

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA**

**PC. CIVIL APPEAL NO. 16 OF 2021**

**GUNDA SAMWEL ..... APPEALANT**

**VERSUS**

**ELIA ERNEST MPINGA.....RESPONDENT**

**(Arising from the judgment of Singida District Court; R.C Migani, RM)**

**Dated 19<sup>th</sup> day of April 2021**

**In**

**Civil Appeal No. 03 of 2021**

.....

**JUDGMENT**

**7<sup>th</sup>March&6<sup>th</sup>May, 2022**

**MDEMU, J.**

This is a second appeal. In the Primary Court of Utemini, the Respondent herein sued the Appellant for payment of Tshs. 2,060,000/= being money advanced to him for purchase of 100 bags of maize. According to the record, the Appellant neither delivered the said maize as agreed nor returned back the money. Having heard the suit, the trial Court awarded the Respondent the claimed sum, more so as there was an agreement (exhibit EE1) between the Appellant and the Respondent.

Aggrieved, the Appellant herein preferred an appeal to Singida District Court having four grounds of appeal. After hearing the appeal on

merits, the District Court dismissed the said appeal. Further aggrieved by that decision, the Appellant preferred the present appeal on the following grounds, to wit:

- 1. That, the honourable Magistrate erred in law and fact by dismissing the appeal and upholding the decision of the primary court in Civil Case No. 184/2020 without proper evaluation of the evidence before arriving at its decision.*
- 2. That, the honourable Magistrate erred in law and fact by dismissing the appeal without properly inquiring into the genuineness of the claim by the Respondent that he gives the Appellant Tshs. 5,060,000/= to purchase 100 bags of maize for him.*
- 3. That, the Honourable Magistrate erred in law and fact by dismissing the appeal by failing to consider the evidence by the Appellant and his witnesses adduced at the trial court.*

Hearing of the preferred grounds of appeal was conducted orally on 7<sup>th</sup> of March 2022 in which both parties appeared in person. Arguing on the grounds of appeal jointly, the Appellant stated that, the Respondent

never at all advanced any money to him. He thus prayed the appeal be allowed.

In reply, the Respondent submitted that, on 3<sup>rd</sup> July, 2020 went to a lawyer accompanied by Merician Shilla and Abdallah Swalehe so that he can prepare a contract between the Appellant and the Respondent. The contract was prepared in which; the Respondent was entrusted with Tshs. 5,060,000/= for the purchase of maize. According to the contract, the Appellant was to buy 100 sacks of maize and deliver the same to the Respondent by 3<sup>rd</sup> August, 2020. However, he didn't deliver any consignment. Following this, the Respondent reported the matter to police where he was advised to institute a civil case. Later in the course, the Appellant agreed to reimburse by installment. He didn't but rather appealed to the first appellate court instead.

In rejoinder, the Appellant simply stated that, what was submitted by the Respondent was not correct. He thus urged the appeal be allowed.

After going through the Court's record and respective submissions by the Appellant and Respondent, the main issue is whether there was a contract between the Appellant and the Respondent for purchase of 100 bags of maize. In the first place, it is worth to note that, this is a second appeal. In both, there is a concurrent findings of facts in which both courts found in favor of Respondent. Regarding concurrent findings of facts by

lower courts, the Court of Appeal in **Raymond Mwinuka vs. the Republic, Criminal Appeal No. 366 of 2017** (unreported) held at page 9 through 10 that:

*"Aware of the most decisions of this Court cautioning against our interference with concurrent findings of facts by two courts below, we shall guard against unwarranted interference of such facts. The decisions on that principle are in cases including; **Daudi Lugusi and 2 Others v. Republic** (supra) cited to us by Mr. Mwitwa and **Jafari Mohamed v. Republic, Criminal Appeal No. 112 of 2006** (unreported). In the latter case, it was held;*

*"An appellate Court, like this one, will only interfere with such concurrent findings of facts if it is satisfied that they are unreasonable or perverse leading to a miscarriage of justice, or there had been a misapprehension of the evidence or a violation of some principle of law: see, for instance, **Petrers v. Sunday Post Ltd [1958] E.A 424; Daniel Nguru and Four Others v. R. Criminal Appeal No. 178 of 2004** (unreported); **Richard Mgaya**(supra) etc."*

Parties didn't submit for and against the grounds of appeal seriatim but rather they reiterated what transpired in both at the trial and the appellate Court. Therefore, in determining this appeal, I will deal with grounds of appeal raised by the Appellant as one specific on analysis of evidence adduced by the parties at the trial court.

I am of the view that, the trial Court did evaluate properly the evidence adduced in reaching its decision. I subscribe to the decision of the two lower Courts that, the Respondent did prove his case at the required standard. There is evidence such that, he entered into contract with the Appellant for purchasing 100 bags of maize for Tshs. 5,000,000/= . Tshs. 60,000/= was for purchasing 100 empty bags for loading maize. This evidence was supported by that of SM2 one Abdallah Swalehe who witnessed the transaction. This was also witnessed by the Appellant's wife one Marisiana Shila. The said contract was admitted by the trial Court as exhibit EE1.

Besides that contract, there is evidence adduced by the Respondent which, in my view, is heavier when compared to that of the Appellant which appears to have contradictions. Regarding this latter, the Appellant in his evidence, testified that, he didn't know the Respondent. I quote part of that evidence for easy of reference: -

*"huyu mdai anaenidai sio kweli hajanipa kitu chochote wala hela yoyote, anaongea uongo. Mimi SM1 wala simtambui na wala sikufunga nae mkataba.*

However, when he was examined by the court for clarification regarding that fact, he testified that: -

*"SM1 namfhamu anakaa Igugumo, kule Ishenga wanapokaa SM1 ana kaka yake ameshakaa hapo kwa kaka yake ndio maana namfhamu.*

This contradiction makes the evidence of the Appellant to be weak and untrusted. It is unlike the evidence of the Respondent which is credible and trusted such that, he really advanced money to the Appellant for purchase of 100 bags of maize. Rule six (6) of the Rules of Evidence in Primary Courts regarding weight of evidence provides, thus: -

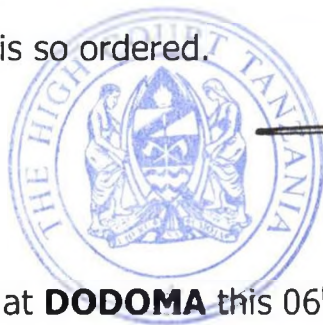
*"In civil cases, the Court is not required to be satisfied beyond reasonable doubt that, a party is correct before it decides the case in its favor, but it shall be sufficient if the weight of evidence of the one party is greater than the weight of the evidence of the other".*

Therefore, since the evidence of the Respondent at the trial court was heavier compared to that of the Appellant and basing on the position that the two Courts below decided in favor of the Respondent, this Court

cannot interfere with concurrent findings of facts of the two courts below for want of evidence on deception or misapprehension of such facts.

That said and done, this Court finds no merit in the appeal warranting any fault to the concurrent findings of the subordinate Courts as to require interference. In the end, this appeal is hereby dismissed with costs.

It is so ordered.



~~Gerson J. Mdemu~~  
JUDGE  
06/05/2022

**DATED at DODOMA** this 06<sup>th</sup> day of May, 2022



~~Gerson J. Mdemu~~  
JUDGE  
06/05 /2022