

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC CIVIL APPEAL No. 75 OF 2020

(Originating from Civil Case No. 62 of 2020, Sengerema Urban Primary Court, then
Civil Appeal Case No. 21 of 2020 at Sengerema District Court)

RESTITUTA VICTORINE.....APPELLANT

VERSUS

JENIPHA JAMES.....RESPONDENT

JUDGMENT

23rd March, & 28th April, 2021.

TIGANGA, J.

This is the second appeal, the same being against the judgments of both Sengerema Urban Primary Court and Sengerema District Court which ordered the appellant to refund the respondent Tshs. 1,000,000/= being the money paid by the respondent to the appellant as an advance payment after the two had allegedly entered into an agreement of the sale of land at the price of Tshs. 2,500,000/= which agreement was never fully performed following the respondent's inability to pay the remaining amount.

The appellant raised three grounds of appeal to the effect that;

- i) Both the trial and appellate courts erred in law and in facts by determining the matter in favour of the respondent without any basis and justifiable reasons contrary to the terms of contract.
- ii) Both the trial and appellate court erred in law and in fact in deciding the matter in the favour of the respondent while it is the respondent's fault and breach of contract has caused the appellant to incur losses as a result of such breach.
- iii) The trial court erred in law and in fact by holding that the sale agreement which was produced in court was not genuine without offering an opportunity to defend the same.

The appellant's prayers before this court are that the appeal be allowed, costs be provided and any other relief(s) that this honourable court may deem just and fit to grant.

At the hearing of the appeal, the appellant was represented by the learned counsel Mr. Salala whereas the respondent stood unrepresented.

The counsel for the appellant prayed to submit on the raised grounds collectively and in so doing, he submitted that, this case originates from sale of land agreement on Plot No. 170 Block "X" which is at Bujora, Sengerema Urban, which agreement was entered into in 2018 with a

consideration of Tshs 2,500,000/= whereby the respondent herein paid only Tshs 1,000,000/= as advance payment. However she remained mute for two years up to when she went to court to claim the amount she paid and the trial court awarded her Tshs 1,000,000/= which she had paid.

Counsel submitted further and prayed to refer to section 64(1)(2) of the Land Act [Cap 113 R.E 2019] which stipulates the need to put into writing any contract for disposition of land if the same is to be enforceable in a proceeding. He stated that in the trial court there was no contract attached, therefore making the enforcement impossible.

He concluded by requesting this court to look at sections 52 and 53 of the Law of Contract which term his client as an innocent party to the contract and allow the appeal.

In his reply, the respondent submitted in rebuttal stating that she had entered into an agreement with appellant in which the appellant agreed to sell her the plot for Tshs 2,200,000/= and not 2,500,000/= as she alleges and that the appellant kept increasing the price claiming that her neighbour had sold his land for 5,000,000/= which made the respondent unable to continue with the payment. She prayed for an order that she

be paid back the total amount of 1,000,000/= that she had advanced to the appellant.

The rejoinder by the counsel for the appellant was to the effect that the buying price was Tshs 2,500,000/= and the same is on the record. He stated that, it was the respondent who did not fulfil the contract which contract had no record.

Now that being the summary of the submissions by both parties, I will go straight to determine the first two grounds of appeal in which the appellant basically faults both the trial court and the first appellate court for deciding in favour of the respondent. Going through the evidence by both parties as presented before the trial court, it is clear that the respondent's claim was for the recovery of the money she had paid in advance to the appellant as part payment after the two had allegedly entered into a sale agreement of the appellant's piece of land.

It would appear from their testimonies that the respondent became unable to clear the remaining balance and so she went back to the appellant and the two agreed that they look for another buyer and soon after the plot is sold, the appellant would refund the respondent the amount that she had advanced, which agreement was also unsuccessful owing to the fact as alleged by the respondent that the appellant kept

increasing the price of the plot the result of which chased away the prospective buyers.

The respondent having lost all hopes of getting her money back, made a decision to go to court to claim the said amount which decision was successful in both lower courts which I would not disturb simply because the appellant in her own words admitted to have received the sum of Tshs 1,000,000/= from the respondent as part payment and that she was ready to refund the same as soon as she sells the plot.

It follows therefore that the claim was proved, therefore both the trial and first appellate courts were right to order the appellant to pay the respondent Tshs 1,000,000/=. Basing on the foregoing discussion, I find these two grounds to lack merits and are hereby dismissed.

Coming down to the third ground of appeal in which the appellant claims that the trial court erred in holding that, the agreement which was produced in court was not genuine without offering an opportunity to defend the same, I will state that I have gone through the trial court records and nowhere in the records is it stated that the said court admitted the sale agreement let alone holding that the said agreement was not genuine, without offering the appellant the right to defend the same. The judgment and proceedings show that, the trial court arrive at

its decision after hearing the parties especially the testimony of the appellant, the then defendant, who admitted the claim by the plaintiff and stated that she was ready to sell the plot and repay the amount to the plaintiff.

It must be noted that, rule 1(2) of the Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations, G.Ns. Nos. 22 of 1964 and 66 of 1972, requires a person who makes a claim against another in a civil case, to prove all the facts necessary to establish the claim unless the other party, that is the defendant admits the claim.

This rule has exception, as the claimant need not to prove (i) any fact which the relevant law or rule 2 declares to be the responsibility of the defendant to prove; (ii) any fact which the defendant admits;

Since the appellant admitted the claim, that she received the money from the respondent, she is estopped from denying the liability to pay the same. That said, I too see no merit in the third ground of appeal. It is dismissed, and having found no merits in all the raised grounds of appeal, this appeal lacks merits in its entirety, it is dismissed with costs.

It is so ordered.

DATED at **MWANZA** this 28th day of April, 2021



J.C. Tiganga

Judge

Judgment delivered on line via audio teleconference in the presence Mr. Victor Kalala, Avocate, for the appellant and the respondent in person. Right of Appeal explained and guaranteed.



J.C. TIGANGA

JUDGE

28/04/2021

