

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**(PC) CIVIL APPEAL NO. 19 OF 2021**

(Arising Civil Appeal No. 5/2021 of Kigoma District Court Before Hon. E. B. Mushi,  
RM, Original Civil case No. 09 of 2021 at Uvinza Primary Court Before: Hon. F. J.  
Mtega, RM )

**ANTONIA D/O LUKAS..... APPELLANT**

**VERSUS**

**ANNA D/O GABRIEL.....RESPONDENT**

**JUDGMENT**

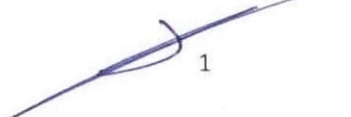
12<sup>th</sup> & 12<sup>th</sup> November, 2021

**A. MATUMA, J.**

The Respondent herein sued the Appellant in the Primary Court of Uvinza for claim of Tshs 2,860,000/= being the value of ten sacks of sardines she sold to the appellant.

The Primary Court (F.J. Mtega RM) after having heard the parties found that only Tshs 350,000/= was proved as against the whole claim.

The Respondent became aggrieved hence appealed to the District Court (E.B. Mushi, RM) whereas the Primary Court's judgment was faulted for having not found that the whole claim of Tshs 2,860,000/= was sufficiently proved. The appellate magistrate thus allowed the appeal and



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ordered the Appellant to pay the whole claimed amount of Tshs. 2,860,000/= to the Respondent.

The Appellant became aggrieved and through Mr. Method R.G. Kabuguzi learned advocate laid three grounds of appeal before me. The three grounds of appeal essentially raises one major complaint that;

***The Hon. Resident Magistrate in the first Appellate Court erred in law and facts to reverse the decision of the Primary Court and order the Appellant to pay the Respondent Tshs. 2,860,000/= which had not been cogently proved.***

Mr. Kabuguzi learned advocate submitted on the ground mainly contending that the Respondent did not tender or give sufficient proof that the Appellant received the alleged ten sacks of the sardines. He faulted the evidence of the bus conductors SM2 and SM3 as having given bare words and or allegations without any document or dispatch for the delivery of the cargo. He thus asked this court to allow the Appeal with costs.

Mr. Silvester Damas Sogomba learned advocate for the Respondent in reply thereof submitted that the evidence of the respondent herself, that of SM2, SM3 and the three tickets exhibit PE1, PE2 and PE3 established

sufficiently that the appellant received the ten sacks of sardines from the Respondent.

Having heard both parties for and against this appeal, and having gone through the records in the case file, I find that; while the Respondent claimed Tshs 2,860,000/= for ten sacks of sardines, the Appellant disputed to have received such ten sacks but only two one of which she returned to the respondent. She thus admitted a claim of Tshs. 250,000/= as the value of one sack of sardines and the outstanding loan of Tshs. 100,000/=. Unfortunately, the Primary Court did not resolve first whether or not the alleged ten sacks were sent and received by the appellant. It concentrated into whether the Appellant paid the outstanding debt of the sardines thereby ending to adjudge for what was only admitted by the Appellant.

The District Court, correctly in my view determined whether or not the ten sacks were sent to the appellant by the Respondent and whether its value thereto was dully paid. This is because the contention was on the ten sacks. Not that the ten sacks were sent by the Respondent, received by the Appellant **but not paid by the Appellant**. In that respect if it is proved that the ten sacks were really sent to the appellant, then an order for payment of its value is inevitable because the appellant persistently

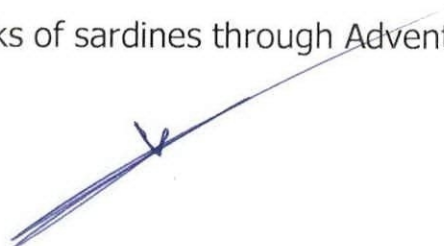
refused to have been sent and received such ten sacks. The value of Tshs 2,860,000/= would as well be justifiable because there was no contention whatsoever that even if it is proved the ten sacks, its total value was not Tshs. 2,860,000/=.

