IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

PC CIVIL APPEAL No.127 of 2020

KWABI LUGOMBA STEVEN.....APPELLANT

VERSUS

UNICREDIT MICROFINANCE LTD..... RESPONDENT

(From the decision of the f District Court of Kinondoni)

(Donasian, Esq- RM)

Dated 29th April, 2020

in

Civil Appeal No.3 of 2020

JUDGEMENT

12th July & 16th August 2021

Rwizile, J.

This is a second appeal. The parties herein entered into a loan agreement, where by, the respondent on 25th June 2019 advanced a loan at the tune of 2,710,000/= to the appellant. The said loan was for a month. Appellant was to repay the same in August, 2019 with an interest of 15% of the principal sum. As a collateral to secure the loan, appellant pledged his car (Toyota, Crown with Registration No. T897 DQN). on 11th September 2019, when appellant was on safari, he was informed by one Mwarami Shami who was in custody of the car that, the respondent impounded the motor vehicle from him. It was sold by auction.

At the time the motor vehicle was seized by the respondent, it had his belongings such as clothes, laptop, shoes, bags and an amount of money to the tune of 5,200,000/=. Because the properties were not recovered by the appellant, he filed a civil action at the Primary Court of Manzese/Sinza seeking for payment of 6,845,000/= worth the lost properties.

The case was heard, and judgement was entered in favour of the appellant that, the seizure of the car by the respondent was illegal, therefore the same should be returned to him and as well be paid 6,845,000/=.

This decision aggrieved the respondent who appealed to the District Court of Kinondoni in Civil Appeal No. 3 of 2020. The first appellate court found the appeal meritorious, and held that the, appellant did not prove his case. No evidence was adduced to prove existence of the said properties. This decision on the other hand aggrieved the appellant who is now before this court to appeal on nine grounds that;

1. *The honourable appellate court erred in law and for entering and determining the matter which was filed out of time.*
2. *The honourable appellate magistrate erred in law and fact in holding that the procedures of selling the car were adhered while the car was detained unlawfully and un-procedural.*
3. *The appellate magistrate erred in law and fact for allowing the appeal without taking into account that the interest impossible from the principal loan by the respondent is illegal, conflicts the provisions of the law and un enforceable.*

4. *The appellate magistrate erred in law and fact for failure to evaluate properly the evidence on record hence leading to erroneous decision.*
5. *The appellate magistrate erred in law and fact for allowing the appeal without considering the value of the car sold and the out outstanding balance of the loan.*
6. *The honourable appellate magistrate erred in law and facts in holding that the procedures of selling the car were adhered accordingly.*
7. *The honourable appellate magistrate erred in law and facts in disregarding the decision of the high court of Tanzania in the case of Kilimanjaro truck company Limited vs Tata Holding and another, Misc. Civil Application No. 169 of 2015.*
8. *The honourable appellate magistrate erred in law and facts in holding that there was proper notice issued to the appellant.*
9. *The honourable appellate Magistrate erred in law and facts in granting costs to the respondents.*

He therefore prayed for the decision of the district court to be quashed and set aside, costs and any other relief this court may deem fit to grant.

At the hearing, appellant appeared in person. However, his submission was crafted by Mr Richard Madibi, learned advocate. For the respondent was Mr. Steven Bwana learned advocate. It has to be noted, on 19th November 2020, the appellant prayed to file supplementary grounds of appeal, the prayer was granted. The same were filed on 3rd December 2020. The parties agreed to argue the appeal by way of written submission.

In support of the appeal, the learned advocate argued on ground one that, the appeal at the district court was filed out of time. He said, the same therefore was determined illegally. He added that, the respondent ought to have filed the said appeal in 30 days after the day of the decision of the trial court. Which, according to him, the respondent did not. He cited section 20(3) of the Magistrate Court Act [Cap 11 R.E 2019] which states every appeal to the district court has to be filed within 30 days. To support his argument, he cited the cases of **Hidaya Ausi vs Hamza Mpenyewe**, Misc Land Application No. 14 of 2020 (unreported) and, **Juma Hussein vs Republic**, Criminal Appeal No. 77 of 2019. His prayer was, this appeal be allowed.

