

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**PC CIVIL APPEAL NO. 198 OF 2020**  
*(Originating from Civil Appeal No. 04 of 2020,  
Kilaha District Court)*

**MONICA S. REWETA.....APPELLANT**  
**VERSUS**

**KEDS TANZANIA COMPANY LIMITED.....RESPONDENT**

**JUDGMENT**

**17/08/2021 & 18/11/2021**

**E. B. LUVANDA, J.**

This is a second appeal following the decision of the first appellate court which affirmed the decision of the primary court to the effects that the appellant orchestrated breach of the food supply contract. In her petition of appeal, the appellant copied and pasted the same grounds of appeal presented at the first appeal court, namely: one, the honorable court erred in law and fact by declaring that the appellant is the one who breached the contract; two, the honorable court erred in law and fact in granting its judgement in favour of the respondent by denying the strong evidence adduced by the appellant; three, the honorable court erred in law and fact

by failing to take into consideration the actual amount claimed by the appellant against the respondent.

Essentially the appellant failed to prove her claim on the preponderance of probability. The evidence or defence presented by the respondent herein (defendant at the trial court) outsmart the appellant story. No wonder the appellant did not even tender the contract alleged to have been breached by the respondent, until when she later produced it as exhibit D1 for appraisal by the court on her defence. It was the evidence of Florence Frank Makele (DW2) that on the material date, he witnessed employees boycotted to consume the dish prepared under the recipe menu of the appellant, for reason of being substandard. Omary Everest Mshana (DW1) tendered food survey-questioners part of exhibit D1, which depict that good eaters on divert dates to wit on 31/5/2019, 22/10/2019, made comments for improving menu and later asked the supplier (appellant) to be changed. The appellant (plaintiff at the primary court) responded slightly that it was because of animosity and denigration. In view of these facts, the two courts below made a concurrent finding that the appellant was the author of the breach. In **Yussuf Moh'd vs The Director of Public Prosecutions**, Criminal Appeal No. 84 of 2009, Court of Appeal at

Zanzibar (unreported), at pages 1 and 2 the apex Court had this to say, I quote

*'In a second appeal the Court is slow, or rather cautious, in interfering with findings of fact by the courts below'*

The apex Court went on to say, I quote,

*'As a matter of principle, therefore, the court may interfere with findings of fact by the courts below where there are misdirections or non-directions on the evidence, where there has been a misapprehension of the evidence etc.'*

Herein, the ably submission made by Sindilo G. Lyimo learned Counsel for appellant failed to demonstrate if at all there is any misapprehension of the evidence on the part of the two courts below which can warrant this Court to interfere with the findings of facts by the courts below. The argument by Lusajo Asajile Mwakalundwa learened Advocate for respondent that the appellant failed to prove her claim, is valid.

Therefore the appeal is unmerited.

Appeal dismissed with costs.



E.B. Luvanda  
Judge

14/09/2021