

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA DISTRICT REGISTRY**

**AT MBEYA**

**PC. CIVIL APPEAL NO 5 OF 2022**

*(Originating from Civil Appeal No. 9 of 2021 of the District Court of Mbozi at Vwawa in original Civil Case No. 13 of 2021 of the Mlowo Primary Court of Mbozi District.)*

*Between*

**MERU AGRO TOUR & CONSULTANTS CO. LTD ..... APPELLANT**

**VERSUS**

**JOYCE ZUNDA .....RESPONDENT**

**JUDGMENT**

*Date of last order: 8<sup>th</sup> June, 2022*

*Date of judgment: 6<sup>th</sup> Jul, 2022*

**NGUNYALE, J.**

The facts of the appeal as obtained from the record is that the appellant and respondent had business relation of agricultural inputs. The appellant supplied the inputs to the respondent on credit basis. The respondent on taking farm inputs on credit she was not paying timely, the debt had accrued at Tsh. 3,940,000/= and only Tsh. 700,000/= had been paid. In pursuant of settling the matter on 27/11/2020 they



executed a contract of acceptance of the debt of Tsh 3,240,000/= and the payment schedule was made to that effect.

The respondent defaulted payment and the appellant filed a suit in the Primary Court of Mlowo via Civil Case No. 13 of 2021 in which she claimed the amount of Tsh. 2,834,400/= being the outstanding debt from the respondent. The respondent essentially did not dispute being indebted but she disputed the amount claimed. The case went for full trial in which the trial Court after hearing both parties found the respondent's debt stood at Tsh 2,840,000/ and was ordered to pay general damage of Tsh 1,000,000/=, costs of the suit and interest rate of 2% as from 27/11/2020.

The above decision aggrieved the respondent who lodged the appeal to the District Court of Mbozi via Civil Appeal No. 9 of 2021. After hearing the appeal, the appellate Court reduced the amount decreed by the trial Court and the respondent was ordered to pay Tsh 1,665,000/= being the outstanding debt. This decision aggrieved the appellant and has filed the present appeal with five (5) grounds of appeal that is

- 1. The appellate Court erred both in law and fact by failure to take into consideration that the deed of settlement entered between the appellant and respondent was not in dispute in the trial.*



2. *That the appellate Court erred in both law and fact by holding that all the receipt adduced by the respondent were used to pay the debt without any proof*
3. *That the appellate Court magistrate erred in both law and fact by failure to evaluate the evidence adduced in the trial Court as the first appellate Court*
4. *That the appellate Court magistrate erred in both law and fact by failure to know that though the appellant owed the respondent since 2019 which was the fact in issue in a trial Court but they are still doing business on cash and credit basis*
5. *That the appellate Court magistrate erred in both law and fact by awarding Tzs 1,650,000/= as the only amount the respondent owed by the appellant without proof against the evidence on record.*

The respondent resisted the appeal. The appellant was represented by Idris Muhidin Msemu learned advocate whereas the respondent appeared in person. The appeal was disposed by way of written submission.

The 1 and 5 grounds of appeal were joined and Mr. Msemu submitted that the disputants were bound by the deed of settlement they signed on 27/11/2020 exhibit KSM2 in which the amount agreed was 3,240,000/=. He added that no oral evidence was to be adduced to contradict the written contract and the case of **Umico Limited v Salu Limited** Civil Appeal No. 91 of 2015, CAT at Iringa (Unreported) was cited to support the argument. It was further submitted that the respondent



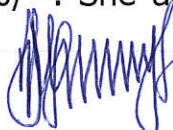
did not dispute signing the said contract where she managed to pay Tsh 400,000/=only.

Mr. Msemo also submitted that the appellate Court did not evaluate evidence on payment of the debt by the respondent which was contradictory. On this the case of **Hamis Rajabu Dibagula v Republic** [2004] TLR 181 was cited to bolster the argument.

Submitting on the 2 and 3 grounds it was argued that evidence was not properly evaluated especially in reference to exhibit KSM2 *mkataba wa kulipa deni*. It was submitted that difference in figures as appearing in exhibit KSM2 was a minor and typing error and curable under section 3A of the Civil Procedure Code [Cap 33 R: E 2019] as the true debt was Tsh 3,240,000/=

On the fourth ground Mr. Msemo submitted that the parties were bound by the principle of sanctity of contract under section 10, 11 and 13 of the Law of Contract Act [Cap 345 R: E 2002] particularly in regard to schedule for payment of debt where the agreed amount is Tsh 3,240,000/=

In reply the respondent submitted that they had business arrangement with the appellant on supply of agro vets on loan and the loan accrued up to Tsh 3,940,000/=. She added that she managed to



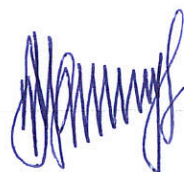


make cash payment of Tsh. 1,010,000/= and the amount of Tsh 1,850,000/= was paid through bank accounts of the appellants. It was further submission from the appellant that taking the total amount of the whole debt of Tsh 3,940,000/= and the amount paid of Tsh. 2,095,000/= the appellant deserves to be paid Tsh 1,845,000/= as a debt from the respondent.

The respondent complained that some of the receipts were not given to him and condemned the appellant for not attaching annexures to written submission to prove the allegation made.

It was further submitted that the respondent did not sign any deed of settlement as it was a forged one and it contained different figures which makes it defective and a misrepresentation contrary to section 18(a)-(c) of the Law of Contract and could not be cured by overriding principles. As for the award of Tsh. 1,665,000/= by the appellate Court the respondent acceded to be a miscalculation as the actual amount was supposed to be Tsh. 1,845,000/=

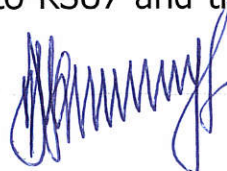
I have gone through the records and rival submission from both parties and found that the only issue for determination of this Court is whether the appellant proved her claim against the respondent.