It was his submission on grounds two, six and eight, that the learned resident magistrate erred in holding that, procedures of selling the car were adhered to. His argument was, the said car was seized and sold illegally. He added, there was no any written notice to that effect. He asserted that, the respondent was required to furnish a 14 days' notice to the appellant informing him of his intention to seize the car. He argued more that, a 14 days' notice is a requirement of the law. He cited section 51(2)(a)(b) of the Microfinance Act, Cap No.10/2018 and Regulation 56 (2)(a) of the Microfinance (Non-Deposit Taking Microfinance Service Providers) Regulation, 2019. His submission was, the respondent failed to comply with the law. He prayed for the decision of the district court to be quashed and set aside.

As for the third ground, he argued; the interest charged by the respondent for the principal sum is big. He said, he borrowed 2,700,000/= from June,2019 to April 2020 only to realise he owed the respondent 4,700,000/=.

According to him, the same contradicts the law under section 50 (2)(f) and (4) of the Microfinance Act. It was his view that, interest is illegal and unenforceable. His view was all financial institutions have to comply with the law. He therefore said, the first appellate court erred in allowing the appeal without considering the interest charged.

It was the learned advocate's submission on ground four that; the first appellate court failed to evaluate evidence on record. He added, if the same could have evaluated the said evidence, it could have dismissed the appeal. He asserted as well that, evaluation of the evidence of both parties is the requirement of law. He relied on the case of **D. B Shapriya and Co. Ltd vs Mek one General Trader and Another**, Civil Appeal No. 197 of 2016.

He submitted on ground five by saying, the first appellate court erred in allowing the appeal without considering the value of the car. He said, the value of the car was more than 15,000,000/=. But the debt was 4,700,000/=. According to him, the respondent failed to account for how much he sold the car and he added, if the same was sold more than the outstanding loan. His opinion was, the surplus would have been remitted to the appellant. He asserted that, considering the value of the collateral is the requirement of the law under regulation 41(6) of the Microfinance (Non-Deposit Taking Microfinance Service Providers) Regulations, 2019. He said, there was no valuation report of the car from respondent. He cited section 128(2) of the Law of Contract Act, [Cap 345 R.E 2019].

He argued on ground seven that; the first appellate court failed to consider the decision in the case of **Kilimanjaro truck company limited vs Tata Holdings and another**.

According to him, if the same could have been considered, the appeal at the district court could have been dismissed.

Lastly on ground nine, learned advocate argued that, the first appellate court awarded costs without giving reasons for the same. Mr.Madibi said, despite the fact that, it is in the discretion of the court to award costs. But the same should be exercised judiciously and not arbitrarily. He relied on the case of **Tanga Cement Limited vs Jumanne O. Massanga and Amos A. Mwalwanda,** Civil Application No.6/2001. (unreported). Learned advocate prayed for this appeal to be allowed, judgement and decree of the first appellate court be quashed and set aside with costs.

Contending the appeal, Mr Bwana learned advocate argued on ground one that; appellant mis interpretated the cases and the law which he cited on this ground. He asserted, the trial magistrate in his judgement provided to the unsatisfied party 45 days to appeal against the decision. This is why, he said they appealed within 35 days, which according to him is within the prescribed time.

As for grounds two, sixth and eight, learned advocate argued; the appellant was not given a notice of default because, he was reminded more than 3 times but he failed to repay the loan. He added that, the appellant was aware with the fact that, he defaulted to repay the said loan. He asserted more that the car was detained lawfully. If, according to him the same was unlawfully, the appellant could have reported the same to the police station.

His submission on ground three was, the respondent charged interest as per BOT regulations. He added that, appellant knew that the interest was fair that is why he took the loan.

The learned advocate said, appellant's submission on the same is unjustifiable. Since, the appellant signed the loan agreement out of his free will.

