

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

PC. CIVIL APPEAL No. 110 of 2021

(Arising from Civil Appeal No.06/2021 of Temeke District Court &

Originating from Civil Case No. 192 of 2020 at Temeke Primary Court)

MEYDAN 2 CO LIMITED (NDIEGE ANGILA MBWANA)APPELLANT

VERSUS

HANIF ADAM AHMEDRESPONDENT

JUDGMENT

MRUMA,J.

This is a fit case for the court to invoke the principle of overriding objective embodied in Article 107A(2) (e) of the Constitution of the United Republic of Tanzania and section 3A and 3B of the Civil Procedure Code [cap 33 RE 2019], which requires courts to deal with cases justly, speedy and to have regard to the substantive justice. The principle stress as on the need to avoid prioritization of procedural technicalities in the process of administration of justice.

In the present case the Appellant MEYDAN & CO Limited (Ndiege Angila Bwana) instituted a suit in Temeke Primary Court of Temeke claiming against the present Respondent Hanif Adam Ahmed a sum of Tshs 22,154,000/= being unpaid purchases price under an oral contract for the sale of goods (Fridge and Freezers) supplied between November 2019 and April 2020 to the Respondent Hanif Adam Ahmed.

During the trial Ndiege Angila Bwana the Manager of Administration and Hamun Resources of the Defendant's company, testified that his company supplied and delivered to the Respondent fridges and freezers worth shillings 38,354,000/=but he only paid part of the purchase price leaving the amount now claimed ie. Tshs 22,154,000/= unpaid. He tendered in evidence Tax invoices and delivery notices to substantiate his claims.

In his testimony in court the Respondent denied the claims of the Appellant. He told the court that at one time he was called at the Defendant's office and was informed that he had an outstanding unpaid balance of Tshs 18,000,000/= which he disputed. He also disputed that amount at police station. He said that, he paid all the outstandings against him by direct to PW2 Salvatory William Minja, by cash.

The trial primary court entered judgment for the Respondent herein. It found that on the evidence on record the Respondent has paid Tshs 17, 300,000/= leaving the balance of Tshs 18, 480,000/= Unpaid. It ordered that amount to be paid.

The Respondent was aggrieved by the findings and decision of the trial primary court and he successfully appealed. In his appeal to the District Court the Respondent had nine grounds of appeal but of interest to the present appeal are grounds 8 and 9 which were only grounds which were found by the District appellate court to have merits. They read as follows;

7. That the honourable trial Magistrate erred in law and fact by delivering judgment without considering the opinion of the assessors.

8. That the honourable trial Magistrate erred in law and fact in arranging payment schedule the without assessing the income of the Appellant (ie Respondent)

As stated herein before the remaining seven (7) grounds of the appeal to the District court were dismissed. In upholding ground 7, the District appellate court clearly stated that it had no opportunity to see the original copy of the trial court's judgment. The court stated thus;

" I have gone through the court file and found that there is no original copy of the said judgment. No judgment has been verified to be the copies. The assessors names are just mentioned..."

The District appellate court concluded that of an unsigned copy of judgment by the trial court has caused injustice.

In my view the findings and conclusion reached by the District appellate court were misconceived and wrong. Upon finding that the original copy of judgment of the trial court was missing on the record or that the records contains an unsigned copy of judgment the appropriate remedy was not to allow or dismiss the appeal on that ground but to remit the records of the appeal to that court with orders that the judgment be signed and certified and brought back to it for determination. Fortunately the records submitted to this court contains original hand written copy of trial court's judgment duly signed by the trial Magistrate and assessors.

Thus the finding that the original records of the trial court are missing cannot be left to stand it is no longer a valid ground of complaint. Consequently the order setting aside the trial court's decision on that ground is quashed and set aside. I thus, agree with the Appellant's first ground of his appeal to this court it was an error for the District Court to quash the decision of the trial court.

Regarding the 8th ground of appeal, the District Court faulted the trial court on the ground that it ordered the Respondent to pay the decretal sum in instalments without taking into consideration his a party to pay. That was also an error on the part of the District appellate Court. Once a decree has been pronounced the judgment debtor is obliged to satisfy it by paying the entire amount. An order for payment of the decretal sum by instalment is a discretionary powers of the court and they can only be exercised upon application by the Judgment debtor and ordinarily in execution proceedings. Failure by the trial court to asses the Respondent's ability to pay could therefore not be a good reason for invalidating the trial court's judgment.

That said, I allow the appeal quash and set aside the Judgment and decree of the District Court of Temeke in Civil Appeal No.6 of 2021 and

restore the Judgment and orders of the Temeke Primary court in Civil
Case No. 192 of 2020.

Order accordingly.




A. R. Mruma

Judge

23/5/2022.