

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**(PC) CIVIL APPEAL NO. 13 OF 2020**

*(Arising from Civil Revision No. 1/2020 Kigoma District Court Before:  
Hon. K. Mutembej – SRM and Originating from Civil Case No. 189/2018  
from Ujiji Primary Court Before: Hon. E.B. Mushi - RM)*

**GASTO SABAS NYOGO.....APPELLANT**

**VERSUS**

**BOMBO JOHNSON NYAMWERU ..... RESPONDENT**

**JUDGMENT**

*10/11/2020 & 13/11/2020*

**A. MATUMA, J**

In the Primary Court of Ujiji at Kigoma, the Appellant stood sued by the Respondent for a claim of **Tshs 4,490,000/=** arising from a loan agreement.

The Appellant admitted the debt stating that he has already paid **Tshs 140,000/=** out of that debt. The respondent acknowledged that he was paid the said **Tshs 140,000/=** and therefore the outstanding debt remained to be **Tshs 4,350,000/=**. The Primary Court decreed such sum.

The Appellant having learnt that the loan agreement accrued from illegal transactions moved the District Court to call for records of the trial Primary Court and revise the same. The District Court in its Revisional order refused to revise the trial Courts records hence this appeal with three grounds of Appeal which was argued generally before me to the effect that;

*"The District Court erred in law and facts in not revising the lower Courts decision accordingly thereby letting the Respondent illegally enrich himself without licenses".*

At the hearing of this appeal both parties appeared in person and they in their respective submissions agreed that the original loan by the Respondent to the appellant was **Tshs 1,500,000/=** but it was taken on agreement that it will be repaid in a month with an interest of **Tshs 300,000/=** and witnesses' costs at the tune of **Tshs 20,000/=** thereof making the total sum to be repaid by the appellant to the Respondent to be **Tshs 1,820,000/=**.

They further agreed in their respective submissions that the appellant defaulted to repay the said loan as it was agreed. As such on 27/9/2018 just four months form the date in which the loan was advanced, the appellant was forced to reduce such loan agreement in writing before Mr. Silvester Damas Sogomba learned Advocate.

They executed such agreement into writing before the said advocate but in it, it was written that the principal loan is **Tshs 4,530,000/=** purporting to have no interest in it;

*"Kwa kuwa mdai amekuwa na desturi ya kukopwa pesa na mdai na kuzirejesha bila matatizo, na kwa kuwa pande zote mbili wamekili kuwa na mahusiano mazuri, **mkopo huu ulitolewa kindugu na hakuna riba itakayotozwa au iliyotozwa wakati wa kukopwa au itakayotozwa wakati wa kurejesha.**"*

It is that contract which formed the basis of the claim by the respondent in the Primary Court.

When I asked the respondent how did it get into such amount Tshs 4,530,000/= from the real advanced loan, he honestly replied that it was due to interests as the appellant stayed with his money without repaying it back for three years.

As reflected herein above, the parties are not at issue on the facts lead to this case. It is therefore, easy to determine this appeal just for determining the issue as to ***whether the loan transaction between the parties was legal capable of being executed.***

To answer that issue there is the question of the legality of the business transaction which resulted into the suit and subsequently a decree subject to this appeal. The business transaction was that the Respondent did lend Tshs. 1,500,000/= to the appellant on agreement of interest at **Tshs. 300,000/=** in a month. The appellant defaulted to repay the principle sum of the loan and the subsequent agreed interests thereof. The claim was thus raised to **Tshs. 4,490,000/=**. Was this business legal? The answer is not.

Nobody can dispute that the agreement between the parties herein on the loan was in the nature of business transaction. That is because it

was in the capital of Tshs. 1,500,000/= invested into lending with an expected profit of Tshs. 300,000/= per month. In other three months it raised into millions of monies as herein above stated. Therefore, it was a business transaction.

Section 3 (1) (a) of the Business Licencing Act, Cap. 208 R.E. 2002 prohibits any person to carry on business without having a valid business licence.

