IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

PC CIVIL APPEAL NO. 127 OF 2019

(Originating from Civil Appeal No. 45 of 2018, Morogoro District Court)

GOLDEN MPEMBWA.....APPELLANT

VERSUS

MBWATO MLAZI.....RESPONDENT

JUDGMENT

The appellant above mentioned is dissatisfied with the decision of the first appellate court which affirmed the decision of the primary court which ordered the appellant to compensate the respondent above, a sum of Tsh 6,000,000.

In the petition of appeal, the appellant grounded that: one, the trial magistrate erred in law in upholding the decision of the Urban Primary Court of Morogoro while the respondent has no locus to sue the appellant; two, the trial magistrate erred in law and facts in holding that the appellant has failed to comply with the court orders; three, the trial magistrate erred

in law and facts for failure to analyze the evidence tendered before the Urban Primary Court of Morogoro.

To start with the third ground. Essentially there was no evidence which was tendered by either party. The records of the primary court depict that when parties appeared for the second time before the primary court magistrate on 4/1/2017, the defendant (appellant herein) was recorded to have said, I quote in verbatim,

> *'Mimi sina pingamizi la kumpa gari yake ila tu fundi ndiye anayenizungusha na kuhusu pesa zake hapa itakuwa shida kwani gari hiyo inatakiwa matengenezo makubwa hivyo kwa kuwa gari inahitaji matengenezo makubwa hivyo naomba asinidai nitengeneze gari lake nimrudishie'*

In response the plaintiff (respondent herein) stated, I quote,

> *'Gari nimempa nzima yeye kaiangusha hivyo naomba alitengeneze gari langu na anikabidhi na nitakuwa simdai pesa yeyote'*

Thereafter, the primary court magistrate, recorded a settlement in the following terms, I quote for appreciation,

> *'Kwa kuwa mdaiwa amekubali kulitengeneza gari la mdai baada ya miezi miwili na kwa kuwa nae mdai amekubaliana na mdaiwa, hivyo kutokuipa usumbufu*

mahakama, mahakama hii haina pingamizi na makubaliano yao na inaamuru mdaiwa ahakikishe anakamilisha kulitengeneza gari hilo na kufika tarehe 5/3/2018 amkabidhi mdai.

Hivyo basi mdai ameshinda madai yake na kila upande utabeba gharama ya kesi hii'

It appears thereafter the defendant (appellant herein) failed to honor his promise and obligation to carry out major repair of impugned motor vehicle and hand over to the respondent, as he vowed. Instead the appellant kept making empty promise here and there, until on 11/9/2018 when the respondent informed the court that the appellant did nothing in repairing, as he promised to scretch the car board, to paint, to replace damaged glasses, and to replace all tyres.

Thereafter on 10/10/2018 the primary court magistrate ordered the appellant to pay the respondent a sum of Tsh 6,000,000 being a value of a motor vehicle. This was proceded by a similar order made on 21/8/2018. However, apart from the fact that this order was inconsistence with the settlement reached earlier, the primary court magistrate made this order regarding value of a car without receiving any evidence. Seemingly the primary court magistrate was under assumption that the explanation and submission by the respondent made on 21/8/2018 (which were not made

under oath) was taken as a sufficient proof regarding the value of a car. Another anomaly, the primary court magistrate assigned and dispatched a set of assessors to visit a motor vehicle in dispute at the locus in quo on 11/9/2018. This prompted the appellant to lodge a complaint of no confidence against the assessors and their subsequent recusal on 12/9/2018. But the primary court magistrate still repeated the same mistake, where on 12/9/2018, ordered a car to be brought before the court, where it was recorded that a new set of assessors also engaged into inspecting it and ultimately made their personal opinion regarding a status of repair, and the decision of the primary court was whole hinged on the assessment and opinion of assessors without further evidence. At any rate this implies bias, as the court had turned into witnesses to stablish and prove a claim of the respondent, which is legally untenable and unacceptable. In the context an order of the primary court dated 10/10/2018 cannot let to stand as was made based on speculation and what was alleged or pleaded by the respondent in a claim document or form, without any proof as aforesaid. As such an argument that the primary court magistrate failed to analyze evidence, is un merited as there was no evidence to deliberate upon.

As much this ground suffice to dispose the matter, I will not dwell on other grounds.

Having premised as above that the order of the primary court dated 10/10/2018 is abrogated, making the judgment of the district court with no leg upon which it can peg on. It is therefore equally set aside.

The matter should be handled based on the settlement reached on 4/1/2017, before another magistrate with a new set of assessors.

For avoidance of doubts and for certainty I make the following orders:

1. Orders of the primary court dated 21/8/2018 and 10/10/2018 are quashed.
2. The judgment of the district court is also set aside.
3. The settlement reached on 4/1/2017 before the primary court is still valid, therefore remain undisturbed.
4. Reassigned primary court magistrate and new set of assessors should facilitate amicable compliance and execution of the settlement dated 4/1/2017 and in case of an impasse or road block, an independent technician from a reputable garage in Morogoro should be contracted at the expense of the appellant, to make valuation and furnish report to the primary court in respect of spare parts and costs for repair,

which shall form a basis of execution of the deed of settlement dated 4/1/2017.

Appeal succeed to the extent explained above. I make no order for costs.

E.B. Luvanda
Judge
15/12/2020