

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

DC CIVL APPEAL NO. 10 OF 2020

(Arising from Civil Case No.3 of 2019 of the District Court of Liwale)

VILLAGE EXECUTIVE OFFICER FOR NANJEGEJA.....1ST APPELLANT

DISTRICT EXECUTIVE DIRECTOR FOR LIWALE.....2ND APPELLANT

VERSUS

ZUBEDA ROBERT KIGOGO.....RESPONDENT

JUDGMENT

10 June & 10 August, 2021

DYANSOBERA, J:

This appeal takes exception to the decision of the District Court of Liwale delivered on 30th June, 2020 awarding the respondent Tshs. 9,090,000/= as specific damages, Tshs. 7,000,000/= as general damages, interest at the bank rate of 21% on specific damages, interest at court's rate of 7% per annum for decretal sum of general damages from the date of judgment to full payment and costs of the suit.

The appellants thought that the decision was not a triumph of justice hence this appeal which is pegged on eight grounds of appeal as follows:-

1. That the learned Magistrate grossly erred in law and fact in deciding that the timbers were confiscated by Liwale District Council while the evidence rendered by the respondent shows the same were confiscated by Tanzania Forest Services Agency (TFSA) officials.
2. That the learned Magistrate grossly erred in law and fact in deciding that the timbers belonged to the respondent while the evidence tendered before the court showed the same were belonging to Nanjegeja Village.
3. That the learned Magistrate grossly erred in law and fact in deciding the matter without considering the evidence adduced by the appellants.
4. That the learned Magistrate grossly erred in law and fact by failing to distinguish between owners of the timbers and participation of the second respondent.
5. That the Court grossly erred in law and fact by deciding the matter without considering the laws relating to forest proceeds.
6. That the learned Magistrate grossly erred in law and fact in deciding that the respondent is entitled to 303 pieces of timbers without enough evidence to prove the claims.
7. That the learned Magistrate grossly erred in law and fact in deciding that there was a village meeting while no evidence to prove the said meeting was tendered before the court.

8. That the learned Magistrate grossly erred in law and fact in deciding that there was a village meeting at Nanjegeja.

The respondent's case at the trial court was, in brief, the following. On 25.3.2017 there was a meeting of Natural Resources of Nanjegeja village Committee whereby it was agreed that there should be made timbers from the logs. The Nanjegeja Village Council was assigned the duty. However, since it had no financial capability, it contracted the respondent who was acquainted with making timbers from logs to perform the task. It was agreed that the timbers would be made using saws and upon obtaining the timber, there would be division in terms of percentage whereby the respondent would receive 75% while the Nanjegeja village would receive 25% and both the producer and owner of the timbers would contribute 5% each. In that exercise, issued were permits to harvest logs, produce timbers and for transportation of the timbers from the forest to Nanjegeja village. In support of this evidence, the respondent produced a contract agreement between her and the Village Authority through Nanjegeja Village Committee Natural Resources dated 25.3.2017 (exhibit P 1), a permit for harvesting logs (exhibit P 2) and transport permit (exhibit P 3).

The respondent's evidence established that after the conclusion of the contract, she took the workforce to Hangai Forest to produce timbers from the logs. They managed to produce a total of 404 tree timbers of torin (msufi).

These timbers were marked by Andrew Jacob Axwesu, a forest officer at Liwale District and hence ready to be transported to the destination.

It was further evidence of the respondent that after marking the timbers, transportation was done from Hangai Forest to Mtawatawa village and the village authority was informed. The process of transporting the timbers from Mtawatawa village to Nanjegeja village started.

With regard to the cause of action, the respondent told the trial court while transporting the timbers using a tractor operated by Said Mambo, the Tanzania Forest Services Agency from Natural Resource Office did, at Mkunya village, seize and confiscate 303 pieces of timbers and the transport permits and took them to Liwale Township. The appellant argued that the confiscation and seizure was illegal as there was transportation permits. The timbers were later taken to the District Natural Resources office and were not released despite the respondent's follow ups. The respondent reported to the Area Commissioner and then instituted the suit in a court of law. in support of her claims of Tshs. 9,090,000/= being the value of the confiscated 303 pieces of timbers, general damages and costs, the respondent contended that she had employed labourers to perform the task of producing timbers and had incurred expenses for working tools and the pursuit of her contractual rights. The respondent maintained that the Village was issued with a permit to harvest the timbers but since it had no money, she, the

respondent was contracted as an agent and did perform her contractual obligation but was not paid for all the efforts spent and costs incurred in the production of the timbers.

The evidence of the respondent was supported by Mpanyu Ally Kipengele (PW 2), a resident of Mkunya. According to him, he with other fellows not less than ten, were involved in the production of timbers using saws and managed to produce a total of 404 pieces of timbers and spent a month in the production. He said that the 303 pieces of timbers were seized at Mkunya while being transported to Mtawatawa village then to Nanjegeja village. He stated that they managed to successfully transport the first trip. As to why those 303 timbers were seized, PW 2 told the trial court that there was no licence. PW 2, however, maintained that the village authority had the licence and tendered it.

