

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC. CIVIL APPEAL NO. 35 OF 2020

(Originating from Chato District Court Civil Appeal No. 11/2019 and Chato Primary Court Civil Case No. 54/2019)

RONJINO MATULIAPPELLANT

VERSUS

GEORGE KATAMBIRESPONDENT

JUDGMENT

06/07 & 31/08/2020

RUMANYIKA, J.:

The 2nd appeal is against judgment and decree of Chato district court dated 23/1/2020 reversing a decision of Chato primary court dated 28/8/2019 whereby George Katambi (the respondent) was ordered to pay Ronjino Matuli (the appellant) shs. 5,000,000/= being value of the car (the collateral) sold by the former.

The 4 grounds of appeal revolve around 3 main points;

- 1) That the respondent had no capacity to dispose of the collateral.
- 2) That the 1st appeal court improperly evaluated the evidence.
- 3) That the 1st appeal court erred in law and fact not holding that the respondent had no legal powers to charge loan interest.

When the appeal was called on for hearing the parties did not have one therefore they made no useful submissions.

A brief account of the evidence on record reads as follows:-

SM1 Ronjino Matuli stated that on 20/6/2018 in writing he borrowed shs. 570,000/= from the respondent in order to repair car the loan was repayable in three equal instalments of shs. 190,000/= monthly. That on default and the parties were agreed, in lieu thereof the respondent took and used the car for one year only but on expiry of the year he learn that the respondent had sold the car.

SM2 Hashim Ally just testified as SM1 did essentially.

SU1 George Katambi stated that on the appellant's request he lend the appellant shs. 1.50m on 5/6/2018 (a house and plot taken as collateral) which loan was repayable in equal installments of shs. 300,000/= per month. That yet still on 20/6/2018, and before repayment of the loan for the same purposes the appellant asked for another loan of shs. 570,000/= repayable in three equal installments of shs. 190,000/- per month. That is all.

The issue is whether the appellant's case was proved on the balance of probabilities. At least in terms of contract its terms and conditions the parties' evidence is at variance materially. If anything, the parties may have reduced it in writing but no one of them produced any documentary evidence. However, only with respect to loan of shs. 570,000/= in terms of terms and conditions the parties were at one essentially. It follows therefore like the trial court held the appellant did sufficiently prove his case.

Moreover, if I were to agree with the respondent that on such terms, additional to shs. 570,000/= he advanced an interest free loan of shs. 1.5m and that indeed the appellant defaulted it, there is no wonder that whether wrongly or rightly the former took the collateral (car) with him it being shs. 5,000,000/= or more of the market value of the car it was by far not fair. If the principles of common law and equity would bring the same results so much better.

Quietly though, such extract money (value) may imply loan interest yes, but that aspect takes me to a well argued decision of the trial court that not only contrary to the provisions of Section 10 of the Law of Contract Act Cap 345 RE. 2019, between the parties the consideration was illegal therefore avoid ab'initio contract, but also contrary to Section 6 (1) of the Banking and Financial Institutions Act, 2006 by so doing the respondent illegally assumed role of a bank and it had no legal effect (case of **Ulf Nilson Vs. Dr Tito Mziray Andrew**, Civil case No. 66 of 2007, HC unreported. Now that the date the respondent took the car was not established, like the trial court held there is no doubts until such time the respondent have had the shs. 570,000/= back leave alone an insufficiently disputed fact that again by way of gentlemen agreement the respondent had occupied and utilized the car for one good year.

In the upshot, had the 1st appeal court properly analysed and evaluated the evidence it should have arrived at a different conclusion. The appeal is allowed with costs. It is ordered accordingly.

Right of appeal explained.

S. M. RUMANYIKA
JUDGE
27/08/2020

The judgment delivered under my hand and seal of the court in chambers this 31/8/2020 in the absence of the parties.



S. M. RUMANYIKA
JUDGE
31/08/2020