IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

PC CIVIL APPEAL NO. 41 OF 2021

(C/f Arusha District Court Civil Appeal No 10 of 2020 emanated from Arusha Urban Primary Court, Civil Case No 403 of 2019)

NORAH AUGUSTINO TESHA ..... APPELLANT

VERSUS

NAIMA RAMADHANI ..... RESPONDENT

JUDGMENT

05/07/2022 & 20/09/2022

KAMUZORA, J.

The Respondent Naima Ramadahani instituted a suit at the Arusha Urban Primary Court (the trial court) claiming against the Appellant Nora Augustino Tesha for the amount of Tshs. 6,000,000/= arising from the purchase of a motor vehicle with registration number T.171 DDT. The Respondent claimed for the refund of the purchase price on account that the car sold to her by the Appellant had mechanical defects which was not prior disclosed to the respondent.

After hearing the parties, the trial court made a finding that the Respondent proved the claim against the Appellant and judgment was entered in favour of the Respondent. Being aggrieved by that decision, the Appellant preferred an appeal to the District Court of Arusha at Arusha (The first appellate Court) which upheld the trial court's decision and dismissed the appeal. The Appellant preferred this second appeal on the following grounds: -

1) *That, the 1st Appellate Court erred in law and fact by dismissing the appeal and upheld the decision of the Trial court while the Motor vehicle which is subject of the matter to the contract dated 9/09/2019 was delivered to the Respondent in good state of repair and the Respondent had acknowledged the receipt of the same.*
2) *That, the 1st Appellate Court erred in law and fact by establishing new evidence that, the motor vehicle which was the subject matter in the case at trial was involved in the accident while there is no any evidence to that effect or any particular at the trial or at the first appeal level.*
3) *That, it was wrong in law and in fact for the first appellate court to introduce a claim of the Appellant to return the money to the Respondent Tsh. 6,000,000/= (six million) and the Respondent to return immediately the said motor vehicle to the Appellant being in condition it was during the sale, while such a claim was never pleaded or raised in evidence at the trial court.*

4) *That, the District Court erred in fact and law under Rule 14 (1) of the Magistrate's (Rule of evidence in Primary Courts) Regulation G.N 66 of 1972 and the Law of Contract Act, to ignore the situation that there is an agreement sufficient to bind the parties in terms of consideration price and other conditions relating to the sale which was well executed by both sides at the presence of the Notary Public.*
5) *That, the District Court, Trial Court has not properly analysed the evidence adduced at the trial otherwise it would have allowed the appeal.*

Hearing of the appeal was by way of oral submissions and as a matter of legal representation, the Appellant enjoyed the service of Mr. Nelson Merinyo, senior learned advocate while the Respondent appeared in person with no legal representation.

Arguing in support of the 1st and 3rd ground of appeal, the counsel for the Appellant stated that, the terms on the contract for sale of the car are clear. That, the seller handled over the car to the buyer together with the required documents after signing of the contract. That, both parties entered into a contract without influence and the car was in good state when it was handled to the Respondent. He urged this court to be guided by law governing evidence in primary courts, Regulation 14(1) of the Magistrate's Court Rules of evidence in Primary court regulations GN

No. 22 of 1962 and GN 66 of 1972 which requires the agreement entered in writing to be proved in writing with exception that, oral evidence can be used to show fraud duress or mistake in writing down what was previously agreed in writing.

He insisted that, the contract explained the rights of the parties and it does not show any deception. That, the issue of deception is covered by section 19(1) of the Law of Contract Act, and he was of the view that, the Respondent was in a position to know if the car was in a good state of repairs or not. On mater of deception reference was also made to section 17 (1)(d) of the law of Contract Act. The counsel for te Appellant added that, the Respondent had a witness one Elias Muganwa who was a mechanics and he examined the car and found it in a good state and drove the car up to shoppers. That, the Respondent is still using the car up to now thus cannot claim the six million shillings as the contract shows five million shillings.

The counsel submitted for the 2nd ground of Appeal that, fresh matter was brought by the 1st appellate court by stating that the car was involved in accident. That, the evidence before the trial court does not show if the Appellant admitted she knew that the car was involved in an accident.

