

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC CIVIL APPEAL NO 73 OF 2020

(Arising from Judgment of the District Court of Ukerewe in Appeal No. 7/2020. Original
Nansio Primary Court Civil Case No. 8/2020)

MUSSA S/O MSABILAAPPELLANT

VERSUS

AISHA RAMADHANRESPONDENT

JUDGMENT

22 /02 & 13/04/2021

RUMANYIKA, J.

The appeal, essentially it is against judgment and decree of shs. 1.40m dated 29/7/2020 of Ukerewe district court with respect to zero decretal sum of Nansio primary court issued against Aisha Ramadhan (here in the respondent) on 12/5/2020. Like the respondent, Mussa Msabila (the appellant) appeared in person.

It is at this juncture also worth noted that the parties were, by way of audio teleconferencing heard through mobile numbers 0756 388 589 and 0714 609 688 respectively.

The appellant submitted that his claims actually had been proved on balance of probabilities save for the 1st appeal court improperly evaluating the evidence on record such that the shs.1.40m awarded to the respondent it was against weight of the evidence as the actual one was shs. 170,000/=.

Having adopted contents of the reply to the petition of appeal, the respondent just submitted that there was nothing to fault the 1st appeal court. She prayed for dismissal of the appeal with costs. That is all.

Sm1 (the respondent) is on record having had stated that having contracted the appellant for 2 cardboards for utensils and clothes, a dressing table, 5ft x 6ft bed, and a tv set stand all for shs. 1,622,000/= and he paid some also at a later stage paid shs. 78,000/=, she paid him 1st installment of shs. 800,000/=, then 6,000/= which installment her parents witnessed at home at night, then she paid shs. 100,000/=, 100,000/= and shs. 22,000/= that irrespective of several and repeated

follow ups the appellant did not perform instead he proposed and dated her but she refused him. He threatened to fix her a criminal case and did it hence the present case.

Sm2 Ramadhan Gasi stated that with respect to the case and the alleged installment of shs. 600,000/= he witnessed the daughter respondent effecting the payment sometimes in 2018. That is all.

Sm3 Felix Edward stated that with respect to the contract, in 2018 he witnessed the respondent paying the appellant installment of shs. 800,000/=.That is all.

Sm4 Amine Jifuna testified more or less the replica of Sm3. That it was August, 2018 but the payment was not reduced in writing. That is it.

The appellant stated that having had been contracted by the respondent for the furniture on 5/11/2018 he received first installment of shs. 100,000/= and he made some but the respondent complained about workmanship such that reluctantly though he dismantled the items and made it all over against but at a later stage the respondent changed mind and urged him to convert it in a shoe case / stand he made and was done. Then she paid him another shs. 40,000/= however as the appellant

continued performing, the respondent stopped him as she was no longer interested in the furniture she claimed back the money. Instead of 170,000/= he paid her shs. 70,000/= but she refused it hence the police case. Nevertheless in his back, by way of "bonafide claim of right" the respondent swept away the appellant's work tools then in Criminal Appeal No. 12/2019 the District court ordered her to bring back the work tools but she refused (copies of the respective judgments – Exhibit "D1") much as by the primary court order he sold the cardboard and through it he surrendered the proceeds (shs. 110,000/=) to the respondent.


The central issue is whether the respondent's claims were proved on the balance of probabilities whatever the value for that purposes witnessed by others or not, the parties may have had agreed orally or otherwise, yes but for a reason or the other therein between they may have parted the company yes, the appellant may have had discharged or not fully discharged the liability granted, but rightly or wrongly in exercise of bonafide claim of right having had swept away the appellant's tools of work the respondent cut the long story short much as irrespective of the court order (Exhibit "D1"), undisputedly she did not bring back the same whether or not the tools were worth the amount claimed, but as the

appellant put it over and above the value of the contract, it is immaterial much as according to her assessments the respondent chose to, and she took the tools with her. In other words, by way of set off the parties were done since much as the criminal appeal court's decision had never been reversed.

Without prejudice to the foregoing however, the respondent's claims left much to be desired because now that if at all the 1st two installment was eye witnessed by Sm3 & Sm4 and Sm2, in the same vain the 3rd installment should have been witnessed by an independent and impartial mind. It is very unfortunate that the respondent he assigned no reasons for departure from the trend. Rightly so in my considered opinion, the learned trial resident magistrate dismissed the respective claims of shs. 222,000/=.

The appeal is allowed with costs here and at the two courts bellow. It is so ordered.

Right of appeal explained.


S. M. RUMANYIKA
JUDGE
03/04/2021

The judgment is delivered under my hand and seal of the court in chambers this 13/4/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

13/04/2021