

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

(PC) CIVIL APPEAL NO.06 OF 2021

(Arising from Bukoba District Court at Bukoba in Civil Appeal No. 01 of 2020 and original Civil Case No. 279 of 2019 at Bukoba Urban Primary Court)

ABDULRAHMAN DAUD.....APPELLANT

VERSUS

ABDALLAH ADADI.....RESPONDENTS

JUDGMENT

Date of Judgment: 24.09.2021

Mwenda J,

This appeal originates from Civil Appeal No. 01 of 2020 whereby the appellant Abdulrahman Daud being aggrieved by the decision of the District Court filed the present Appeal with three grounds as appearing in a petition of appeal.

During the hearing of this appeal the appellant was represented by the learned counsel Ms. Pilly Hussein while the respondent appeared in person.

In her submissions in chief Ms. Pilly stated that, she is going to argue the first and the third ground of appeal collectively and the second ground of appeal separately.

Ms. Pilly submitted that, after the hearing of the appeal in District Court Civil Appeal No. 1 of 2020 which was conducted by the way of written submission,

it was held that the trial court erred to issue judgment in favour of the appellant on the reason that the advocate who witnessed the contract in question was not called upon to testify. According to her, the first appellate court erred to pronounce that judgment as there is no legal requirement which requires the advocate who witnessed the contract to testify. She said that the honorable magistrate did not state under what law does that requirement emanates from.

She went further by submitting that since the contract was tendered as exhibit A1 and the parties signed, then there was no need for an advocate who witnessed to be called to testify as they agreed with its contents and became bound by it. To bolster her argument she cited the case **Mawala Advocates vs. Fosunwood Tanzania Limited Misc. Commercial Application No. 79 of 2019.**

On the second ground of appeal the counsel for the appellant submitted that, the case before the primary court was proved on the balance of probabilities. She said the appellant proved his case by tendering their agreement and it was admitted as exhibit A1 without any objection. She went further by submitting that, the appellant also brought before the court three witnesses who are SM2, SM3 and SM4 and they all testified that the respondent was indebted as claimed.

She said, the respondent consented that after they have agreed in terms the contract was then signed. She concluded by submitting that the appellant

proved his case before the trial court and she prayed this appeal to be allowed with costs.

Responding to the submission by the counsel for appellant, the respondent Mr. Abdallah Adadi briefly replied that, he prays for this court to consider his reply to the grounds of appeal and adopt them as part of his submissions. He then prayed this appeal be dismissed with costs for lack of merits.

This court, having perused lower courts records and after considering the submission made by both parties came up with only one issue to be determined which is whether this appeal have merits.

Having gone through the Primary Court proceedings it is clear that appellant and the respondents knew each other as they had business relationship. In his evidence before the trial court the appellant stated that, they entered into an agreement where the respondent agreed to sell a car to him in consideration of Tsh 4,500,000/-. He then paid the agreed amount but the respondent failed to hand him the car. Following his failure to undertake his obligation so the applicant decided to draft a payment agreement schedule which was witnessed by an advocate and tendered as exhibit A1. During his defense before the trial court, the respondent submitted that, he does not know the content of the said agreement because he does not know how to read and write and that what he was told is only to sign the said agreement. At the end of the day the trial

magistrate entered judgment in the favour of the appellant by putting weight on exhibit A 1.

From the trial Court's proceedings, this court noted a few things worthy note taking. One, when the appellant prayed to tender payment's schedule agreement as exhibit A1 the respondent had no objection. His reply was in the following words and I quote:

***"Sina pingamizi na mimi naomba kulipa deni kati
ya Abdulahiman Dauda"***

Failure of the respondent to object the admission of exhibit A1 implies he was in admission of its execution by himself. **Section 72 of the Evidence Act [CAP 6 R.E 2019]** needs:

***"The admission of party to an attested document
of its execution by himself shall be sufficient proof
of its execution as against him, though it might be
document required by law to be attested."***

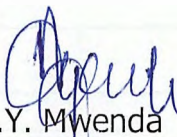
Also, it is clear from the record that the respondent signed the agreement exhibit A1 voluntarily and he appended his signature. His signing of the said agreement entails he knew of its contents and that he is literate.

Again, having signed exhibit A1, the respondent started effecting payments in instalments and exhibit B1 & B2 were tendered before the trial court to that effect.

From the foregoing observations this court find merits in this appeal as it is hereby allowed by quashing the proceedings and set aside the judgment of the first appellate court and any other order arising therefrom. I otherwise uphold the decision of Bukoba Urban Primary Court in Civil Case No. 279 of 2019.

It is so ordered.



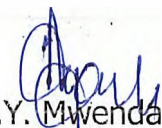

A.Y. Mwenda

Judge

24.09.2021

Judgment delivered in chamber under the seal of this court in the presence of Ms. Pilly Hussein the learned counsel for the appellant and in the presence of the respondent Mr. Abdallah Adadi.




A.Y. Mwenda

Judge

24.09.2021