Three witnesses testified for the defence. These were Damas Mkonda Mumwi (DW 1), G. 6032 DC Francis (DW 2) and Andrew Jacob Axwesu (DW 3). It was the evidence to DW 1, natural resource officer, Liwale District that on 24.5.2017 at 1800 hrs while in the office, he received a phone call from the OC-CID one Mtaki requesting him to go to the police station at Liwale as there was a motor vehicle Reg. No. T.654 BWE the property of Harid Chama which carried timbers amounting to 162. DW 1 went to the police station and apart from the seized timbers and motor vehicle, there were also two people who had been locked up.

DW 2 was told by the seizing officer that the timbers were seized in the morning near Likongowe Primary School. He argued that the owner of the motor vehicle executed the legal requirements and the motor vehicle was released but the timbers remained there. This witness said that the respondent went there after a long time. It was later learnt that the seized and confiscated timbers belonged to the Nanjegeja village authority who were authorised by the Forest Officer to produce the timbers. The respondent then issued with them a notice of intention to sue after three months, DW 1 argued. He told the trial court that according to law, where timbers are seized and no one lays claims over them within thirty days, they have to be sold. DW 1, however, admitted that after the expiry of thirty days, they remained with the timbers and in 2019, the timbers were supplied to different schools for construction of school buildings.

DW 1 explained the procedure of harvesting the forest produce and told the trial court that the respondent some time was found having committed the offence and signed fomu ya kukiri makosa dated 19.12.2016 (exhibit D 1). The same DW 1, however, admitted that the officer issuing compounding must sign and write. He admitted that James Kabuta did not sign the exhibit D 1.

DW 1 admitted that the timbers were legitimised as they were marked by DW 3. He however argued that the seized timbers had no TP and there was no licence.

In his evidence, DW 2, a police officer testified that he seized the timbers and the motor vehicle under section 25 of the Criminal Procedure Act. The motor vehicle Isuzu Tipper which belonged to Harid Chama and then Mr. Mpako was being driven by Ally and the conductor was Iddi. DW 2 argued that the timbers were marked but there was no licence and was told that the licence was with the owner of timbers and those two, that is Ally and Iddi were just transporters. The owner was the wife of Mbwambo. As to why the timbers were seized, DW 2 said that there was no document and the timbers were seized for further legal action. Although DW 1 argued that it took a long time for the respondent to go to the seized timber and meet him, DW 2 was clear at p. 40 of the typed proceedings that 'it took almost only some hours when the plaintiff came at the police station and she met the natural resources officer there that is Damas.

DW3, a forest officer at Liwale District Council that he fulfilled his official obligation of marking the timbers which were the property of Nanjegeja village. He said that he was not responsible to issue the TP.

The learned Resident Magistrate in his elaborate and reasoned judgment was satisfied that the respondent had entered into an official agreement to produce timbers from the logs with the terms and conditions which she fulfilled. Further that the agreement was reduced in writing as evidence by exhibit P. 2. He found

that it was an enforceable contract under section 10 of the Law of Contract Act [Cap. 345 R.E.2019].

At the hearing of this appeal, Mr. Barikiei Sindato assisted by Erasto Nombo, learned State Attorneys for the appellants submitted in support of the appeal whereas Mr. Godfrey Namoto, learned counsel for the respondent, argued against the appeal.

I have anxiously and with circumspection considered the competing arguments of the parties' representatives vis a vis the record of the trial court. I am satisfied, on the available record, that the following facts are established. One, there was legally enforceable contract between the respondent and Nanjegeja Village Council for the production of timbers from the logs. Two, this duty was bestowed on the Nanjegeja Village Council but was assigned to the respondent who acted as her agent as the Village Authority had no financial capability of performing the the task that had been assigned to her. Three, the respondent fulfilled her part of obligation by producing 404 timbers and managed to transport them. Four, DW 3, a forests officer legitimised the produced timbers by marking them. Five, the respondent put her efforts in the production of the timbers by hiring labourers, buying working tools and transporting the timbers. These established facts were not controverted by the Nanjegeja Village

Authorities as no evidence was led to dispute the existence of the contract between the respondent and Nanjegeja Village Authority.

Since there was a legally enforceable contract, the respondent performed her obligation and incurred costs and expenses, the seizure and confiscation of the timbers, notwithstanding, the contract has to be honoured and the trial court was duty bound to enforce it.

The evidence in its totality depicts that the timbers were wrongly seized and confiscated as they belonged to the Nanjegeja Village Authority which had been authorised to produce them and the respondent was contracted to and did produce them as per the contract.