Learned advocate's argument on ground four was, the resident magistrate evaluated the whole evidence on record. He said, the honourable magistrate considered the fact that, the appellant borrowed money from respondent and defaulted repaying the same. According to him, the case of **D.B Shapriya and Co. Ltd (supra)** insisted, the court has to evaluate all evidence adduced in court before arriving at the decision. His view was, the first appellate court did evaluate the whole evidence adduced before it.

Learned advocate argued together ground five, seven and nine that, the car was evaluated and appellant was asked to find a customer for the same, but failed. He added that, considering the corona crisis, it was hard to find customers. Therefore, he said, the car was sold at the price which covered the outstanding loan.

He argued further, that the case of **Kilimanjaro Truck Company Limited** (supra) as cited, is distinguishable taking into the circumstances of the case. He said, the car was already sold and not in the hands of the respondent.

Lastly, he said, the first appellate court was right in granting costs. Since, he added, awarding costs is in the discretion of the court and it is the right of the parties to the case. He therefore said, it is a misconception for the appellant to fault the resident magistrate in awarding the same. His prayer was for this court to dismiss this appeal with costs.

When re-joining, the learned advocate reiterated what was submitted in chief.

Having considered the rival submission of the parties, records of the lower court and meditating the grounds of appeal. I propose that, to deal with ground one which I consider, will dispose of the appeal. The said ground states;

> *The honourable appellate court erred in law for entertaining and determining the matter which was filed out of time.*

It was argued by appellant that, respondent filed the first appeal out of the prescribed time of 30 days. On the other hand, respondent said he lodged the same within time since the trial court provided for 45 days to appeal against the decision of the primary court.

It has to be noted that, time limitation is a statutory requirement. Which means the same is provided orcreated by the law. Since the law provides for time limit against filing of appeals orcases, (as the case may be). The parties and courts are enjoined to adhere to the same.

In this case, it is on record that, respondent herein appealed against the decision of the primary court which was delivered on 03rd December, 2019. He appealed against the same at Kinondoni District Court. Before deciding whether the said appeal was out of time or not. I think I should consult Part III (b) of the Magistrate Court Act, [Cap 11 R.E 2019] *(herein referred as the Act*), specifically under section 20(3) of the Act. Which for ease reference is hereunder reproduced and states;

> *Every appeal to a district court shall be by way of petition and shall be filed in the district court within thirty days*

after the date of the decision or order against which the appeal is brought.

As for the foregoing section it is crystal clear that, every appeal to the district court has to be filed within thirty days after the date of the impugned decision or order. It is on record that impugned decision of the primary court was delivered on 03rd December, 2019. The respondent lodged his appeal on 10th January 2020. It is therefore certain that, respondent filed her appeal after expiry of 38 days. Which by the dictate of section 20(3) of the Act, the appeal was lodged out of the prescribed time.

But respondent's argument was, she filed his appeal within time since the trial magistrate in the judgement provided for 45 days to appeal against the decision of the trial court. After perusal, the judgement at page 9 of the same. It states,

Rufaa: Haki ni siku 45 kuanzia leo

it is my humble view that, it was not proper for the resident magistrate to give 45 days to appeal, when the law provides for 30 days. It is my considered view that, once the law provides for time limit, no court can state otherwise. In the case of **The D.P.P vs Bernard Mpangala and Two Others,** Criminal Appeal No. 28/2001 the Court of Appeal at Dar es Salaam, held that;

Admittedly, limitation is a legal issue which has to be addressed at any stage of proceedings as it pertains to jurisdiction.

It is from the foregoing analysis I hold that the first appeal was filed out of the prescribed time. Therefore this, rendered the district court to entertain an appeal filed out of time and so lacked jurisdiction to entertain the same. For this reason, I find merit in this ground. I allow the appeal, quash and set aside the judgement and decree of the district court with costs.

AK. Rwizile
Judge
16.08. 2021

Recoverable Signature

X

Signed by: A.K.RWIZILE

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY