

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

PC. CIVIL APPEAL NO. 8 OF 2021

(Arising from Civil Appeal No. 35 of 2020 in the District Court of Mbeya)

Between

LUCY DANIEL MPILUKAAPPELLANT

VERSUS

NOE FINANCE LTD.....RESPONDENT

JUDGMENT

A.A MBAGWA J.

This appeal arises from the District Court of Mbeya in Civil Appeal No. 35 of 2020. The matter originally started in the Primary Court of Mwanjelwa in Civil Case No. 121 of 2021 whereby the appellant was adjudged to pay the respondent the amount of Tshs. 3,158, 577.68/= being unpaid loan amount. Unamused by the decision, the appellant unsuccessfully appealed to the District Court, hence this appeal.

The brief facts obtaining in this matter may be narrated as follows; The respondent advanced a loan of Tshs. 5,000,000/= to the appellant on 17/6/2019. She deposited a car registration card No. T579 AWA as a collateral. The appellant then started to service the loan but she managed to repay only Tsh. 2,739,000/= until at the time of filing Civil Case No. 121 of 2021. The appellant had thus an outstanding loan amount of Tshs. 3, 540,899.80/=.



The appellant disputed the claims. She contended that she repaid the whole loan amount. In a bid to establish his case, the respondent paraded one witness and five documentary exhibits, on the one hand. The appellant, on the other hand, testified in defence and produced ten documentary exhibits marked as P1, P2, P3, P4, P5, P6, P7, P8, P9 and P10.

Upon full trial, the trial court was satisfied that the respondent had established the claim to wit, Tshs. 3, 158,577.68/= hence entered a judgment in favour of the respondent. In addition, it awarded the respondent costs of the suit.

Dissatisfied with the decision of the trial primary court, the appellant unsuccessfully preferred the appeal to the District Court. Still aggrieved, the appellant approached this Court with a petition of appeal containing three grounds;

1. That the appellate court erred in law and facts to give judgment in favour of the respondent despite being a non-existing institution or unknown person hence the complaint at the trial court had no leg to stand
2. That the magistrate of the appellate court erred in law and facts to declare a judgment in favour of the respondent without regarding the documentary exhibits tendered which indicates that the appellant completed paying the whole debts to the exceed (sic) owed number of Tanzanian shillings five million eight hundred thousand eighty eight thousand (5,888,000/=)
3. That the lower court erred in law and facts for failure to analyze and evaluate the evidence hence reached unjust and unfair decision.



When the appeal came for hearing, the appellant appeared in person unrepresented while Ms. Anneth Mrema, learned advocate appeared for the respondent. Both parties prayed and were allowed by the Court to dispose the appeal by way of written submissions.

Arguing in support of the first ground, the appellant submitted that the respondent was not a registered entity under the Banking and Financial Institution Act hence unauthorised to provide loan. She thus lamented that the case was prosecuted by non-existing institution or unknown person.

On second ground, the appellant submitted that the trial magistrate failed to scrutinise exhibits as presented by her. She said that had the appellate magistrate analysed properly the evidence, he would have found that the appellant repaid the whole loan amount. cited the case of **Tanzania Breweries Limited vs Anthony Nyingi** [2016] TLR 99 to support his argument.

Submitting in support of the last ground, the appellant argued that evidence was not subjected to proper evaluation and analysis. He cited the case of **Munina vs Budesiano** [2016] 3 EA 311 to back up his version. In essence, the appellant submitted that any proper evaluation of evidence would have revealed that she had cleared the loan. The appellant thus prayed the appeal to be allowed.

Reacting to the first ground, Barnabas Pamboma, counsel for the respondent submitted that the respondent is a registered entity under the Companies Act [Cap. 212 R: E 2002] and is working as a financial institution with valid licence. He thus strongly submitted that the respondent had locus stand to sue.



Regarding the second ground, the learned advocate replied that the respondent proved the appellant owed him Tshs. 3, 158,577.68/= as an outstanding loan amount. He added that the claim by appellant that he repaid in excess was not backed by documentary evidence apart from his mere words.