It provides;

*"3(1) No person shall carry on in Tanzania, whether as  
a principal or agent, any business unless  
(a) he is the holder of a valid business licence  
issued to him in relation to such business."*

The Respondent herein had no business licence to that effect and therefore was doing illegal transactions. He was actually contravening the Banking and Financial Institutions Act, Cap. 242 R.E. 2002 in which only Banks and Financial Institutions can run business in the nature of financial transactions like lending money on interest basis. That law under Section 4(1) & (2) restricts business in the nature of financial transactions to Banks and Financial Institutions subject to the application and grant of licence to that effect under Section 6 of the Act. The Procedures on how to apply and grant of the licence are provided for under section 7 of the said Law. In the circumstances, the respondent was violating the law by carrying on business without being registered for and licenced as such. He cannot be allowed to benefit from illegal businesses. My learned brother Josephat M. Mackanja Judge, as he then was, at one time faced

the similar problem in the case of *David Charles V. Seni Manumbu* (HC) Civil Appeal no. 31 of 2006 and ruled out that;

***"As it has come to pass that, and since the loan was advanced and was received in contravention of the law, it cannot be enforceable."***

I hold the same view that the agreement between the parties herein were illegal and not enforceable in terms of section 23(1) (a) (b) and (2) of the Law of Contract Act, Cap. 345 R.E. 2002. Section 23(1) (a) & (b) of the Law of Contract supra defines that any agreement forbidden by Law or an agreement which is of a nature that if permitted would defeat the provisions of the Law is unlawful. Subsection (2) thereof declares that unlawful agreements are not enforceable.

It provides;

***"23(2) In each of the cases referred to in subsection (1), the consideration or object of an agreement is said to be unlawful; and every agreement of which the object or consideration is unlawful is void and no suit shall be brought for the recovery of any money paid or thing delivered or for compensation for anything done, under any such agreement."***

It was wrong therefore for the court to receive and register such a suit which based on illegal transaction. The acts of the respondent to carry on such illegal business of lending money on interest basis is not only illegal but also criminally punishable under Section 4(3) of the Banking and Financial Institutions Act, supra which provides;

***"Any person who contravenes the provisions of this section commits an offence and on conviction is liable to a fine of not less than one million shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment."***

Had the District Court on Revision considered all these it would have ruled that the circumstances in this matter dictated revision of the trial court's findings to meet the end of justice.

I therefore step into the shoes of the District Court and exercise Revisional powers to remedy the situation. In the premises the order of the District Court is hereby quashed so does that of the primary court. I order the Appellant to refund back Tshs. 1,500,000/= to the Respondent the principal debt with no interest.

I have also considered the fact that the respondent is a honest man who has decided to declare the true status of the loan between him and the Appellant contrary to the false executed loan agreement which was dishonestly drafted by the learned advocate purporting to establish false loan facility hiding in it interests. I further find that, the appellant ought to have repaid his real principal loan of Tshs 1,500,000/= on 1/7/2018 which was agreed period. He did not however repay it to date which is three years and almost five months. He has thus caused the respondent to suffer some damages.

I asked both parties what should be the remedy in the circumstances.

The appellant offered to pay the principal amount of Tshs 1,500,000/= and damages for his delay to the tune of Tshs 500,000/= in disregard to Tshs 140,000/= which he has already paid to the respondent. The

respondent agreed to be paid such amount (Tshs 2,000,000/=) but prayed that ne be paid it at once (in a lump sum) so that it can be useful to him. The Appellant undertook to pay such amount by the 30<sup>th</sup> December,2020.

Since the parties are in agreement as such, I do hereby declare that the respondent in addition to the principal sum of **Tshs 1,500,000/=** be paid **Tshs 500,000/=** as general damages and not interest. The whole sum be paid before or by 30<sup>th</sup> December,2020. Failure of the Appellant to repay such amount in the stated agreed period shall entitle the respondent to execute the decree by attachment and sell of the landed property of the Appellant which was subject to the execution proceedings in the trial Primary Court.

In the circumstances, this appeal is allowed to the extent herein above stated and as the parties mutually agreed to settle the dispute between them, I order no costs to either party.

It is so ordered.



**A. Matuma**

**Judge**

**13/11/2020**

**Court:** Judgment delivered in chambers in the presence of both parties in person. Right of Appeal explained.

**Sgd: A. Matuma**

**Judge**

**13/11/2020**