

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT SUMBAWANGA

PC CIVIL APPEAL NO. 10 OF 2020

*(Originating from the District Court of Mpanda in Civil Appeal No. 4 of 2020
from Civil Case No. 24 of 2020 of Mpanda Urban Primary Court)*

BETWEEN

JIBRAI RAJAB MIHAYO APPELLANT

VERSUS

PASCAL SITTA RESPONDENT

Date of Last Order: 18/05/2021

Date of Judgment: 16/08/2021

JUDGMENT

C.P. MKEHA, J.

Before Mpanda Urban Primary Court, the respondent herein sued the appellant herein for payment of Tshs. 2,500,000/= being costs for maintenance of a motor vehicle alleged to have been destroyed by the appellant. Having heard the suit, the trial Court awarded the respondent the claimed sum in respect of an agreement entered vide exhibit KM1.

Aggrieved, the appellant herein preferred an appeal before Mpanda District Court through a total of seven grounds. After hearing the appeal on merits, the same was dismissed. Further aggrieved, the appellant has preferred the present appeal on the following five grounds to wit that:

1. The appellate Court erred in law in dismissing the appeal without considering the plain fact that the case was entertained by the trial Court without jurisdiction.
2. The appellate Court erred in law in dismissing the appeal while it had already expunged exhibit "KM 1" from record as it was not stamped per the law.
3. The appellate Court erred in law in dismissing the appeal while at the same time there was change of assessors in the proceedings of the trial Court and proceed to hold wrongly that such change of assessors was done during "plea taking", a procedure which is done in criminal cases.
4. The appellate Court erred both in law and in fact in holding that the respondent's case was proved in the trial Court, hence, there was no any need of calling the witnesses who evidenced signing of "Exhibit KM 1" which was expunged from the record by it.
5. The appellate Court erred both in law and in fact by dismissing the appeal in total by disregarding the adduced evidence by the appellant in the trial Court that he signed an agreement dated 01/02/2020 through undue influence.

Hearing of the preferred grounds of appeal was conducted orally whereas Mr. Lawrence John, learned counsel appeared for the appellant while the respondent appeared in person, that is, unrepresented.

On the hearing date, the appellant's counsel abandoned the 5th ground of appeal thus remaining only with four grounds. Arguing for the 1st ground of appeal, the appellant's counsel just reiterated contents of the ground whereas as to the 2nd ground of appeal, Mr. Lawrence John learned counsel backed the said ground by citing the case of **Robert P. Mayunga and Another v. Republic**, Criminal Appeal No. 514/2016 whereas in support of the 3rd ground, the appellant's counsel cited to this Court the case of **Njile Kisala v. Diana Sokanya**, PC Civil Appeal No. 34/2018.

In response, the respondent submitted for the 1st ground that the trial Court was as such clothed with trial jurisdiction whereas as to the 2nd ground, the respondent argued that his case remained proven even after exhibit "KM 1" had been expunged. As to the 3rd ground on assessors, the respondent argued that there was no change of assessors from the first date till judgment. The respondent thus urged for dismissal of the appeal.

After going through the Court record and the respective submissions by the appellant's counsel and the respondent in person, I proceed to determine the appeal. In the first place, it is worth to be noted that; this is a second appeal in which there have been concurrent findings of the two lower courts in the judicial hierarchy.

Concurrent findings of lower courts are varied conditionally. Regarding concurrent findings by lower courts, the Court of Appeal in **Raymond Mwinuka vs. the Republic**, Criminal Appeal No. 366 of 2017, (Iringa), (Unreported), underscored at pages 9 and 10 that:

"Aware of the host decisions of this Court cautioning against our interference with concurrent findings of facts by two courts below, we shall guard against unwarranted interference of such facts. The decisions on that principle are in cases including; Daudi Lugusi and 2 Others v. Republic, (supra), cited to us by Mr. Mwita, and Jafari Mohamed v. Republic, Criminal Appeal No. 112 of 2006 (Unreported). In the latter case it was held;

"An appellate Court, like this one, will only interfere with such concurrent findings of fact if it is satisfied that "they are unreasonable or perverse" leading to a miscarriage of justice, or there had been a

misapprehension of the evidence or a violation of some principle of law: see, for instance, Peters v. Sunday Post Ltd. [1958] E.A 424; Daniel Nguru and Four Others v. R., Criminal Appeal No. 178 of 2004, (Unreported); Richard Mgaya (supra), etc”.

Starting with the 1st ground and as earlier pointed, the suit in the trial court was on payment of Tshs. 2,500,000/= as costs for maintenance of a motor vehicle alleged to have been destructed by the appellant. Notably, despite raising the jurisdiction issue, the appellant’s counsel did not address the court as why this Court lacks jurisdiction in bidding home such ground. In the circumstances, this Court will not labour on the same as well. Consequently, the 1st ground is dismissed for want of merit in law.

Regarding the 2nd ground, undoubtedly; the required proof in civil cases is that of balance of probabilities and not beyond reasonable doubts as required in criminal cases. Justification over this ground has been levelled over the expunged exhibit “KM 1”. Expunging from record of an exhibit does not necessarily water down proof if the remaining evidence suits proof of the same. It thus follows that, the cited case of **Robert P.**

Mayunga and Another v. Republic (supra) is distinguished in addition to the fact that the same does not even fit circumstances of this case.

In respect of the 3rd ground, the trial Court record is clear that on 13/02/2020 when the matter was placed before the trial Magistrate for the first time, the court assessors forming the coram were C. Kilala and Nyakasi. From 24/02/2020 when the matter commenced hearing, the court assessors were C. Kalunde and T. Kazimzuri with the same forming the coram throughout till Judgment was entered by the Court on 26/03/2020. From the above in nutshell, it goes without saying that the levelled ground lacks merits with a consequent order the same deserving, that is, dismissal.

Lastly, the 4th ground. The appellant's counsel had nothing as to this ground. Moreover, the same is so much related to the 2nd ground as to the expunged exhibit "KM 1". Being the case, the same is as well dismissed. From the above in totality, this court finds no merit in the appeal warranting any fault to the concurrent findings of the subordinate courts. As a result, this appeal is hereby dismissed, with costs.

Dated at **SUMBAWANGA** this 16th day of August, 2021.



C.P. Mkeha

C.P. MKEHA

JUDGE

16/08/2021



Date - 16/8/2021
Coram - Hon W.M. Mutaki – DR
Appellant } Absent
Respondent }
B/C - Zuhura

Order: Judgment is delivered in the presence of the Respondent in the absence of the Appellant.



W.M. MUTAKI

DEPUTY REGISTRAR

16/08/2021