Now was there sufficient evidence to establish that the respondent sent and the Appellant received the ten sacks of sardines?

Mr. Kabuguzi argued that exhibits PE1, PE2 and PE3 which were used as evidence establishing the claim did not prove that the appellant was a destination of the cargo named therein. He argued that along with those exhibits, SM2 and SM3 gave bare words without any document or dispatch to authenticate that the Appellant received the cargo.

On his party Mr. Sogoma argued that the respondent had witnesses who explained such exhibits in connection with both parties herein, the respondent as a sender and the appellant as a receiver.

In my view Mr. Sogomba learned advocate for the respondent is absolutely right. Exhibits PE1, PE2 and PE3 are the cargo Tickets for transportation of the ten sacks of sardines through Adventure Connection (bus).





The tickets indicates that on 25/10/2020 four packages were transported from Mwanza to Kidahwe Kigoma, on 25/11/2020 four other packages were transported and on 04/12/2020 two packages were as well transported.

SM2 Hemed s/o Abud and SM3 Hussein s/o Maulidi who are Bus Conductors explained the packages to be sacks of sardines and that it was the respondent who entrusted them to transport to Kidahwe to the appellant. In their respective evidences they testified to have sent to the Appellant many sacks of sardines being sent by the respondent but only the last ten sacks were in dispute and that is why they brought only three tickets in respect of the disputed cargo. SM3 transported six (6) sacks and SM2 transported four (4) sacks.

In the circumstances, there is no dispute that the respondent did actually send ten sacks which are in dispute through adventure connection. The question as put by Mr. Kabuguzi is whether such sacks were ultimately delivered to the appellant.

The appellant throughout her evidence contended that the respondent sent to her only two (2) sacks of sardines and they were not in a good order;



*'Alinitumia gunia mbili ambazo zilikuwa mbaya  
nikamwambia aje azichukue'.*

Then she testified that the Respondent was not advancing the cargo to a debtor;

*'Mdai alikuwa hatumi mzigo kama unadaiwa'.*

She thus wanted to tell the court that as she had an outstanding debt for the previous cargoes, the respondent could have not sent her the ten sacks. Such evidence contradicts the appellant herself whose evidence in its totality show that she used to be sent sardines despite of having been indebted.

Also, SM2 and SM3 proved that the respondent sent the ten sacks and they themselves handled the same to the Appellant. Therefore, the appellant's denial on a mere fact that there is no dispatch is unfounded. This is because she admits to have made business with the Respondent since June, 2020 and at all that time the Respondent used to send her sacks of sardines and she did not say that she was receiving the cargo on dispatch basis. Even the last two sacks which she admits to date, she did not say that she received it on dispatch. The dispatch issue is an afterthought no doubt brought in by her learned advocate. The parties contracted on the basis of trust.

I have no reason nor there is any apparent facts on record that would call for not believing SM2 and SM3 that they indeed transported ten sacks of sardines from the respondent to the Appellant. The two witnesses are thus protected under the principle enshrined in the case of ***Goodluck Kyando versus The Republic, [2006] TLR 363*** that every witness is entitled to credence and have his or her evidence accepted unless there are good and cogent reasons for not believing such a witness.

In that regard this appeal has been brought without any sufficient cause, it is hereby dismissed in its entirety with costs. Right of further appeal subject to the relevant guiding laws is hereby explained to the parties.

It is so ordered.



  
**A. Matuma**

**Judge**

**12/11/2021**

**Court:** Judgment delivered this 12<sup>th</sup> November, 2021 in the presence of both parties in person and Mr. Method R.G. Kabuguzi learned Advocate for the appellant and Advocate Silvester Damas Sogomba for the Respondent.

**Sgd: A. Matuma**

**Judge**

**12/11/2021**