goods from the appellant*

- (ii) *That the District Court erred to fail to hold that since the respondent was convicted of obtaining goods by cheating, impliedly those goods belonged to the appellant who was the complainant.*

During hearing, the appellant appeared in person while the respondent was represented by Silvester Sogomba, learned advocate. In her brief submission, the appellant prayed to adopt her grounds of appeal and asked the court to consider the evidence as a whole and make correct findings.

In reply Mr. Sogomba, learned counsel for the respondent, supported the finding of the lower courts in that the claim was not proved because the appellant failed to present any exhibit to prove her claim.

Regarding the criminal case judgment, the learned counsel submitted that it was not enough evidence to prove the claim and it was irregularly admitted at the District Court level. The learned counsel reminded this court of the law that a second appellate court can only interfere with the concurrent finding of the lower courts on proof of misapprehension of evidence which is not the case here.

I shall start with the first ground of appeal which has two parts. The complaint in the first part is that the trial court failed to record that the judgment of the District Court convicting the appellant was admitted in evidence before it. This complaint has no merits because that judgment was

admitted in evidence as reflected at page 7 of the trial court's proceedings. The same was marked wrongly as annexure "A" and it is in the trial court's record. I use the word "*wrongly*" because once a document is admitted in evidence, it becomes an exhibit and not annexure. However, this wrong marking has no prejudicial effects to any party. The argument by counsel for the respondent that it was admitted at first appeal court is also misconceived. There is no record to support this argument.

Coming to the other part of this complaint that the conviction is a proof that the respondent obtained the maize and did not pay for it, the District Court had this to say:-

*"...I wish to categorically state here at the outset that, the respondent conviction in the criminal case is not "prima facie" sufficient to constitute the base for a convictee (sic) liability in civil court. Each case has to be determined on its own".*

Then the District Court reasoned that since the person who collected the maize on behalf of the respondent did not testify, then the claim was not proved. The trial court had reasoned on the same lines and held that on the balance of probabilities, the case had not been proved.

It is my view that both the lower courts failed to properly analyse the evidence on record, consequently, reached a wrong conclusion. While the district court touched on that judgment, the trial court never considered the weight of evidence in exhibit "A" which is a judgment indicating that the respondent had been tried and convicted for obtaining goods from the appellant by cheating. The person who took the goods from the appellant



on behalf of the respondent testified at the criminal trial as DW2 and her evidence on how she delivered the goods to the respondent led to her acquittal and conviction of the respondent. It is this evidence which the District Court and the trial court ignored. The appellant filed a civil suit after conviction of the respondent. The Principle is that once an exhibit containing material evidence is admitted, its contents which are relevant must be analysed and decided upon. Both the lower court never analysed the evidence in exhibit "A". This was a misapprehension of evidence which warrants my intervention with their concurrent finding.

Unlike the holding of the District Court regarding the probative value of the conviction of the respondent, I am of the settled view that where a person is convicted of an offence and the offence for which he is convicted becomes relevant in civil proceedings, the conviction is "*prima facie*" evidence on existence of the fact in issue. In this case the appellant was required to prove, which is the fact in issue, that the respondent obtained goods from her and has not paid for them. This fact had been determined in a criminal trial where the standard of proof is even higher. No court, therefore, is entitled to make further finding on this issue unless the finding which led to the conviction of the respondent is set aside by a higher court. There is no such evidence in this case, therefore, the two lower courts erred not to appreciate that there is already a finding of a competent court on the fact that the respondent received the goods from the appellant. I find merits in the first ground of appeal.

By necessary implication, the above discussion disposes of the second ground of appeal too. Consequently, the judgments of the two lower courts are hereby quashed and orders there from are set aside.

In the final analysis I hold that the appellant is entitle to payment of Tshs 5,390,000/= by the respondent. This amount shall attract interest at the current 17% bank rate from the date when payment was due to the date of this judgment and 7% interest from the date of this judgment till payment in full is made. The appellant also is entitled to costs in this court and in both lower courts. Orders accordingly.

**Sgd: I.C. Mugeta**

**Judge**

**13/08/2020**

**Court:** Judgment delivered in the presence of the appellant and the Respondent's Counsel Mr. Damas Sogomba.



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**A.J. Kirekiano**  
**Deputy Registrar**

**13/08/2020**

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