In the first ground of appeal, the appellants are complaining that, 'the learned Magistrate grossly erred in law and fact in deciding that the timbers were confiscated by Liwale District Council while the evidence rendered by the respondent shows the same were confiscated by Tanzania Forest Services Agency (TFSA) officials'. I think that avoids the issue. The issue was not who confiscated the timbers but whether there was a breach of a contract and who was responsible for the breach. As the evidence clearly shows, it is the 1st respondent who had breached the contract as she did not live to the contractual agreement. She was properly sued. Indisputably, Nanjegeja Village Council is a local government by virtue of Section 3 of the Local Government (District

Authorities) Act [Cap. 287 R.E.202] as amended. Under section 26 (1) and (2) of the said Act, it is provided that as soon as may be practicable after the election of the first village council following the registration of a village, the Registrar shall furnish to the village council a certificate of incorporation in the prescribed form, and also a copy of that certificate to the appropriate Director. Sub-section (2) (b) of Section 26 of the Act provides that:-

'upon the issue of the certificate of incorporation in relation to a village, the village council of the village in question shall, with effect from the date of that certificate, be a body corporate, and shall-

(a)..... (Not relevant)

(b) In its corporate name be capable of suing or being sued.

(c)..... (Not relevant)'

Why then was the District Executive Director for Liwale sued as the 2nd defendant in this case and now appears as the 2nd respondent on this appeal? The answer is provided for under sub-section (3) of 26 of the said Act as amended by the Written Laws (Miscellaneous Amendments) Act, No. 1 of 2020 which provides as hereunder:-

'(3) Notwithstanding sub-section (2), the District Executive Council shall have the right to be joined as a party in any suit or matter instituted by or against the village council, and for that purpose the village Council shall have a duty

to notify the District Executive Director of any impending suit or matter against the village Council'.

The above provision enjoined the Village Council to notify the District Executive Director of the impending suit against her and the 2nd respondent was joined as a necessary party in the suit that had been preferred by the respondent after the Nanjegeja Village Council had breached the contract.

This first ground of appeal falls away for lack of any legal substance. The determination of this first ground of appeal disposes also the fourth ground of appeal.

As far as the second ground of appeal is concerned, the fact that the timbers belonged to Nanjegeja Village explains why the 1st respondent was successfully sued in a court of law. The respondent performed her part of contractual obligation, the 1st respondent failed to perform her part but as evidenced by DW 1, the timbers produced at the efforts of the respondent were used to construct school buildings.

With regard to the third, fifth, sixth, seventh and eighth grounds of appeal, the record of the trial District Court does not support those complaints. The learned Resident Magistrate extensively and in detail analysed and evaluated the evidence that was before him. He applied the Law of Contract Act and reviewed various case laws and found that the respondent had proved the case against the

appellants on preponderance of probabilities. In his oral submission in support of the fifth ground of appeal, Mr. Barikiel Sindato argued that the trial court grossly erred in law and fact in deciding this matter without considering the laws relating to forest produce and in particular, the Forest Act No. 14 of 2002. With respect to Mr. Sindato, I think he missed the point and did not do his legal research well. The Forest Act No. 14 of 2002 was not enacted and meant to supersede other laws of the land, particularly the Law of Contract Act which was mainly applied by the trial court in deciding this matter. There was a breach of contract and the breaching party had to be behaved according to the applicable law which is the: Law of Contract Act [Cap. 345 R.E.2019] and not the Forests Act as learned State Attorney for the appellants wanted the court to believe. The court was duty bound to enforce the contract. That is what the District Court did. These grounds of appeal are also lacking in merit

With regard to the awarded reliefs, the payment of Tshs. 9,090,000/= was geared to enforce the contract. It was awarded as specific damages which had been specifically pleaded and proved. Tshs. 7,000,000/= as general damages was rightly awarded. The respondent had asked Tshs. 10,000,000/=. The trial court, in its discretionary powers, awarded 7m- only. A close look at the trial court's record reveals that the respondent furnished evidence in support of the claim and provided facts upon which the damages were assessed. The award of

general damages was at the discretion of the court and this court has found that the discretion of awarding damages was properly exercised by the trial court and there it was not established that the Resident Magistrate contravened any rule of law. The interest and costs were awarded in accordance with the Civil Procedure Code [Cap. 33 R.E.2019].

There is hardly anything on record to impugn the finding of the trial Resident Magistrate in analysis of evidence and the applicable laws of the land pertaining to the issue that surfaced for determination. The assessment and award of damages was also properly made.

For the stated reasons, I find the appeal lacking in legal merit. I order that the appeal be dismissed with costs to the respondent.




W.P. Dyansobera

Judge

10.8.2021

This judgment is delivered under my hand and the seal of this Court on this 10th day of August, 2021 in the presence of Ms Getruda Songoi, learned State Attorney for the appellants and in the presence of the respondent.

Rights of appeal to the Court of Appeal explained.




W.P. Dyansobera

Judge