IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC CIVIL APPEAL NO. 4 OF 2021

(Arising from Civil Appeal No. 9/2020 of Ilemela District Court. Original Civil Case No. 149/2019)

PUNUNTA CO. LIMITED (NEWTON KITUNDU) ..... APPELLANT

VERSUS

MAGIGI SAGARYA ..... RESPONDENT

JUDGMENT

9th & 13th April, 2021

RUMANYIKA, J.:

The 2nd appeal is, with respect to judgment and decree dated 26/10/2020 of Ilemela district court (the DC) on the basis of one trading without license the latter having nullified the proceedings and decision of 26/06/2020 of Ilemela primary Court (the trial court) which had ordered Magigi Sagarya (the respondent) in six (6) equal monthly installments of shs. 200,000/= to pay Pununtas Co. Ltd (Newton Kitundu) (the appellant) shs. 1.20 million from the principle shs. 250,000/= according to agreement of 26/01/2018 being unrepaid loan and interest.

Mr. Adam Akram learned counsel appeared for the appellant while the respondent appeared in person, through their mobile numbers.

0754996916 and 0787835288 respectively the parties were, by way of audio teleconferencing heard on 08/04/2021.

Having chosen to argue the two grounds of appeal generally, Mr. Adam Akram learned counsel very briefly he submitted; **(1)** that contrary to Section 3(1) of the Law of Limitation Act Cap 89 R.E. 2019 (the Act), DC erroneously held that the appeal was not time barred **(2)** that with regard to the issue whether or not the appellant had Microfinance Business License, the parties were not heard the point having had been **suo motu** raised by the court and the omission therefore led to miscarriage of justice. (case of **Sylivester S. Nyanda V. The IGP** and Attorney General, Civil Appeal No. 64 of 2014 (CA) at Mwanza, unreported. That the learned magistrate should have, in the middle raised it the point yes, but on that one also the parties should have been heard. We pray that the appeal be allowed with costs. The learned counsel submitted.

Unusually briefly, the respondent submitted that in fact on the issue of business license the DC fairly heard the parties after all the appellant only had office in the brief case and the proceedings were properly nullified therefore the devoid of merits appeal was liable to be dismissed with costs. That is all.

From the record it is as evidently clear as follows: -

SM Newton Kitundu of the appellant (copy of the letter of introduction-Exhibit R2), also according to copy of the loan agreement (Exhibit R3) he stated that at the interest of shs. 50,000/= from them on 26/01/2018 the respondent secured a month term loan of shs 250,000/= therefore shs. 300,000/= repayable on 26/02/2018 latest but for the respondent's default as the latter only paid shs. 50,000/= on 16/03/2018, shs. 50,000/= on 30/04/2018 and shs. 150,000/= on 30/04/2019 latest hence the outstanding and disputed shs. 1.0 million (the copies of the receipts for the installments paid-Exhibits R1 copies of business licenses for the years 2018 – 2021 (Exhibits R5, R4, and R8). Also copies of the certificate of Registration/Incorporation and TIN No. (Exhibits R6 and R7) respectively that depending on the respective loan agreements they charged between 0% and 30% interest rates. That is all.

SU Magigi Sagarya stated that really from the appellant on such terms in 2017 he borrowed shs. 250,000/= but he repaid it all and was done as per the disputed Exhibits Z1, Z2 and Z3 except Exhibits S4 and S5. That as the outstanding sum stood at shs. 250,000/= in year 2018, for some reasons he asked for relaxation/variation of the loan terms

successfully but contrary to the promise the appellant never reduced it in writing then he paid shs. 150,000/= on 30/04/2019 therefore remained with shs. 1,000,000/= only unpaid. That is all.

The issue generally is not whether the appellant's claims were proved on the balance of probabilities but rather on the question of interest chargeable whether the claims were so proved.

From undisputed loan of shs. 250,000/= the respondent having had repaid shs. 50,000/= (on 16/03/2018), shs. 50,000/= on 30/09/2018 and shs. 150,000 on 30/04/2019 vide Receipts Nos. 0206, 0233 and 0533 respectively and the appellant did not dispute them sufficiently, no doubts the respondent had paid a total of shs. 250,000/= in other words the loan was fully repaid.

Contrary to the purported loan agreement the respondent may have repaid the month term loan ahead the schedule i.e. 26/02/2018, yes, but in terms of the loan terms and conditions (Exhibit R3) for no disclosure of the interest rate chargeable much as if anything, but contrary to Sections 100 and 101 of the Evidence Act Cap 6 R.E. 2019 the alleged shs. 50,000/= which one was only in his testimony orally introduced and stated by the

appellant's SM. Now that it being the loan interest or penalty rate it was not categorically stated in the agreement and the amount claimed by the appellant included interest, irrespective of the principle of sanctity of contracts, with all fairness it could not be said that he appellant's case was, on the balance of probabilities proved. I think the omnibus and or not at all disclosed terms and conditions rendered it not only unfair but also void ab'nitio contract leave alone. Unless the courts of law had employed an extra mile judicial activism, the contracts between lenders and borrowers were contracts between weak and strong parties such that in events of breach of the terms the courts were obliged to more seriously play the role of umpire more so when it is, in this jurisdiction common knowledge that some mashrooming microfinance groups had ever been busy granting extra ordinarily unfair, and more or less exploitative loans (in Kiswahili commonly known as **Mikopo Umiza**) suffices in favor of the respondent the point to dispose of the appeal.

Moreover, but without prejudice to the foregoing discussion even where the interest chargeable it was shs. 50,000/= per month like the learned RM put it, the rate was both illegal and unfairly exorbitant thus violate of the provisions of Section 4 (2) of the Banking and Financial

Institutions Act Cap 342 R.E. 2019 as there was no evidence and proof that the regulatory Central Bank had blessed it much as the free market economy policy was not intended, at the detriment of the borrower's microfinance groups abrogate the Financial Institutions Legislations. It is very unfortunate that the trial court magistrate did not observe this otherwise like the DC did the former would have arrived at a different conclusion. Ground one of the appeal is dismissed.

Moreover, for some reason the respondent may have breached the loan agreement yes, but contrary to clause 2 (1) of the agreement (Exhibit R3) the appellant assigned no reasons why, instead of attaching and selling the collaterals namely the TV set, the sofa set and cardboard straight forward they instituted the case. Again it is very unfortunate that the two courts bellow never questioned it.

Last but not least is whether or not the 1st appeal was time barred like, at times the learned resident magistrate discussed it and in favor of the objector concluded it but for her paradigm U-turn, having considered the circumstances of the case I would, in exercise of absolute and revision powers **suo motu** grant the respondent extension of time.

In the upshot, but partly for the different reason, the devoid of merits appeal is dismissed with costs as said the respondent having had fully repaid the principle loan of shs. 250,000/=. It is accordingly ordered.

Right of appeal is explained.

S. M. RUMANYIKA

JUDGE

11/04/2021

The judgment is delivered under my hand and seal of the court in chambers this 13/04/2021 in the absence of the parties.

S. M. RUMANYIKA

JUDGE

13/04/2021