

**IN THE HIGH COURT OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**PC. CIVIL APPEAL NO 48 OF 2019**

(Originating from the decision of Mkuyuni Primary Court in Civil Case No 373 of 2018  
and District Court of Nyamagana in Civil Appeal No. 71 of 2018)

**JUMA MABIMBA .....APPELLANT**

**VERSUS**

**SAMWEL POMPIDO .....RESPONDENT**

**JUDGMENT**

06 & 14/05/2020

**RUMANYIKA, J.:**

The 2<sup>nd</sup> appeal is against judgment and decree of 2/8/2019 of Nyamagana district court which quashed decision of 16/11/2018 of Urban primary court Mwanza. The grounds of appeal read thus:-

- 1) That the impugned judgment suffered serious illegality namely was not reasoned one therefore no judgment at all.
- 2) That the 1<sup>st</sup> appeal court learned resident magistrate erroneously ignored the evidence on record.

Messrs D. Kahangwa and J. Muna learned counsel appeared for Juma Mabimba and Samwel Pompido (the appellant and respondent) respectively.

When the appeal was called on 6/5/2020 for hearing, but following the global outbreak of Coronavirus pandemic and pursuant to my order of 25/3/2020 the parties were online (0743 361 854 and 0754 405 115) respectively, by way of Audio Teleconferencing I heard them as follows:-

Mr. D. Kahangwa learned counsel argued the grounds combined and he submitted that for want of the essential concise statement, points for determination, decision and reasons therefor, the impugned was no judgment at all. Counsel cited the provisions of Section 3 and Order XX Rule 4 of the Civil Procedure Code Cap 33 RE. 2002 and the case of **Tanga Cement Company Limited V. Christopherson** Company limited (2005 TLR 190 (CA) that each of the 4 criteria of a judgment worked independently.

In the alternative, Mr. D. Kahangwa leaned counsel submitted that should the court hold otherwise, yet still the 1<sup>st</sup> appeal court did not determine the issues and properly evaluate the evidence. That the omission therefore rendered it a defective judgment the learned counsel cited the case of **Sostenes Bruno and Another V. Flora Shauri**, Civil Appeal No 81 of 2016 (CA) unreported. We shall ask that the impugned judgment and proceedings be quashed and therefore the appeal be allowed with costs. The leaned counsel further contended.

On his part, Mr. J. Muna learned counsel submitted that in fact there were some reasons therefor at page 4 of the judgment much as naturally points for determination were embodied in reasons for the judgment.

Its background and therefore the summary of the evidence on record goes as under:-



With an open ended contract the present respondent having leased a boat Engine with Registration No. 980446 make Suzuki (shs. 2,050,000/=) to the appellant two weekly for shs. 125,000/= on 18/11/2017 but the appellant did not pay 36 weeks charges which now had accumulated to shs 4.30m inclusive of shs. 2,250,000/= being value of the engine (copy of the cash sale receipt Exhibit "PE2").

On his part, the present appellant testified that on behalf of SU2 he hired the machine only for two weeks, he paid shs. 125,000/= and he was done since. But during field operations some fisheries officers having seized the engine on 15/2/2018 for want of the respective cash sale receipt (copies of the seizure form and the related letter of the local Bwiru Kijiweni BMU Chair-Exhibits "DE1" and "DE2"). Leave alone mechanical faults that were reported but the respondent turned hostile and he refused to pay for repairs or accept the engine back.

I choose to begin with the trial court's analysis of the evidence. (i) looking at the copy of the lease agreement (Exhibit "PE1") very clearly it was a two (2) weekly contract (ii) it was open ended (iii) impliedly though the contract was renewable (iv) the appellant executed it not as guarantor but a party proper (v) the first two weeks ran from 18/11/2017 – 2/12/2017 inclusive of the dates (vi) there was in their contract no "defect clause" or any other clause related to unforeseen events. **Res Ipsa Loquitor.**

The appellant had liability to pay much as if anything, looking at the seizure form (Exhibit "DE1") the engine was seized say three (3) months after the contract was executed by the parties. As long as the appellant

did not tell when exactly did the engine develop mechanical defects and when for the first time he reported it to the respondent. It may have been during the first two weeks or something in which case therefore in order to minimize loss one would have reasonably expected to surrender the engine with immediate dispatch short of which unlike the trial court did, the appellant was presumed throughout having made use of and enjoyed the fruits.

With regard to the point whether or not the impugned judgment was a reasoned one I had to look at the two issues that the learned RM had paused:- **(1)** Whether the present respondent had good cause of action **(2)** if issue number one was answered in the affirmative who, between the parties was duty bound to redeem the seized engine. To answer the two issues in effect the learned resident magistrate was of the view that as even on lapse of the agreed 1<sup>st</sup> two weeks the appellant did not pay or for whatever reasons return the engine to the appellant, by necessary implication for that long the latter assumed a continued renewal of the contract and therefore liable to pay the accumulated shs. 4.30M. Leave alone upon the officers seizing the engine the appellant's duty to redeem or cause it to be redeemed much as still the contract subsisted and the appellant had control of the engine.

With all the above said, I think as far as reasons for the judgment was concerned there was nothing more to be said by the learned resident magistrate. Like in judgment writing there was no fast and harden rule, recording of the reasons for judgment much depended on individual judicial officer's art.




There is nothing upon which to fault the learned resident magistrate. The appeal runs short of merits and it is dismissed with costs. It is so ordered.

Right of appeal explained.

  
**S. M. RUMANYIKA**  
**JUDGE**  
**10.05.2020**

It is delivered under my hand and seal of the court in chambers this 14/5/2020 in absence of the parties with notice (copies to be supplied immediately).

  
**S. M. RUMANYIKA**  
**JUDGE**  
**14.05.2020**