On the last ground, it was submitted by the respondent's counsel that the appellant failed to prove repayment of whole loan amount. He referred to the case of **Hemed Said vs Mohamed Mbilu** [1984] TLR 113 and section 110(1) of the Evidence Act on burden of proof.

In rejoinder, the appellant reiterated her submission in chief save for first ground where she changed her earlier version and replied that the respondent was not a proper party and was not licenced to carry lending business.

I have given due regard to submissions of both parties and grounds raised by the appellant. From what I have gleaned, the issues for determination of this appeal are basically three namely,

One, whether the suit was instituted by the proper person in the primary court;

Two, whether the lower courts evaluated and analysed evidence properly.

Three, whether the respondent established the claims against the appellant.

To start with the first issue, it has to be noted that the matter originates from primary court and parties were Noe Finance (Noel Imani) vs Lucy Daniel Mpiluka. Apparently, the name of the complainant as it appears, it implies Noe Finance Ltd is an entity. At this juncture it is worthwhile to

A handwritten signature in blue ink, appearing to read "Amrinda", with a horizontal line underneath it.

note that the governing law is rule 13 of the Magistrate's Courts (Civil Procedure in Primary Courts) Rules G.N. 310 of 1964 which reads;

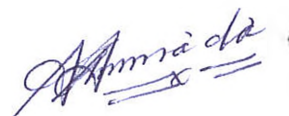
13 (1) Proceedings by or against a firm may be in the name of the partners or in the name of the firm.

(2) Where a proceeding is instituted against a firm as such, any one of the partners may appear on behalf of the firm in the name of the firm.

In the trial court, the appellant did not raise an objection on the locus stand of the respondent nor was it asked during cross examination. However, it is in evidence that Noel Imani was asked by the court and he replied that the respondent was a registered entity. Be it as it may the issue of locus stand can be raised at any stage of proceedings even at second appeal stage. As such, the first appellate court rightly considered its substance.

It is also clear in evidence of Noel Imani that he testified on behalf of the respondent. Thus, this ground has no merits.

The second issue concerns with evaluation of evidence. The appellant is complaining that the trial court did not consider her documentary evidence of payment. I took time to go through the oral account and documentary evidence. The appellant does not dispute to borrow from the respondent a sum of Tanzanian shillings five million (Tshs 5,000,000/=). However, she claims that she had repaid the whole loan amount by 2nd day of August, 2019. The appellant testified that she used three modes of payment namely, airtel money and cash. She stated that whenever she paid in cash, she was issued with receipts some of which got lost. She produced a loss report and the same was admitted and marked SUP1. However, during cross examination, the appellant said that she did not know how much worth were the lost receipts.



Further, at the trial Primary Court, the appellant did not dispute that the loan was advanced to her on 17th day of June, 2019. Surprisingly, she brought the receipts including exhibit SUP7 dated 14th June, 2019 valued at Tanzanian shillings two million purporting that it was part payment of the loan amount. I agree with what the respondent said while objecting its admission that this payment was in respect of the previous loan. This is so because the appellant could not start repayment of loan which had not been advanced to her. The receipt is dated 14th June, 2019 whereas the loan in dispute was disbursed on 17th June, 2019.

It should be noted that there are concurrent findings of the lower courts to the effect that the appellant did not repay the whole loan amount. The law is very clear that this Court, being the second appellate court cannot interfere with the concurrent findings unless there are misapprehension of evidence or misapplication of principles of law. See the case of **Amratlal Damodar and Another v. H. Jariwalla** [1980] TLR. 31

I have keenly gone through the evidence adduced in the trial primary court and judgments of both lower courts but I failed to detect any misapprehension of evidence or wrong application of principles of law. Even the appellant could not tell the court which principles of law were violated. In the circumstances, I find no justification to interfere with the concurrent findings of the lower court.

In view of the above, like the lower courts, I am satisfied that the respondent sufficiently established the claims against the appellant.

On all this account, I find this appeal without merits and consequently dismiss it. The appellant should bear the costs of this appeal.

It is so ordered.



Right of appeal explained in fully.



A.A. Mbagwa
Judge
03/01/2022

Judgment delivered in the presence of appellant and in absence of respondent this 3rd day of January, 2022.



A.A. Mbagwa
Judge
03/01/2022