

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

PC. CIVIL APPEAL NO. 07 OF 2020

**(Originating from the decision of Mwanza Urban Primary Court at
Nyamagana Civil Case No. 286 of 2020 and District Court of Nyamagana in
Civil Case No. 50 of 2020)**

CHRISTOPHER COSMAS APPELLANT

VERSUS

FURHAH EVARIST RESPONDENT

JUDGMENT

28/04/2021 & 25/05/2021

W. R. MASHAURI, J;

This application is emanating from the decision of Mwanza Urban Primary Court in Civil Case No. 286 of 2020 and the District Court of Nyamagana District Court in Civil Appeal No. 50 of 2020.

Being aggrieved with the decision of the District Court of Nyamagana in Civil Appeal No. 50 of 2020, the appellant Christopher Cosmas has now come to this court. He has fronted three grounds of appeal as follows: -

1. That the trial District Magistrate erred in law and fact by taking consideration that, the respondent was not the legal owner of the

subject matter at the time signing the contract thus making it nuly and null and void.

2. That the trial District Magistrate erred in law and fact by not considering that, the tendered a documents were not valid.
3. That the trial Court Magistrate erred in law and fact by not considered of the amount paid by the appellant to the tune of Shs. 880,000/= and the remaining amount is Shs. 340,000/= and if this court sees fit to request the bank statements from CRDB Bank Account No. 0152247354801 from December, 2019 to February, 2020 and NMB Bank Account No. 335100005410 March, 2020 from the Respondent would prove so.

In this appeal, both parties appeared in person and on the hearing of this appeal, the appellant submitted in support of his grounds of appeal that, he has appealed because the Primary court erred in law and fact for failure to look at the contract evidence produced in the trial court that, the one who entered into contract with Furaha (respondent) who said the motorcycle was his property the allegation of which is not true. That the respondent Furaha did chit him because, when the motor cycle was apprehended by police officers, Furaha did not appear and upon got the documents, was gathered

that, the said motor cycle was not property of the respondent. Furaha who said in his defence that, the motor cycle was property of Renatus who also said he bought the motor cycle from spiracle.

That, when he asked Furaha and his witness who is a police officer to give him the sale agreement, they declined to produce any and in the Primary court, he also asked them to produce the registration card of the motor cycle but in vain. That even the police officer said it was the appellant who took the motor cycle to police station for want of documents.

That, since he did not get the documents, in time, that was not his fault. On 6/8/2020 he asked to be given summons at police station but was told that, the concerned police officer was our safari. He therefore closed his case.

On 4/8/2020, the matter was adjourned and set for hearing on 20/08/2020 when the police officer said he had handed to him the said motor cycle and the police officer the motorcycle which the appellant had handed to him was a stolen property which in fact was a lie.

For the 2nd ground of appeal that the trial District Magistrate erred in law and fact by not considering that the tendered documents were not valid, the

appellant submitted that the document which is an agreement dated 24/04/2020 is forged on a chassis and Engine number as the same were tempted. That, even the office stamp of the primary court in also forged. He reported the matter to the VEO where the respondent Furaha was summoned to appear but he did not appear.

On his part, the respondent submitted in reply that, in his agreement with the appellant, he entrusted his motorcycle to the appellant for drive on an agreement of payment of Shs. 70,000/= per week i.e. Shs. 10,000/= per day. The appellant executed the agreement only for two weeks and changed the model of payment by paying outside the agreed period.

The issue is whether this appeal has been properly filed in this court.

Having carefully gone through the appellant's grounds of appeal as well as his submission in support thereof I have gathered that, the grounds of appeal and the appellant's submission in support of the said grounds of appeal is at variance.

In his purported grounds of appeal, the appellant is challenging the trial District Magistrate to have erred in law and fact while in his submission in support his grounds of appeal the appellant started by telling the court that,

he has appealed to this court because **the lower primary court** erred in law and fact for failure to look at the contract evidence produced in the trial court, while in his all grounds of appeal the appellant is challenging the District trial Magistrate to have erred in law and fact by taking consideration that the respondent was not legal owner of the motorcycle by not considered that the appellant paid a tune of Shs. 880,000/= to respondent and remained Shs. 340,000/= and that the trial District Magistrate erred in law and fact by not considered that the tendered documents were not valid.

It appears in this appeal that the appellant in his appeal to this court has combined the decisions in the primary court in Civil Case No. 286 and that of the District court in Appeal No. 50 of 2020.

There is nowhere in the law of civil procedure in primary court and the Civil Procedure Code (CPC Cap. 33 R.E. 2002) requires both decision to be appealed to the High court when a person was dissatisfied with both the primary and District court decisions must lodge his appeals in the High court, save section 13 of the CPC Cap. 33 R.E. 2002 which provides that:

"All suits must be filed in the court of the lowest grade competent to try it. Here it means adhering to the courts' hierarchy in filing suits starting with the Primary Court the

District court on appeal, High court on appeal and to the Court of Appeal on appeal. You may appeal to the District court if aggrieved by the decision of the Primary court and so forth."

By lodging his appeal against the Primary and District court decision in the High court at once is an irregularity which is fatal. This appeal was therefore not properly in this court. The appellant therefore has wrongly moved the court; the appeal is struck out with costs.




W. R. MASHAURI
JUDGE
25/05/2021

Date: 25/05/2021

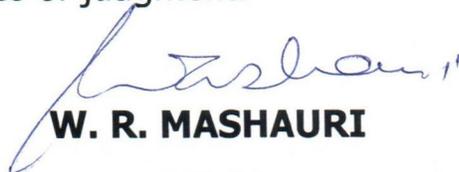
Coram: Hon. W. R. Mashauri, J

Appellant: } All absent on line.
Respondent: }

B/c: Elizabeth Kayamba

Court: Judgment delivered in court in absence of all parties for want of internet to conned with them this 25th day of May, 2021, parties be notified and called to collect copies of judgment.





W. R. MASHAURI

JUDGE

25/05/2021