IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

PC CIVIL APPEAL NO. 27 OF 2020

(Appeal from the District Court of Karatu Civil Revision No.4 of 2019, Originating from Karatu Primary Court Civil Case No. 100 of 2019)

BERTINA YURA ..... APPELLANT

Versus

DESSIDERI MUSSO ..... RESPONDENT

JUDGMENT

22nd February & 17th May, 2021

MZUNA, J.

Bertrina Yura (herein referred to as the appellant) has preferred this appeal against the decision of the District Court of Karatu (the District Court) in Civil Revision No. 4 of 2019. In that decision, the District Court was called upon to revise the proceedings of Karatu Primary Court (the Trial Court) in Civil Case No. 100 of 2019. In its decision that was delivered on 19/2/2020, the District Court found that the trial Magistrate erred for failure to order the respondent to pay the appellant the balance of Tshs 140,000/= after setting off each party's claim and eventually close Civil Case No. 100 of 2019. The appellant was dissatisfied by that order. She has preferred this appeal on a single ground of appeal that:-

That, the Honourable Magistrate of the District Court erred in law and facts to order the appellant to pay the respondent amount of Tshs. 140,000/= (one hundred forty thousand only) while the respondent is the one who is required to pay Tshs 300,000/= (three hundred thousand only) to the appellant as per their agreement.

Based on the above ground, the Appellant prays that this Court allows the appeal by ordering the respondent to pay Tshs 300,000/= to her. In addition to that, she prays that the decision of the District Court be quashed and set aside and further she prays for any other relief that this court may deem fit to grant.

The background story shows, the present respondent instituted Civil case No. 45 of 2019 against the appellant claiming Tshs 640,000/=. That was on 22/7/2019 which was denied by the appellant. The case was heard whereby three witnesses testified for the Respondent. On 5/9/2019, the appellant asked to withdraw the case as it was to be settled out of court. The case was marked withdrawn.

During the pendency of Civil Case No. 45 of 2019, the appellant lodged a criminal complaint that she was being threatened by the respondent. This ultimately led to the institution of Criminal charge of threatening to kill was preferred against the respondent, the charge which was preferred in the same the trial Court on 6/8/2019 vide Criminal Case No. 543 of 2019. That case was heard to its finality whereby the respondent was found not guilty. He was acquittal on 17/10/019. It was further found that the case was preferred aiming at weakening the respondent's Civil Case that was pending in Court.

As if that was not enough, on 20/11/2019, the appellant filed Civil Case No. 100 of 2019 in the trial Court for a claim of Tshs 500,000/= against the respondent. On 28/11/2019 when the claim was read to the respondent, he admitted to be owed Tshs 500,000/= by the appellant, but he also claimed to owe Tshs 640,000/= to her. On the same tune, the Appellant also admitted to be owed Tshs 640,000/= by the Respondent.

Both also admitted that Civil Case No. 45 of 2019 was withdrawn after intervention of the elders, aiming at settling the same outside court.

It is noteworthy that Civil Case No. 100 of 2019 was dismissed on 17/3/2020 for want of prosecution after parties defaulted appearance. It is against that case revision was sought in the District Court.

The main issue is whether the revision application should be upheld or not?

At the hearing of this appeal, both parties appeared in person unrepresented and fended for themselves. Hearing of the appeal proceeded orally. The decision of the Resident Magistrate who presided over the said revision is couched in the following words:-

"In this Civil case No. 45 of 2019 (sic) the Respondent shows to admit the debt of the Applicant also no dispute even in counter affidavit in this Revision the Respondent admits that civil case No. 45 of 2019 was withdrawn by consent that means they (applicant and Respondent) (sic), act upon the words of their elders.....Respondent who is the plaintiff admitted to be owed Tshs 640,000/=while she owes Tshs. 500,000/= to the same person."

The learned magistrate further proceeded:

"I think the trial Magistrate and court assessors on that date and time when the plaintiff for her own words (sic) admitted to file a claim of Tshs 500,000/= to the same person, this civil case No. 100 of 2019 (sic) was supposed to end on that date by ordering the plaintiff/Respondent to pay the applicant/Plaintiff of 28th November 2019 when she was admitted (sic) to be owed, to order her to pay the applicant/Defendant total of Tshs 140,000/= then to close this file civil case No. 100 of 2019 (sic)."

It is against that order that the present appeal has been preferred. The appellant argues that she claimed against the respondent Tshs 500,000 which he admitted before elders that he would pay on 1/8/2019 and the document was tendered in Court. At first, they went to the police and later to the elders. She has also a text message that the respondent sent to her through a mobile phone.

The appellant insisted that the respondent withdrew his case, Civil Case No. 45 of 2019 because she was to be paid by him. The payment was made before CCM District Chairperson, when she was paid Tshs 200,000/= by the respondent and the remaining balance was Tshs 300,000/=. According to the appellant, the respondent stopped paying after Criminal Case was withdrawn. The appellant's claim is that she challenges the award of Tshs 140,000/= by the District Court instead of Tshs 300,000/=, the outstanding balance she should be paid by the respondent.