In this appeal there is no dispute that the appellant and respondent had business arrangement in which the respondent was being given agro vets on credit. There is also no dispute that the debt had accrued to Tsh 3,940,000/=. What is in dispute is the amount paid in regard to the debt above. The appellant alleged that the remaining debt is Tsh. 2,840,000/= while the respondent claims that she is indebted only at 1,845,000/. In an attempt to prove the amount, the appellant produced customer statement of the account exhibit KSM3, contract on payment of loan exhibit KSM2 which was not objected by the respondent. On the other hand, the respondent produced delivery notes and invoices from the appellant and payment receipts exhibit KSU1 to KSU7.

In its judgment the trial Court after evaluating evidence came to the conclusion that on 27/11/2020 the appellant and respondent signed a contract on payment of the debt which stood at Tsh 3,240,000/=, out of such amount the respondent managed to pay only 400,000/ therefore the remaining loan balance was 2,840,000/.

The respondent contested the above award in the District Court, the appellate Magistrate re-evaluated the evidence on payment and discredited exhibit KSM2. Also, was satisfied that the respondent paid Tsh. 2,095,000/=through exhibit KSU1 to KSU7 and the remaining debt was




Tsh 1,650,000/= to which respondent thinks it was supposed to be 1,845,000/=

I have gone through the judgments of the lower Courts, this appeal hinges on burden of proof. This appeal traces its root from the Primary Court and the relevant law is rule 6 of the Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations G.N. 22 of 1964 which reads;

*'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 favour, but it shall be sufficient if the weight of the evidence of the one party is greater than the weight of the evidence of the other.'*

From the above it is the law that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved. It is again trite that the burden of proof never shifts to the adverse party until the party on whom the onus lies discharges his/her and the said burden is not diluted on account of the weakness of the opposite party's case. see the case of **Habiba Ahmadi Nangulukuta v Hassani ausi Mchopa** (The Administrator of the Estate of the late Hassani Nalino), Civil Appeal No. 10 of 2022, CAT at Mtwara (Unreported).

In disposing this appeal, the starting point is exhibit KSM2 contract of payment of debt. When SM1 was tendering exhibit KSM2 the respondent did not object which implies that she admitted to have signed



it. Is settled law that failure to object admissibility of the exhibit and cross examine the witness on such vital document implies acceptance of the truth contained therein. See the case of **Bomu Mohamedi v Hamisi Amiri**, Civil Appeal No. 99 Of 2018, CAT at Tanga and **Hamis Amri Idd v Mohamedo Mandwanga**, Misc. Land Appeal No.16 OF 2022 (both unreported) in **Hamis Amri Idd** the Court stated

*'I have perused the trial tribunal records and noted that during the hearing of the matter at the trial tribunal, the respondent in defending his case tendered a form and the appellant did not object admissibility of the said document. Moreover, the appellant did not cross-examine the respondent on the contents of the said document. Such failure mean that the appellant accepted that matter. Moreover, during cross examination, the appellant did not ask the respondent about the validity of the said document.'*

In this appeal the issue of authenticity of contract of payment of debt (exhibit KSM1) has been raised for the first time in this Court. If indeed the respondent was unaware with exhibit KSM2 ought to have objected to its admissibility and raised the issue of fraud as she is trying to do at this stage. Therefore, it is the finding of this Court that the exhibit KSM2 was signed by the respondent and ought to comply with terms contained therein. I agree with the appellant difference in figure may be a result of typing error.



In this case it was the respondent who was to lead evidence that she paid the debt. The appellant tendered contract of payment of debts signed on 27/11/2020 with a debt being Tsh 3,240,000= . Also, the appellant admitted that the respondent paid two instalments with total amount of Tsh. 400,000/= . On the other hand, the respondent tendered three receipts relevant to payment of debt as from 27/11/2020. These are payments made on 8/12/2020 paid 200,000/= exhibit KSU5, on 12/12/2020 paid 200,000/= exhibit KSU6 and on 20/12/2020 paid 200,000/= exhibit KSU7. The total amount paid on those receipts is 600,000/= .

On my re-evaluation of evidence from 27/11/2020 when they signed the contract of debt payment, I have found that the lower Courts did not make proper analysis of evidence and documentary evidence tendered. Looking at exhibit KSM2 in which the debt is indicated to be Tsh. 3,240,000/= and the amount of 600,000/= paid through exhibit KSU6-7 the remaining debt becomes Tsh. 2,640,000/= . It is my findings that the appellate Court fell into error when he considered some receipts evidencing payment prior 27/11/2020 which in fact was not at issue.

The respondent complained that the appellant did not attach receipts to written submission to prove the allegation. This complaint has

no merits as no evidence has to be attached to written submission rather authorities including extracts of law, writings of prominent and authoritative authors and decided case laws. See the case of **Vocational Education Training Authority v Ghana Building Contractors & Another**, Civil Case No. 198 of 1995 (Unreported).

To that end this appeal succeeds to the extent demonstrated above. The award of Tsh 1,665,000/= by the District Court together with that of the trial Court of Tsh. 2,840,000/= were erroneously granted, they are substituted with Tsh 2,640,000/=. The award of general damages of Tsh.1,000,000/= and interest rate of 2% remain as awarded by the trial Court for it was not subject to appeal in this Court and the District Court. No order as to costs in this appeal considering the business relationship of the parties. It is so ordered.

DATED at MBEYA this 6<sup>th</sup> Day of July, 2022

  
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**D.P. Ngunyale**  
**JUDGE**