

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**PC. CIVIL APPEAL NO. 7 OF 2021**

**KAJULA PHILIPO CHAMBULA ..... APPELLANT**

**VERSUS**

**MAHUNA CREDIT CENTRE CO. LTD ..... RESPONDENT**

(Appeal from the decision of the District Court of Mpanda at Mpanda)

(R. M. Mwalusako, RM)

Dated 16<sup>th</sup> day of June 2021

In

PC Civil Appeal No.15 of 2020, original Civil Case No. 110 of 2020 – Mpanda Urban

Primary Court

**JUDGMENT**

Date: 19/05 & 17/06/2022

**NKWABI, J.:**

The first appellate court (the District Court) was not persuaded by the appellant that the trial court was wrong in its decision. As such, it dismissed his appeal for being devoid of any merit and upheld the decision of the trial court with costs.

The appellant was undeterred, himself believing that he had mounted a formidable defence against the respondent's claim of loan money at T.shs

1,986,000/= in the trial court. The appellant, a primary school teacher at Mpembe, had a loan with the respondent, it would appear, prior to the loan subject of this controversy. Then, a top-up loan allegedly taken by the appellant from the respondent resulted into the case the subject of this appeal. The loan agreement was tendered in court and admitted as exhibit KSI in which the loan amount is T.shs 1,854,000/=. It was witnessed by Sweetbert Alphonse Nkumpilo, learned advocate on 25/02/2019 and the respondent's officer namely Mohamed Rasmini approved the loan on 25/02/2019.

It was on 30<sup>th</sup> June, 2020 the respondent filed a civil suit in the Primary Court of Mpanda Urban at Mpanda claiming for T.shs 1,986,000/= as the loan money including the follow-up costs. The respondent had three witnesses in establishing her case. They are PW1 Abiud Simon Kalagila, PW2 Mohamed Rasmin Athuman who authorized the loan and PW3 Sweetbert Alphonse Nkumpilo, learned advocate, who witnessed the execution of the loan agreement form.

PW1's evidence was that after the appellant had been paid the loan money, he paid for one instalment at T.shs 128,000/=, then stopped payment. He ought to have paid each instalment at T.shs 232,000/= for each month. PW2 Mohamed testified that the appellant was given more than six months to repay the loan. In total, the appellant ought to pay T.shs 1,854,000/=. He only paid for one month at T.shs 180,000/= in March 2019, later, they lodged the case claiming even an amount for costs for making follow-up.

In his defence, the appellant admitted to have executed the loan agreement and had the head teacher as a security for the loan but claims that he was not paid the agreed amount, though he had returned the agreement form to the respondent. He claimed that the respondent was not claiming any amount from him. He tendered the bank statement as exhibit KU1.

The trial court decided that the respondent proved the claim of T.shs 1,724,000/=. It added that the filing fee also be paid by the appellant at T.shs 10,000/= thus totaling T.shs 1,734,000/= in its decree.

Unhappy with the decision of the first appellate court as such six grounds of appeal were preferred by the appellant They are:

1. That the trial magistrate erred in law and fact by failing to consider and evaluate the evidence of appellant.
2. That the trial magistrate erred in law and fact by delivering judgment basing on words of respondent while there is no evidence showing that appellant received money from respondent.
3. That trial magistrate erred in law and fact by allowing unauthorized person to act on behalf of company as there is no any approval.
4. That trial magistrate erred in law and fact by considering the evidence of one side.
5. That trial magistrate erred in law and fact by accepting change of person during proceeding without any notice to appellant.
6. That the person appeared to be representative of company Mohamed Rahim never show up in court instead appearing another person called Abuid Simon Kalagila.

It is due to the above grounds of appeal, the appellant prayed the whole judgment be reversed and decree set aside.

In fact, the District Court found that the claimed amount at T.shs 1,724,000/= was proved and dismissed the appeal with costs as I have indicated above.

The hearing of this appeal was conducted orally and the appellant appeared in person, unrepresented. The respondent did not appear. There is an affidavit of service of the summons to the respondent.

In his submissions, the appellant adopted the grounds of appeal as his submission. He contended the trial court did not evaluate well the evidence. No evidence to prove the way he received the loan money. The trial court and appellate court erred. There was no any documentary evidence to prove the claim.