In reply, the respondent contended that he claims against the appellant Tshs 640,000/= and she owes him Tshs 500,000/=. The appellant instituted Criminal case alleging that he had threatened her after he had filed Civil suit against her. According to the respondent, the CCM District Chairman advised them to withdraw the same was withdrawn first but the appellant continued with her Criminal case. He, however won in the Criminal case, and the appellant instituted another Civil case No. 100 of 2019. In that case, the appellant admitted the claim of Tshs 640,000/= while she claimed Tshs 500,000/= against him. The District Court ordered the difference of Tshs 140,000/= to be paid to respondent. The appellant maintained that he does not know about Tshs 300,000/= claimed by the appellant because it does not arise from the trial Court

proceedings. He therefore implored the Court to dismiss the appeal as he never paid any sum of money.

In a short rejoinder, the appellant fortified that the Respondent admitted even in the Criminal case that he had already paid Tshs 200,000/= to her. That there are witnesses who witnessed during the payments. She was not given the document by the chairperson rather she was advised to institute Civil case claiming the Tshs 300,000/=, which she did. She reiterated her prayer that the appeal should be allowed.

Reading from the trial Court record and the submission of the parties, the question is, *is the finding of the District Court proper in the circumstances of this case.*

As a matter of fact, both civil cases did not go to the final determination. As I have hinted earlier on, Civil case No. 45 of 2019 which was preferred by the respondent against the Appellant was withdrawn by the respondent in order to be settled out of Court. That case at least had three witnesses who had testified but the plaintiffs case was not closed. Similarly, Civil Case No. 100 of 2019 which was filed by the appellant against the respondent, subject for Revision in the District Court and appeal to this court, was dismissed for want of prosecution. Parties had defaulted just for one day.

Unless, the appellant says the admission in Civil case No. 45 of 2019, record of 24/07/2019 does not reflect what transpired, that record clearly support the findings of the Magistrate who determined the appeal. There was an admission and therefore the respondent was entitled to Shs 140,000/- arrived at as a set off from the counter claim raised by the appellant.

That is also reflected on 28/11/2019 when Civil Case No. 100 of 2019 was read to the parties. The claim was Tshs 300,000/= after she had advanced Tshs 500,000/- to the respondent. The record reads:-

*"**Mdaiwa (Desdery Musso):-** Kesi tulishafanya kwa Mhe. Kasweta Madai Na. 45/2019. Tuliiondoa kwa sababu tuliomba kuipeleka kwa wazee. Namdai Mdai 640,000/- na yeye ananidai 500,000/-*

***Mdai Bitrina Yura:-** Kesi ilikuwa kwa Mhe Kashweta, wazee walivyoingilia kati, mdaiwa aliondoa shauri Mahakamani. Mdaiwa ananidai 640,000/-"*

The above story literally shows, the respondent admitted to be owed by the appellant Tshs 640,000/= but he also raised counter claim that he owed her Tshs 500,000/=. In reply, the appellant also admitted that she was owed Tshs 640.000/= by the respondent.

In essence, and as rightly stated by the respondent what was claimed by the appellant was to be set off from his claim of Tshs 640,000/=. That being the case, it was the appellant who was owed Tshs 140,000/= by the respondent following her admission of the respondents' claim.

Procedure regulating civil cases in Primary Courts is a creature of the law. Rule 52 of the Magistrates' Courts (Civil Procedure in Primary Courts) Rules, G.N No. 310 of 1963 provides for the procedure where a party admits either whole or part of the claim. It reads:

"At any stage of a proceeding, if the court is satisfied that the proceeding has been adjusted wholly or in part by any lawful agreement or compromise the

court shall in the presence of the parties record such agreement or compromise and when recorded it shall have the same effect as if it were a decision of the court."

From the above provision, it is crystal clear that the trial Court Magistrate soon after the parties admitted the claim and counter claim ought to have made a ruling on the sum of money due or subject of proof. That is the remaining Tshs 140,000/= after setting off the 500,000/= that the respondent owed the appellant.

The allegation by the appellant that she was paid Tshs 200,000/= by the respondent and that she owes Tshs 300,000/= is unfounded as there is no supporting evidence. The record shows that there was a meeting whose minutes were attached to the plaint that was filed in the trial Court. In the said minutes, it shows that there was an agreement that the respondent had agreed to pay appellant's claim of Tshs 500,000/= on 1/8/2019. There is no any other evidence that the respondent paid any amount to the Appellant. Therefore, the appellant's claim that she claims Tshs 300,000/= from the respondent is unfounded. Under section 22 of the Tanzania Evidence Act, Cap 6 RE 2019, the appellants words amounts to admission. It reads:-

"22. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute, are admissions."

She is estopped to deny it under section 26 of the Tanzania Evidence Act. For the above reasons, this court is at one with the finding of the District Court Magistrate that the case file Civil case No. 100/2019 be remitted back to the trial Court for necessary order on the unsettled balance based on the admitted claim and its mode of payment.

That said, the decision of the District Court is hereby upheld to the extent above explained. The appeal stands dismissed. Considering that none of the parties is to blame and that parties are related, each party shall bear its own costs.

Order accordingly.

M. G. MZUNA,
JUDGE.
May 17th, 2021.