

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SONGEA**

**AT SONGEA**

**DC CIVIL APPEAL NO.12 OF 2020**

**(Originating from the Decision of the District Court of Mbinga at Mbinga in  
Civil Case No. 03 of 2020)**

**JAMES R. NDUNGURU..... APPEALANT**

**Versus**

**FANIKIWA MICRO FINANCE..... RESPONDENT**

**JUDGMENT**

**Date of Last Order: 13/04/2021.**

**Date of Judgment: 27/04/2021.**

**BEFORE: S.C. MOSHI, J.**

The appellant sued the respondent for breach of contract at Mbinga District Court. He claimed that he entered into a loan agreement in which the respondent was to advance him Tshs. 6,000,000/= to be repaid in 36 months in which 200,000/= was to be deducted from the appellant's salary each month in 36 months. To the contrary the respondent disbursed Tshs. 3,600,000/= to be repaid in 48 months and 210,000/= was to be deducted in his salary. The trial court held that the respondent didn't breach the contract and dismissed the suit. Dissatisfied by the judgment and decree of the trial court the appellant has filed this appeal upon the following grounds: -

- 1. That the Honorable Trial Magistrate grossly erred in evaluating the evidence leading to unjust decision.*
- 2. That the trial court erred in law by deciding the matter contrary to the law and evidence.*

During the hearing of appeal both parties were unrepresented.

In his submission in support of the appeal, the appellant argued that the trial Magistrate didn't consider his exhibits. He said that the respondent brought a contract which was never executed, a contract for Tshs. 3,600,000/=. The contract he entered with the respondent was for Tshs. 6,000,000/= which was to be repaid back in 36 months, at 20% interest and 200,000/= was to be deducted in his salary. The contract was to be forwarded to his employer then the respondent would start to deduct the sum. However contrary to their agreement, they advanced him Tshs. 3,600,000/= which was to be repaid in 48 months and Tshs. 210,210/= was to be deducted from his salary each month.

He submitted further that, he contacted them, they replied that they would rectify the error, but they didn't. His salary slip showed that the debt was 10 million, he asked them to show him the contract, they told him that the contract had been sent to Head Quarters. However, they didn't give him the contract. He stated that, he checked the balance, and learned that T.shs 6,500,000/=was deducted from his salary, he still owed



T.shs. 3,000,000/=. He engaged an advocate who asked for the agreement, but they brought a different contract. Hence, he instituted a suit.

On the second ground of appeal, he said that the court did not consider his evidence, as the respondent changed his name, position of work and the contract had no witness.

In reply the respondent submitted that the appellant went to respondent's office and he requested to be advanced a loan. He was informed of the procedure whereby he was to bring a bank statement, a salary slip, passport size picture and a copy of staff identification. The appellant filled the form on the same date and he was informed that the interest rate was 3.75% per month. The amount to be advanced was calculated basing on his salary, he qualified to get a loan of Tshs. 3,600,000/= to be repaid in 48 months. He was supposed to repay Tshs. 210,210/= per month. He conceded to the terms, filed the agreement form and signed. The agreement was forwarded to his employer, at Dar es salaam. The transaction was entered into the system, eventually he was advanced Tshs. 3,600,000/=. The respondent started to deduct the amount in July, 2017.

He contended further that on 30/1/2020 the appellant wrote a letter requesting the outstanding amount so that he could be allowed to repay

the outstanding sum. He was informed of the unpaid amount but he didn't pay instead his advocate wrote a demand letter requesting them to supply the agreement. He said that they printed a copy of the contract and gave him however, thereafter the appellant referred the matter to court stating that the agreement which was given to him was different as he applied for six million not three million and six hundred, but he didn't tender the agreement of the same.

In rejoinder the appellant reiterated his submission in chief and added that he does not know the agreement which was brought as exhibit as it shows a different position and names of his witness; that is instead of Robert Malola, they wrote Robert Malolo, and instead of Nunusius H.Komba, they wrote Nunus H. Komba.

That being the submission of the parties, the issue for determination is whether this appeal has merits.

There is no dispute that the appellant took loan from the respondent. The center of contention is the amount the parties agreed to be advanced to the appellant, was it 3,600,000/= or 6,000,000/=?

Section 100(1) of the Evidence Act Cap. 6 R.E 2019, provides that:

*"when the terms of a contract, grant or any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is*



*required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act”.*

Section 101 of the evidence Act Cap. 6 R.E 2019, excludes oral evidence from Written agreement. The law is to the effect that when the terms of a contract have been proved according to the above quoted section i.e., 100(1) of the Evidence Act, no evidence or statement shall be admitted to controvert a written contract.

Back to the case at hand, the appellant stated that he applied for a loan of T.shs 6,000,000/=, however he did not tender the contract pertaining to the above contract. He also did not call witnesses who supported his claim. On the other hand, it was the respondent who tendered a contract exhibit D1, the contract which was signed by the appellant, it involved a loan of Tshs. 3, 600,000/=. Since the said contract is in written form then respondent's evidence is evidentially valuable than the oral evidence by the appellant, as per section 101 of the Evidence Act, Cap. 6 R.E 2019.

Furthermore, the issue of his position of work, his names being changed, different names of his witnesses in the contract that are Robert Malola instead of Robert Malolo and Nunus H. Komba instead of Nunusius H. Komba, to my view are only typographical errors, besides the appellant didn't raise these errors during trial. The errors do not invalidate the contract

That said, this appeal lacks merits, the decision of the trial court is upheld and consequently the appeal is hereby dismissed with costs.

Right of Appeal fully explained.



  
**S. C. MOSHI**

**JUDGE**

**27/04/2021**