IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISRTY OF KIGOMA

AT KIGOMA

CIVIL APPEAL NO. 11 OF 2019

(Arising from Civil Appeal No. 18/2018 of Kasulu District Court at Kasulu)

REGINA GAUDENCE.....APPELLANT

VERSUS

SADOCK JAMES .....RESPONDENT

J U D G M E N T

Date of Judgment: 9/03/2020

Before: Hon. Matuma, J.

The appellant sued the Respondent in the Primary Court of Kasulu Urban at Kasulu for payment of **Tshs 2,550,000/=** being value of 25,000 bricks.

The brief facts arising to this appeal is that the appellant and the respondent sometimes cohabited and were blessed with two issues. The appellant was running her own business of laying bricks and selling them.

She had laid 25,000/= bricks but the respondent sold them without her knowledge or consent.

She found the bricks missing at the site and was told that it was the respondent who sold them at **Tshs 100/=** each.

She tried to communicate the respondent in vain hence the suit at the trial court, an appeal to the District Court and now before this court.

At the trial court, appellant succeeded in the suit but the respondent successfully appealed to the District Court. The appellant having been dissatisfied with the decision of the District Court has preferred this appeal with four grounds mainly faulting the decision of the District Court on the

ground that there was sufficient evidence on recorded which established her claims against the respondent hence the District Court ought not to have reversed the decision of the Primary Court.

At the hearing of this appeal both parties appeared in person unrepresented and they mainly adopted their respective memorandum of Appeal and Reply thereof respectively.

The issue is therefor whether the appellant had produced tangible evidence to the effect that the respondent sold her bricks. At the trial the appellant gave her evidence to the effect that she laid her bricks but one day she was informed that the bricks were sold.

She sent some people on the locus in quo and they really found the bricks missing. The relevant piece of evidence thereof reads;

"Siku moja saa saba usiku nikiwa nimelala simu yangu iliita, nilipokea ndipo niliambiwa imekula kwangu nimeambulia mchoko sitapata pesa yoyote. Simu hiyo nilipigiwa na mke wake mdaiwa. Asubuhi nilituma watu wawili kwenda kuangalia wakakuta ni kweli matofali hayapo".

When the respondent cross examined her during trial as to who the bricks were sold she replied;

" *Unajua mwenyewe ulimuuzia nani"*

The two other witnesses William Fabiano (SM2) and Apolo s/o Andrea (SM3) gave similar evidence to the effect that they worked for the appellant to lay the bricks. They had no evidence on where was the bricks taken thereafter. They thus gave evidence to establish that at one time those bricks were there laid by them at the instances of the appellant.

The respondent on his party denied to have sold the bricks of the appellant nor to have any business with her.

The District Court on appeal observed that the trial Primary Court had erroneously reached to its decision. It held in part;

"I think the trial Court could have not seen that the respondent has successfully sufficiently proved that it was the appellant who had taken the bricks from the site. There was no any eyewitness who testified to the trial Court to have seen the appellant taking the bricks. It was only the allegation that the appellant's wife made a phone call to the respondent telling her that she wasted her energy for nothing.

I think this thread of evidence cannot constitute the justifiable base for the findings the trial court made. First of all, in the conversation there is nowhere the bricks neither the appellant have been referred. But again there were no proof that this call, if at, the reference to the bricks and the appellant could have featured in this conversation, was made. And lastly, even if there could be this proof, there is no proof of the content of the conversation".

I am of the firm view that such observation of the first appellate court was rightly made. The appellant's suit at the trial court based on assumptions and speculations that the missing bricks of the appellant were sold by the respondent in this appeal. The respondent was not even aware as to whom the bricks were sold as reproduced herein above. Therefore even the allegations that her bricks were sold remains assumptions. She had in fact alleged that the respondent had stolen the alleged bricks during cross examination at the trial. **Assumptions** and **speculations** have no room in Civil justice.

The law requires he who alleges to prove his allegations (see section 110 of the Evidence Act, Cap.6 R.E 2002).

The law has further provided the modes in which an alleged fact may be proved. That is the rule of **direct evidence** as against **hearsay evidence**. See section 62 (1) (a) – (d) of the Evidence Act, supra.

The evidence of the appellant at the trial did not qualify in any of the modes of proving the alleged fact as per section 62 of the Evidence Act supra.

The trial Primary Court was thus wrong in adjudging for the appellant and the District Court was right in reversing such erroneously reached decision of the trial Court.

In the premises, I find this appeal to have been brought without sufficient cause. The same is hereby dismissed in its entirety. No orders as to costs.

It is so ordered.

MATUMA

JUDGE

9/3/2020