

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

(PC) CIVIL APPEAL NO. 3 OF 2021

*(Originating from Civil Revision No 01/2020 in the District Court of
Rombo at Rombo)*

BEATRICE CONSTANTINE APPELLANT

VERSUS

ROMAN THOMAS RESPONDENT

JUDGMENT

MUTUNGI .J.

The appellant herein aggrieved by the decision in Civil Revision No 1/2020 delivered by the District court of Rombo dated 18th December, 2020, has appealed to this Court. The court could not help but make an observation on the way the grounds have been framed. The same are full of narrations and analysis. It has in the event tasked the court at length as to which are the actual grounds of appeal. Even though the following are what the court could make out. They are reproduced hereunder as follows: -

1. *That the learned Resident Magistrate seriously erred and mistook the evidence of the prosecutrix and her witness at the trial.*
2. *That the learned Resident Magistrate strayed into serious error to create and include additional defense which was not brought by respondent at the trial where Appellant could question, and or cross examine it.*
3. *That the learned Resident Magistrate grossly erred in holding that since the appellant didn't produce at the hearing a Bill table tabulating the debt as among the reason to allow the application was also a grave error.*
4. *That it will also be submitted at the hearing that this appeal is within time as ruling and order of the District Court was delivered by the 18th day of December 202, copy of it applied by the 21st day of December 2020 and same delivered to appellant by the 30th day of December 2020.*

The brief facts forming the genesis of the appeal are that, the Appellant had instituted a civil case at the Usseri Primary Court No. 27/2020 (trial court) against the Respondent claiming for Tsh 650,000/= an amount subject of the goods

which the Respondent borrowed from her shop which were taken by the respondent's labourers. This was after the respondent had entered into a contract with investors. The labourers he had hired would take items like food, flour, meat and drinks from the appellant's shop. The respondent denied the claims on the ground, he had never hired those labourers nor had he entered into such agreement. The trial court decided in favour of the Appellant.

Aggrieved by such decision, the Respondent filed an application for revision in the District Court under section 22(1)(2) of the Magistrate Court Act, Cap 11 R.E. 2019 for the District court to call, examine and revise the decision of the trial court on the grounds, the trial court decision was tainted with incorrections, illegality and irregularities. The grounds for revision were such that, **first**, the Respondent (the Appellant herein) sued the wrong party considering the respondent had never hired people to work for him nor borrowed anything from the Respondent. **Second**, the trial court entertained the claim which was out of time. The District Court thereto decided in favour of the Respondent. I wish to quote the decision at page 2 of the ruling: -

“This court found out the matter at the trial court was not proved to the required standard that the claims were not proved against the applicant at the trial court hence there was no need of the orders given.”

At the hearing, the Appellant was unrepresented while the Respondent was represented by Mr. Julius Focus learned advocate. The appeal proceeded by way of written submissions.

Addressing the grounds of Appeal generally first and foremost the Appellant faulted the District Court for failure to consider her evidence and instead dealt with the contract between different parties and ignored the oral agreement between appellant and respondent.

The Appellant further stated the District Court failed to direct itself to the Application of revision before it. The respondent had precisely stated down in the revision he was not part of the written contract between Thomas Ndikira and TEACA. Secondly, the respondent was wrongly sued and thirdly the matter was out of time and so the trial court lacked jurisdiction. In that respect, the Appellant was of the view the District Magistrate had to say something about these prayers

but instead dealt with the appellant's evidence in the trial court which was not in issue.

In concluding the Appellant argued since the District Court did not deal with the respondent's prayers, then the court should quash the orders and ruling of the District Court.

Responding to the Appellant's submission, the Respondent's advocate contended, the District Court was right to set aside the trial court judgement because the Appellant did not prove the case at the required standard. There was no proof of the listed items which she claimed to have been taken from her shop nor evidence that the investors invested on the respondent's premise. Furthermore the Appellant did not summon any of the alleged labourers to support her allegations.

Mr. Julius further responded, the Resident Magistrate never dealt with any evidence as alleged. The District Court simply dealt with the Affidavit and Counter-Affidavit duly filed in court for and against the revision.

As to the contract between the TEACA and Thomas Ndikira, the learned advocate stated, it was not an issue before the

court. The records reveal the respondent is alleged to have hired people to clear his premises, it follows the appellant had a duty to prove that fact existed as required under **section 110(1) of Tanzania Evidence Act, Cap 6 RE 2019.**

As though not enough, the learned counsel faulted the Appellant for failure to prove if at all the alleged labourers were working for the respondent. Further there was no evidence of the agreement between herself and respondent. It was Mr. Julius's view, the Appellant was required to bring proof that those labourers worked for the respondent and that it was the respondent who sent them to collect the goods from her shop.

