

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

(PC) CIVIL APPEAL NO. 11 OF 2019

(Arising from Civil Appeal No. 18 of 2018 of Muheza District Court and
Originating from Civil Case No. 136 of 2018 of Mbaramo Primary Court)

DUNSTAN MICHAEL MSENDAAPPELLANT

VERSUS

LEVINA JOHN MUSHIRESPONDENT

JUDGMENT

MRUMA,J.

This is an appeal against the decision of the District Court of Muheza at Muheza in Civil Appeal No. 18 of 2018. In that appeal the present Appellant Dustan Michael had appealed to challenge the decision of the Primary Court of Mbaramo which had ordered him to pay the Respondent Tshs.2,750,000/= being part of the amount of money he received from her for construction of a two roomed house at Mbaramo Ward in Muheza District.

Before the trial court it was the Respondent's case that sometimes in March 2018 she gave the Appellant Tshs.6,800,000/= (say shillings six million and eight hundred thousand) for purposes of buying building materials for her two roomed house. According to the Respondent it was mutually agreed that the amount given to the Appellant was sufficient to

buy building materials for the said house. Construction started on 12/03/2018. The Appellant bought 45 (30g) corrugated Iron sheets, 20 bags of cement, binding wire, 2kg of iron sheets nails, 3kgs of ordinary nails and ring beam. The Appellant informed the Respondent that the building materials he had bought had costed him Tshs.1,300,000/= (say One Million and Three Hundred Thousand). On 16/03/2018 the Appellant bought 700 red bricks, three trips (Lories) of sand and 60 tin of building pebbles. In April 2018 he paid Tshs.40,000/= for digging a pit latrine and he bought 3 more cement bags. Thereafter the Appellant advised the Respondent that construction work should stop to pave way for rainy season to come to an end.

After the rain season had ended the Respondent asked the Appellant about progress of the construction work. The Appellant informed her that he had bought 700 square feet of wood, 5' x 5' window frames 1,420 sapphire wood square feet, 10mm 10 pieces of iron bar and three door frames. The Respondent didn't agree with the account and a dispute arose on the amount used and the balance whereupon the Appellant gave the Respondent Tshs.100,000/= as the remaining balance. The Respondent did not agree and she instituted a criminal case against the Appellant for obtaining Tshs.3,548,000/= by false pretenses. The Criminal case was withdrawn and instead, the Respondent instituted a civil suit claiming 2,750,000/= on account that the Appellant had given her building materials worth Tshs.796,000/= only.

The Respondent called one witness Juma Shabani who testified as PW2 who gave evidence confirming the alleged relationship between the Respondent and the Appellant.

In his defence, the Appellant denied the Respondent's claims. He informed the trial court that he had advised the Respondent who was his lover to buy a plot which she bought at Tshs.450,000/=. Thereafter she bought building sand and he (i.e. the Appellant) paid a mason and supervised digging of a latrine pit. He was surprised to be summoned to the police where he denied being indebted to the Respondent.

The trial court found for the Respondent. The Appellant was aggrieved and he unsuccessfully appealed to the District Court and hence this second appeal.

This being the second appeal this court has no obligation to re-evaluate the evidence adduced at the trial. Re-evaluation of the evidence was done by the first appellate court. In its judgment the district appellate court conducted a post mortem (i.e. re-evaluation) of the evidence and came up with a conclusion that comparing the evidence of both parties the evidence adduced by the Respondent was heavier than that adduced by the appellant.

At the hearing of this appeal parties were unrepresented and hence they had no much to tell the court. In arguing his first ground the Appellant argued that the District appellate court erred in finding for the

Respondent while he (the appellant) was acquitted in Criminal Case involving the same subject matter. Responding to the Appellant's submission on that point, the Respondent submitted that the two cases, are different therefore they should be looked at differently.

On my part I agree with the Respondent that the two cases are different. Acquittal in a Criminal Case is not an absolute defence in civil liability. It is trite law that standard of proof in Civil cases are on the balance of probabilities while that of Criminal cases is beyond reasonable doubt. It is also trite that any doubt in criminal trial must be resolved in accused's favour. This, however does not impute that the accused cannot be found liable in a civil litigation over the same subject matter.

In the case at hand the Respondent explained how she gave Tshs.6,800,000/= and how the amount was spent by the Appellant in buying building materials. According to her, there was Tshs.2,750,000/= which the Appellant did not account for. The appellant chose to remain silence on this issue and did he not offer any explanation. In his evidence in chief the Appellant had stated that all this was brought about because he had promised to give the Respondent wood. The trial court rejected this defence and I think rightly so in my view. As correctly observed by the District appellate court the Respondent's evidence was heavier than that of the Appellant and since parties in a suit cannot tie **(See Hemed Said V. Mohamed Mbilu (1984) TLR 113]** like the appellate district court I find that the evidence adduced by the Respondent was a lot weightier than that

of the Respondent which constituted general denial. I find that the findings and decisions of the two courts below were justified in law.

In the final result, this appeal has no merit. It is dismissed with costs to the Respondent here and below.




A.R. MRUMA

JUDGE

19/08/2020

Date: 19/08/2020

Coram: A.R. Mruma, J.

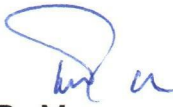
Appellant: Present in person

Respondent: Present in person

Court Clerk: Nakijwa

COURT:

Judgment delivered.


A.R. Mruma

Judge

Dated at TANGA this 19th Day of August, 2020