He further asserted that no material witness came to testify and whether he had a board resolution to come to testify. Further, he maintained that the person who filled in the loan form for him did not come to testify against him. The witness who came claimed to be the manager while he was not.

The decision of the district court was erroneous, he stressed and prayed this court to quash the decision of the district court as well that of the primary court. The district court too refused his prayer for making a rejoinder submission.

I have closely examined the grounds of appeal preferred by the appellant in this court together with his submissions. I have also gone through the proceedings and judgments of both lower courts and I am of the view, that only the 2<sup>nd</sup> ground of appeal deserves the attention of this court. This is because, the rest of the grounds of appeal were either not raised in the trial court by cross-examining the relevant witnesses or not by the appellant's defence. Also, some of them were not raised as ground of appeal in the first appellate court. They are therefore an afterthought. Since the complaints in the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> grounds of appeal are not pure matters of law as they are mixed matters of law and fact, I cannot entertain them as per **Julius Josephat v. Republic**, Criminal Appeal No. 3 of 2017, CAT, (unreported):

*"... those grounds are new. As often stated, where such is the case unless the new ground is based on a point of law, the Court will not determine such ground for lack of jurisdiction."*

See also **Rashidi Sarufu v. Republic**, Criminal Appeal No. 467 of 2019:

*"As a matter of principle, a party who fail to cross examine a witness on a certain matter is deemed to have accepted the matter and will be estopped from asking the trial court to disbelieve what the witness said."*

For the above reasons, I dismiss the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> grounds of appeal.

The main complaint, in this appeal, of the appellant, however, is that the trial magistrate erred in law and fact by delivering judgment basing on words of respondent while there is no evidence showing that appellant received money from respondent.

The appellant's defence was not found credible by both the trial court and the first appellate court. This is a second appellate court where, this court, if possible, reluctantly interferes with concurrent decisions of lower courts. This was stressed in **Neli Manase Foya v. Damian Mlinga** [2005] T.L.R 167, where it was decided:

*"...It has often been stated that a second appellate court should be reluctant to interfere with a finding of fact by a trial court, more so where a first appellate court has concurred with such a finding of fact. The District Court, which was the first appellate court, concurred with the findings of fact by the Primary Court. So did the High Court itself, which considered and evaluated the evidence before it and was satisfied that there was evidence upon which both the lower courts could make concurrent findings of fact."*

Is there any justification for me to interfere with the concurrent findings of both the trial court and the District Court? In my view, there is no any reason that would warrant me to do so. More so when I have in my mind the decision of this court in **Ibrahim Ahmed v. Halima Guleti, [1968] HCD no. 76.** (PC), Cross J.:

*"The District Court erred. The question for a court on appeal is whether the decision below is reasonable and can be rationally supported: if so the lower court decision should be affirmed. The appeal judge may not in effect try the case de novo, and decide*



*for the party he thinks should win. "Surely, when the issue is entirely one of the credibility of witnesses, the weight of evidence is best judged by the court before whom that evidence is given and not by a tribunal which merely reads a transcript of the evidence." Judgment of the primary court restored."*

With the above evidence there is no doubt that the appellant entered into a loan agreement on 25/02/2019. He is however, claiming that the loan amount was not given to him. It is incredible. If the story of the appellant were credible, he would have brought evidence to the effect that the first loan was deposited through his bank account, or that he signed any document evidencing that he received the money that he did not attempt to do that. As both lower courts were satisfied, I am also satisfied that the respondent proved her claim on the balance of probabilities. The appellant has to repay the loan just as per the decision of the District Court. This view of mine is fortified by the decision in the case of **Mohamed Iddrisa Mohamed v Hashim Ayoub Taku** [1993] TLR 280 where it was held:

*"Where a party to the contract has no good reason not to fulfil an agreement, he must be forced to perform his part, for an agreement must be adhered to and fulfilled."*

In the final analysis, the respondent proved her case on the balance of probabilities. The trial court was justified in holding that the respondent proved her case on the balance of probabilities. The District Court was as well justified to dismiss the appeal. This appeal, in this court is as well dismissed for want of merits. I make no orders as to costs as the respondent did not enter appearance nor lodged in this court any document.

It is so ordered.

**DATED** at **SUMBAWANGA** this 17<sup>th</sup> day of June, 2022



  
**J. F. NKWABI**  
**JUDGE**