Regarding the claim that she did not cross examine, the learned advocate argued the same was not presented during hearing of the revision application and hence should be ignored. Mr. Julius concluded his submission by praying for the court to dismiss the appeal for being devoid of merit.

In rejoinder the Appellant reiterated her submission in chief.

Having considered the grounds of appeal and submissions of both parties, I find the issue which need to be determined in

this appeal is whether this appeal has merits or otherwise. I have noted the appellant lay as she is, could not properly put together her grievances in this appeal. In my settled view, the Appellant's main concern is that, the District Court did not direct itself to the application for revision before it. In due thereof, I have been prompted to refer to the application before the District court where the court was moved under **section 22(1)(2) of the Magistrate Court Act, Cap. 11 R.E. 2019**). The court was being called upon to revise the trial court decision as stipulated under paragraphs 5 and 6 of the affidavit. For ease of reference the same is quoted hereunder: -

5. That the Applicant is of the view that the respondent sued the wrong party in the said case as he was not the owner of the said piece of land which was rented.

6. The Applicant states further that the primary court entertained the matter which had no jurisdiction as the Respondent was borrowed her goods in the year 2016.

Under section 22(1) of Magistrate Court Act (supra) on revision, the District Court is required to satisfy itself as to the

correctness, legality or propriety of any decision or order of the primary court. The provision states: -

“A District Court may call for and examine the record of any proceedings in the primary court established for the district for which it is itself established, and may examine the records and registers thereof, for the purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the primary court, and as to the regularity of any proceedings therein, and may revise any such proceedings.”

I have painstakingly gone through the judgement of the District Court and found the learned Resident Magistrate did not deal with the grounds of revision as rightly submitted by the Appellant. Instead, the magistrate re-evaluated the evidence of the trial court and came up with the settled findings that, the appellant's evidence had not been proved on the balance of probability and proceeded to quash the trial court's decision as though she was dealing with an Appeal. I wish to quote part of the District Court decision hereunder: -

"Whether there was need of this revision

Going through the chamber summons the affidavit and the records of the trial court this court in answering the issue have found that there was a need of the revision as filed by the applicant; this court had a chance to make though perusal of the trial court records and found out that the required standards in civil cases were not met.

In criminal cases a case must be proved beyond reasonable doubt as stated in the case of Karnataka Transport Corporation Vs National Insurance Bank Ltd AIR 1999 Kant 233, different from civil cases that a case has to be proved to the balance of probability, and whoever desires any court to give judgement as to any legal right or liability depends on existence of facts which he asserts, must prove that those facts exist.

The respondent who was the plaintiff on Civil case no 27/2020 at Usseri Primary filed that case claiming against the applicant who was the

defendant payment of Tshs. 650,000/= being the payment of services provided by the respondent by then plaintiff, at the hearing at the trial court the respondent/plaintiff submitted that I quote;

Mnamo tarehe 9/9/2016 mdaiwa alifika kwenye biashara yangu na alikua na wafanyakazi walikua wakifanya kazi ya kuondoa visiki kwenye shamba kwaajili ya kukodisha muwekezaji ndipo alipoongea na mimi na kuanza kuhudumia mali mbalimbali dukani kwa ajili ya wafanyakazi wake ikiwemo: -

-Nyama

-Ndizi

-Vinywaji mbalimbali

-Unga

Mali hizo alikua anachukua siku mbalimbali na tofauti hadi ilipofikia Tshs. 650,000/= naomba Mahakama itoe amri mdaiwa anilipe fedha zangu

Sina Zaidi"

Thereafter her witness give evidence and the defense was entered, in essence I have troubled to copy all that to show how the plaintiff/respond evidence was and there was no any tangible


evidence like where was she writing whenever the items were collected so as to show how that Tshs. 650,000/= was reached she just say as quoted and the court entered judgment in her favour."

From the above quoted extract it goes without saying, the learned Resident Magistrate erred in re-evaluating the evidence and ignoring the responsibility of dealing with the grounds of revision. The court sitting on revisionary jurisdiction is not obliged to re-evaluate the evidence, the same is the mandate of the court exercising appellate powers.


Given the foregoing findings of this court, I hereby nullify the ruling subject of the revision dated 18th December 2020, quash and set aside the orders thereto. In the circumstances I order the record to be remitted back to Rombo District Court before another Magistrate for re-determination of the grounds of revision. I make no orders as to costs.

It is so ordered.





B. R. MUTUNGI
JUDGE
31/8/2021

Judgment read this day of 31/8/2021 in presence of the Appellant and Mr. Julius Focus Advocate representing the Respondent.


B. R. MUTUNGI
JUDGE
31/8/2021

RIGHT OF APPEAL EXPLAINED.


B. R. MUTUNGI
JUDGE
31/8/2021