

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

PC. CIVIL APPEAL NO. 35 OF 2018

(Arising from Civil Appeal No. 12/2018, District Court of Bariadi, Original Civil case No. 118/2018, Somanda Primary Court)

JACOB OSANYA MAGATI.....APPELLANT

VERSUS

KASILI KULWA KITEBO.....RESPONDENT

JUDGEMENT

05/05 & 4/8/2020

G.J.Mdemu;J.;

This is a second appeal arising from the decision of the District Court of Bariadi in Civil Appeal No. 12 of 2018 delivered on 16/08/2018, according to the facts, the Respondent in the Primary Court of Somanda claimed Tshs.6,000,000/= against the Appellant. The nature of the claim was that, on 30/11/2016, the Appellant Jacob Osanya borrowed Tshs.1,350,000/= from the Respondent for business purposes. He promised to pay the loan by 30/12/2016. To that date, the Appellant defaulted to pay the loan as agreed, and thus renders the said loan to accrue to Tshs.6,000,000/= with interest. According to the agreement, the Appellant was to pay monthly Tshs.600,000/=. The Primary Court determined the claim and ordered the Appellant to pay the Respondent Tshs.3,000,000/=.

The Appellant, being, aggrieved by that decision of Somanda Primary Court, appealed to the District Court in civil appeal No. 12 of 2018, in which, the

District Court on 16th of August, 2018 dismissed the appeal. The Appellant again got aggrieved by that decision, hence lodged the present appeal on the following grounds: -

1. *That, both lower Courts erred in law and fact by admitting the Contract entered by parties while the same contract was tendered by the Respondent in Civil Case No.28 of 2017 from Somanda Primary Court and Civil Appeal No. 63 of 2017 before Bariadi District Court.*
2. *That, both lower Courts erred in law and fact by disregarding that no exhibit can be tendered twice in proving two different cases to the same.*
3. *That, the District Court erred in law and fact by failure to discuss the other four grounds of appeal without legal justification.*
4. *That, the District Court erred in law and fact by violating section 53(2)(b) of the Magistrates' Courts (Civil Procedure in Primary Courts) Rules ,Cap.11, R.E 2002.*

This appeal was heard *ex-parte* on the 5th of May, 2020, after the Respondent has defaulted to appear. The Appellant appeared in person. He prayed first his grounds of appeal as reproduced above be adopted to form part of his submission.

In his submission, in addition to the adopted grounds of appeal, the Appellant argued that, the contract between parties was deployed as evidence in Civil Case No.28 of 2017, in the Primary Court of Somanda, Civil Appeals No.63 of 2018 and No.12 of 2018 both of Bariadi District Court. To him, in all

those cases, execution was done. He added that, there is no in law, a contract that can be used in two different cases. He insisted that, the claim was that of Tshs.1,350,000/=. Thus, he was surprised on how the claim of 6,000,000/= arose.

He further submitted that, the judgement of the Primary Court was not signed by the Trial Magistrate. He thought under the premises there is no need of hearing the instant case which execution process has been completed, because it is Civil Case No.28 that led to Civil Appeal No.63 of 2018 having a claim of Tshs.1,350,000/= of which, execution got completed. He added that, it is Civil Case No.118 of 2018 also that lead to Civil Appeal No.12 of 2018, for a claim of 6,000,000/= which is unjustifiably claimed for there is no contract. He further added that, the District Court did not consider other grounds of appeal, therefore, he prayed this appeal be allowed.

I have heard submissions of the Appellant and after having gone through the record, I find it not disputed that, **one**, there was a contract of Tshs 1,350,000/= between the Appellant and the Respondent. **Two**, the Appellant mortgaged his car to the Respondent as security for the said loan. The issue here now to determine is whether there was an agreement for a loan facility of Tshs.6,000,000/= between the Appellant and the Respondent.

