

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

HC. CIVIL APPEAL NO. 08 OF 2021

(Originating from the Resident Magistrate's Court of Mwanza Civil Case No. 56 of 2020)

MAYUNGA NJILEAPPELLANT

VERSUS

VUMI MGUNILARESPONDENT

JUDGMENT

03 & 18/05/2021

RUMANYIKA, J.:

With respect to judgment and decree dated 24/12/2020 of Mwanza Resident Magistrate's court (the trial court), Mayunga Njile (the appellant) was not happy, here he is with regard to claims of shs. 18.0m plus general damages hence a total of shs. 21.0m for breach of loan agreement one having been sued by Vumilia Mgunila (the respondent), and she lost the war and battle.

The 4 grounds of appeal revolve around points as under:-

1. That the trial court improperly discounted the material Delivery Notes (Exhibit "DO1").

2. That the trial court improperly evaluated the evidence leave alone unjustifiable general damages of shs. 6.0m.
3. That actually the trial court lacked territorial jurisdiction.
4. That as long as the respondent wasn't a licensed Financial Institution, the loan agreement was void ab'initio.

Messrs I. Michael and E. Hezron learned counsel appeared for the appellant and respondent and, by way of audio teleconferencing I heard them through mobile numbers 0683330000 and 0767545654 respectively.

With ground number 4 abandoned, Mr. I. Michael learned counsel submitted; **(1)** that pursuant to clause 2 of the agreement (Exhibit P01) sufficed the respective Delivery Notes (the DNs) to show that the parties were done since that whether or not the DNs lacked full names and dates it was immaterial **(2)** that the general damages awarded had no basis thus unjustified (3) that on that one the p.o was overruled yes, but still the trial court lacked territorial jurisdiction because the contract was executed away at Nansio Ukerewe where the defendant resided therefore the suit should have been instituted there. We humbly submit with costs stressed the learned counsel.

In reply, Mr. E. Hezron learned counsel submitted; **(a)** that the question of jurisdiction depended on law and not on the parties' wishes much as Ukerewe district court belonged to Mwanza region, therefore the trial court had jurisdiction **(b)** that with regard to quantum and general damages of shs. 6.0m, the trial court was right because given nature of the breached contract the respondent must have suffered some commercial loss **(c)** that the appellant having had disputed the respondent's claims, pursuant to provisions of Sections 110 (1) and 112 of the Law Evidence Act Cap 6 RE. 2019, the former was bound to disprove the claims much as DNs did not even show that the respondent had received the goods given its shortcomings (names of the delivering person and full dates not disclosed) and, between them the parties had been so trading since way back 2015. That the respondent may have had acquiesced for one year or so yes, but that one there was no implied adverse legal presumption. We pray that the appeal be dismissed with costs the learned counsel further contended.

A brief account of the evidence on record would run thus: -

Pw Vumi Mgunila stated that since 1996 he traded on fish and knew the appellant with whom on 18/1/2016 they contracted and the latter

advanced him shs. 8.0m cash to collect him fish (copy of agreement- Exhibit P01) through profit gained recoverably on 18/1/2017 latest also for that purposes fish equipment namely a boat valued at shs. 3.0m and an engine valued at shs. 4.0m among others, that the appellant presented his 22 room house as collateral but he defaulted hence the claim of shs. 39.0 million being the principal loan and general damages.

Dw Mayunga Njile stated that for the previous nine (9) years he traded on fish and in 2016, between them they executed one year agreement with shs. 8.0m given to him having had collected the respondent fish (13 of the DNs) inclusive of one issued on 23/8/2016 for the outstanding shs 44,600/= therefore the parties were done much as contrary to the respondent's testimonies he had not received any kind of fish equipment from him. That is all.

In conclusion, the learned trial resident magistrate held that between the parties there had been valid business contract save for the doubtful DNs therefore unrepaid loan. As said, end of the day the trial magistrate awarded one shs.8.0 m being the principle loan and shs. 6.0m being compensation for 3 years the respondent had been denied of use of the shs. 8.0m that is all.

The issue is whether the respondent's case was proved on balance of probabilities the answer is for three main reasons no. **One;** Crucial as it was, I chose to begin with the issue of territorial jurisdiction. In fact I did not understand that indeed Mr. I Michael learned counsel meant it that for the case arising from Ukerewe district, Mwanza Resident Magistrate court (not Nyamagana, Misungwi or Sengerema district courts) had no territorial jurisdiction much as the learned counsel wasn't heard even saying that it being geographically or administratively Ukerewe district had ceased being part of Mwanza region. As defendant, the appellant may have resided or worked for gains in Ukerewe district yes, but still regional wise he hailed from Mwanza region. Ground 3 of the appeal is dismissed.


Second; for the reasons with regard of names of the parties and dates the DNs may have had left much to be desired yes, however, in accordance with clause 2 of the contract (Exhibit P01), and, assuming the DNs were issued for year 2016, as at 23/08/2016, even before expiry of the loan term, according to the respondent therefore, the debt stood at shs. 44,600/= only much as, according to the terms and conditions unusually though, instead of being issued by the consignor, the DNs were

issued by the consignee in which case therefore, as said, the outstanding sum should have been shs. 44,600/= Not shs.8.0m or something.

Three; the issue of an orally introduced fish equipment based claim it should not even have been raised because it was so strange to the written contract (Exhibit "P01") that it contravened provisions of Sections 100 and 101 of the Law of Evidence Act Cap 6 RE 2019.


With all said, it cannot therefore be said that the respondent's case was on balance of probabilities proved. Grounds 1 and 2 of the appeal, therefore the entire appeal it is allowed with costs. It is so ordered.

Right of appeal explained.


S. M. RUMANYIKA
JUDGE
06/05/2021

The judgment delivered under my hand and seal of the court in chambers this 18/05/2021 in the absence of the parties.




S. M. RUMANYIKA
JUDGE
18/05/2021