

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

PC. CIVIL APEAL NO 34 OF 2021

(Arising from the Civil Appeal No. 31 of 2021 at Musoma District Court and originated from Civil Case No. 45 of 2020 at Zanki Primary Court))

PRISCA JOSHUA APPELLANT

VERSUS

KIKUNDI CHA UHURU KISAMWENE RESPONDENT

JUDGMENT

6th May & 21th July , 2022

F. H. MAHIMBALI, J.

The appellant in this case was one of the members of Kikundi cha Uhuru Kisamwene which dealt with giving credits to its members in consideration to the shares each member owned/owns. According to the facts and evidence of the case, the appellant had a total share worth 821,100/=. With these shares, she was entrusted to get a total loan of Tsh 1,540,000/- repayable in three months with an interest of 308,000/=. The appellant defaulted repayment of the said loan totalling 1,848,000/=. The resolution of the Kikundi cha Uhuru Kisamwene on this loan by the appellant was to confiscate all her shares (821,000/=)

to discharge part of that debt. Furthermore, her known properties which included domestic utensils and domestic animals were seized and sold to settle the balance.

As if that is not enough, the said Kikundi wants to go ahead to recover the remaining balance by selling her house. This is now the controversy which gave birth to this case, now the subject of this appeal. The trial court (Zanaki Primary Court) ruled that the remaining balance is 834,000/=.

Dissatisfied with that decision, the appellant unsuccessfully appealed to the District Court. Still undaunted, the appellant has come to the doors of this court seeking for its indulgence that the justice of the case still demands the whims of this court.

At this court, the appellant has preferred a total of six grounds of appeal. However, for the interests of justice, I think only ground suffices to dispose of this appeal. This is ground no 4 which reads:

That the resident Magistrate of the District Court of Musoma misdirected himself on point of law to support the trial court's judgment without considering that the value of the appellant's items attached by respondent is bigger than Tshs 268,000/= the total amount which the (respondent) sold the appellant's items. That the value of the appellant

items are: (1) 5 goats Tshs 350,000/=, (2) Mattress 5/6 size T.shs 270,000, (3) 5 tallow pots Tshs 60,000/=, (4) Dinner table T.shs 70,000/=, (5) Satin Spar Tshs 12,000/=, (6) 18 Water bucket 90,000, (7) 5 plates Tshs 10,000/=, (8) Basin T.shs 20,000/=

During the hearing of appeal the appellant appeared in person whereas the respondent was represented by Mr. Shafii Hussein who introduced himself as principal officer of the respondent (secretary).

The appellant while adopting her grounds of appeal, did not contest the borrowing of the said money (1,540,000) and defaulted in repayment, but mainly argues that considering her share value (821,000/=) and the sold properties (domestic utensils and domestic animals) the whole debt could have been re paid.

So long as the fact of borrowing the said money 1,540,000/= repayable with interest of 308,000/= is undisputed (as per testimonies of SM1, SM2, SU1 and SU2) and the repayment of the same through the appellant's shares and her properties sold is also not disputed, the vital question now is whether the appellant is still indebted.

In my digest to the trial court's record, it is clear that the sale of the appellant's properties was not transparent. It is not clear who purchased them and at what price. It is also not clear whether the said

sale complied with the market value of the said properties. As there was no proof of sale by auction, it can hardly be ascertained in the circumstances of this case that the sale was transparent.

In the circumstances, the available option is either to order resale of the said seized properties by auction or to close the eyes so as to end the matter in harmony. I think in the circumstances of this case and for the interests of justice for both sides, we better opt for the latter lesser evil. As the sale of the appellant's properties was not by auction and transparent, let the bastard go. So long as the appellant does not contest the indebtedness, the sale of her domestic properties and her domestic animals after confiscation of her shares, in all fairness should have been taken to discharge the whole loan of 1,848,000/=.

That said the appellant's debt is considered to be fully repaid and that there is no further indebtedness.

Appeal is allowed. Each party shall bear its own costs.

It is so ordered.

DATED at MUSOMA this 21st day of July, 2022.



F. H. Mahimbali

Judge

Court: Judgment delivered this 21st July, 2022 in the presence of the respondent Mr. Shafii, the appellant being absent and Mr. Gidion Mugo - RMA.



F. H. Mahimbali

Judge

21/07/2022