In the first and second grounds of appeal, the complaint of the Appellant is that, the trial District court received in evidence the contract tendered by the Respondent in both Civil Case No.28 of 2017, Somanda Primary Court and Civil Appeal No.63 of 2017 at Bariadi District Court. What is at stake is that, the correct version regarding deployment of exhibit is as submitted by the Appellant that, exhibit that is '*Hati ya Makubaliano ya kukopeshana fedha taslimu*' was tendered by SM1 Kasili Kitebo in Civil Case No.118/2017. This was a claim to have his loan of Tshs.1,350,000/= be paid by the Appellant. Regarding

this, at page 9 of the trial Primary Court proceedings, the record reads as follows;

"SM1 Kasili s/o Kitebo

Ninamdai mdaiwa kiasi cha Tshs.6,000,000/- kwa sababu tarehe 30/11/2016 nilimpatia pesa kiasi cha Tshs.1,350,000/=ambazo zilikuwa azirejeshe tarehe 30/12/2016 lakini hakuzirejesha kwa maana hiyo kwa kuwa hizo hela zangu ni za biashara kila mwezi alipaswa anilipe kiasi cha Tshs.600,000/= kwa kuwa miezi 11 tangu achukue pesa yangu,kutokana na hilo ndio maana namdai kiasi cha Tshs.6,000,000/= ili anilipe.Naomba nikabidhi vielelezo vya makubalianao yetu pamoja na madai yangu.P.1 na P.2 vimepokelewa ."

Correctly as submitted by the Appellant, exhibit P1 was deployed in evidence in civil case No.28/2017 tendered by the Appellant as "Kielelezo A" However, it is clear that, in all the two cases, the subject matter was a loan contract of Tshs.1,350,00/= between the Appellant and the Respondent. In law therefore it was not fatal for the Respondent to use the same contract deployed in Civil Case No.28/2017. There is no restriction requiring a document to be used in one case only.This ground is thus baseless.

On the third ground of appeal, the main complaint is that, the District Court erred in law and fact by failure to discuss the other four grounds of appeal without legal justification. Regarding this point the Judgement of District Court, at page 3 reads as follows:

"In respect of other grounds of appeal, the court do opt not to detain long simply because there is no good reason

to defer with the trial court on the findings of fact. The judgement before the trial court was properly signed. The decision of the trial court remains undisturbed."

From the quotation above, the appellate Magistrate demonstrated and stated reasons on not going to the details of other grounds of appeal. He observed that, such grounds do not constitute substance as to require him to differ with findings of the trial Court. In essence, he did not abandon as complained. Therefore this ground also lacks merit and is accordingly dismissed.

Regarding violation of Section 53(2)(b) of the Magistrates' Courts (Civil Procedure in Primary Courts) Rules Cap.11, complained in the 4th ground of appeal, the provisions of the Rule stipulating the legal requirement is reproduced as hereunder:

"53 (1) At the conclusion of the hearing or on a later day fixed by the court, the court shall give its decision.

(2) Every decision shall-

(b) be signed by the magistrate who heard the proceedings.

As it is, the provision require the trial Magistrate to sign his/her decision in the instant appeal the trial Court records shows that, both the proceedings and judgement of the court got signed by the trial Magistrate. The appellate Resident Magistrate also made that observation in his judgment at page 3, that the judgment of the trial court was duly signed. Therefore the ground that the trial Magistrate violated the above provision is also baseless and is accordingly dismissed.

One thing I noted, after perusal of trial court's proceedings, is that, there are two cases filed by the parties in different times. That is, civil appeal No.63 /2017 which originated from civil case No.28 of 2017 and Civil Appeal No.12/2017 which originated from civil case No.118 of 2017, which is the case at hand. In civil case No.28 of 2017, the Appellant Jacob Osanya claimed a car from the Respondent. The said vehicle, which was registered as T.678 AVS make Fuso, was a security on the loan facility secured by the Appellant. The latter confiscated the vehicle on default of the Respondent to service the loan facility. Furthermore, in civil case No.118 of 2017, in the same trial Court, the Respondent Kasili Kulwa filed a claim regarding the loan facility secured by the Appellant.

According to the record, specific to exhibit P1, the loan agreement, the total sum loan was Tshs.1,350,000/=.The issue of interests is not coached anywhere in the agreement. That being the case, the two courts below, erred in awarding the total payment of the loan to the tune of Tshs.3,000,000/=.There is no any criteria invoked by the two courts as to how the said amount got arrived at. In view thereof, the Appellant is only entitled to pay the principal sum as contained in the loan agreement. To that end, this appeal is dismissed to the extent as demonstrated above. It is so ordered.


Gerson J.Mdemu

JUDGE

04/08/2020

DATED at SHINYANGA this 04th day of August, 2020.




Gerson J.Mdemu

JUDGE

04/08/2020