

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

HC. CIVIL APPEAL NO. 04 OF 2021

(Arising from judgment and decree of Geita District court dated 29th December 2020
Original Civil Case No.13 of 2019) before Hon K.A SOSTHENES - RM)

RASHID SADICK KUHANZIBWA.....APPELLANT

VERSUS

CLEMENT MUSSA NSIYANTEM IRESPONDENT

JUDGMENT

27/04 & 05/05/2021

RUMANYIKA, J.:

The appeal is against judgment and decree dated 29/12/2020 of Geita Resident Magistrate Court (the trial court) with respect to claim of shs. 28.0m being price of 1312 bags of paddy, one Clement Mussa Nsiyantemi (the respondent) having had won the war and battle against Rashid Sadick Kuhanzibwa (the appellant).

The 4 grounds essentially they revolve around 3 points; **(a)** that the trial court had no pecuniary jurisdiction **(b)** That in awarding general damages of shs. 5,000,000/= the trial magistrate was justified **(c)** that with respect to the alleged appellant's commitment to pay, the trial

magistrate improperly evaluated the evidence therefore the respondent's case it wasn't actually proved on the balance of probabilities.

Messrs Liberatus John and Matha learned counsel appeared for the appellant and respondent respectively. Through digital platform I heard the parties through their mobile numbers 0769377408 and 0653393539 respectively.

Mr. Liberatus John learned counsel in a nutshell he submitted; (i) that though it arose from breach of contract of sale, according to Section 2 of the Magistrates Court Act Cap 11 RE 2019 (the MCA) it was a commercial dispute at the time, i.e on or by 16/9/2019 pecuniary jurisdiction of the district court was limited to shs. 30,000,000/= only the High Court of Tanzania had jurisdiction (Section 4 (3) (b) of the MCA) (ii) without evidence to show how, if at all he was injured, general damages of shs 5,000,000/= awarded was not funded (case of **NIC v. China**, Civil Engineering Construction Company, Civil Appeal No. 119 of 2014 (CA) unreported (iii) that actually the respondent did not, on balance of probabilities prove his case much as the appellant would not have committed himself or promise to pay but for the police pressure and threats and there was no wonder the alleged commitment leave alone, on that one the missing appellant's declaration much as also, irrespective of

exhibit "P1" the respondent did not prove in advance having had been paid him the alleged shs. 50,000,000/=. That is all.

In reply, Ms. Matha learned counsel submitted; **(1)** that in fact pursuant to provisions of Section 41 of the MCA the trial court had pecuniary jurisdiction because by nature it was a commercial dispute **(2)** that with respect to the warehouse, the appellant did not prove ownership. The respondent therefore had choice and discretion to file the case in the trial court **(3)** that general damages were awarded only at the court's discretion (case of **Stanbic Bank Tanzania Limited v. Abercrombie and Kent (T) Limited**, Civil Appeal No 21 of 2001 (CA) unreported also for the reasons assigned inclusive of lapse of the time. **(4)** that in fact with the appellant's confession and commitment to pay reasonably it could not have been procured under police threats or compulsion as alleged **(5)** that now copy of the the receipt (Exhibit "P1") it was in the name of the appellant's warehouse that one was proof that in advance the appellant had paid him shs. 50.0million.

Questioned for further clarity, Mr. Liberatus John learned counsel submitted that the alleged appellant's commitment to pay it violated provisions of Sections 100 and 101 of the Evidence Act Cap 6 RE. 2019 much as parties' agreement was oral.

With all the agreed facts, the central issue is whether or not the parties had a sale agreement and, if the issue was answered in the affirmative whether there was breach much as they differed on the number of bags; 1312 or 446 (as put by the respondent and appellant) respectively.

At least with regard to storage of the paddy in the appellant's warehouse they had oral and gentleman lease agreement. It means therefore whether, if at all upon defaulting, but before a policeman in writing the appellant having had promised to pay the respondent, it was, but contrary to the provisions of Sections 100 and 103 of the Law of Evidence Act Cap 6 RE. 2019 therefore it was against Parol Rule of evidence. Moreover, it defeated both logic and common sense that a contract duly executed by them freely, partly it was supervised by police. It is very unfortunate that the alleged confession cum cautioned statement it lacked the appellant's declaration. Now that the appellant had pleaded undue influence/police threats, Exhibit "P3" shall be, and it is hereby discounted and as such expunged. So is the receipt Serial No. 0831 issued on 20/9/2016 (Exhibit "P1"). Why out of 1312 or 446 bags as the case may be the receipt for fifty (50) bags only!

Second, without prejudice to the foregoing, the respondent did not sufficiently dispute the appellant's evidence that that actually the respondent sold it all namely 446 bags of paddy for shs. 28.0m to one Henry a Ugandan businessman. Whether or not by virtue of his position as Land lord the appellant had witnessed the sale or as guarantor of the purchaser, for reasons known to the parties neither the trial nor this court was told. In any case however, that one it took no place of the respondent proving his case on the balance of probabilities.

Even where, with regard to delivery dated 30/08/2016 by the respondent of the entire consignment, if at all of 1312 bags of baddy the receipt was genuine and yet still as said before, 50 bags were delivered separately what a contradiction!

The appeal is allowed with costs. For avoidance of doubts the trial court's decision and order(s) are quashed and set aside respectively. It is so ordered.

Right of appeal explained.


S. M. RUMANYIKA

JUDGE

04/05/2021

The judgment delivered under my hand and seal of the court in chambers this 5th May, 2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

05/05/2021