Regarding the 4th and 5th grounds of appeal the counsel argued that, if the lower courts could have analysed the evidence and consider the regulation governing contracts it could have realised that there was no problem with the contract. That, the decision of the lower court is that the contract was *void ab initio* but he prayed for this court to consider the meaning of void contract under section 20(1) and section 25 to 29 of the Law of Contract Act. He prayed the appeal to be allowed with costs and maintained that, the contract between the parties was clear and not void as the car is still in the hands of the Respondent who is using it. That, the Appellant was also paid the purchase price hence there was a clear performance of the contract.

The Respondent believe that the car was sold to her while it had mechanical defect and the Appellant was aware and responsible to tell the Appellant of the car condition. She complained that, the contract contains no clause stating the condition of the car.

On the argument that she went with a mechanic one Elias to inspect the car, the Respondent submitted that, Elias was not a mechanic but a fellow employee of the Respondent. She contended that, she was a friend to the Appellant but the Appellant deceived her by selling a car with mechanical defect.

Regarding the price of sale of the car the Respondent submitted that, she paid 6 million as purchase price but the Appellant asked her to write 5 million and she agree as they knew each other.

The Respondent admitted to the fact that the car is still in her hands as the Appellant refused to take it and the Respondent had nowhere to take the same. That, the defect was discovered within three days after the purchase but the Appellant was avoiding the Respondent. That, since the car knocked down and could not heat, she had to replace the engine and she have a receipt to that effect. That, she was also told by the Appellant that the car was involved in an accident but she had no money to repair the same. The Respondent thus prays for the court to dismiss the appeal.

In a rejoinder submission the counsel for the Appellant added that, no new evidence can be accepted on appeal stage thus, the claim that the engine was changed must have been among the evidence to the trial court. He maintained that, the Respondent had a mechanic who tested the car thus, ought to have known of the car had defects before paying for the same. The Appellant insist that the appeal be allowed.

I have considered the records of both the trial court and the first appellate court, the ground of appeal as well as the submissions by the

parties for and against the appeal. As per the first and third grounds of appeal, it is the claim by the Appellant that it was wrong for the first appellate court to order the return of purchase price as well as the sold motor vehicle while the motor vehicle was delivered to the Respondent in good state of repair.

The basis of the trial court decision was that, the Appellant was aware of defects in the car and that is why she failed even to disclose in their contract the condition of the car. The trial court was of the opinion that, the defects in the engine cannot be discovered by observation or opening of the car doors. The court agreed with the argument that the car was not inspected by a mechanic as Elias was not a mechanic by profession. On appeal, the district court was satisfied with the analysis of evidence by the trial court. The magistrate concluded that, since there was a proof that the Appellant knew the car had defects and did not disclose the same to the Respondent, the agreement was void. However, the magistrate court did not refer the evidence which made her believe that the circumstances of the case amounted to a void contract. I will therefore have a second look into the evidence and its relevance to the matter.

It was the evidence of Respondent (SM1) at page 5 of the trial court typed proceedings that, the Appellant lied to her as it was her duty to inform her that the car was involved in an accident and has mechanical defects. With this evidence, the Respondent raised the issue of misrepresentation. When she was cross examined by the Appellant, she stated that, she did not check or test the car and denied the fact that she was accompanied by the mechanic. She also denied the allegation that Elias tested the car to be satisfied that it was in good state. She also contended that, she discovered the defect the same day but tried to reach to the Appellant unsuccessfully. The Respondent's evidence was supported by SM2 Elias Mnganwa who was her witness in the purchase of the car. SM2 denied to have inspected or tested the car but that it was good looking at the time of the sale. He was informed later that the car could not start the engine. Again, there is evidence by SM2 that the car was sent to him for repair and he discovered that the engine gear box had defects.

It was the Appellant's evidence at the trial court that, when selling the car to the Respondent it was in a good state and the claim on the defect came after the Respondent had stayed with the car for 11 days. She insisted that, before paying the purchase amount, the car was

inspected by Elias who is the car mechanic at Arusha Urban water Supply Authority who went there with the Appellant. That, SM2 being the Respondent's mechanic, he tested the car and drove it up to shoppers before execution of a contract. The said evidence was not tested on cross-examination by the Respondent who opted not to ask questions. The evidence by the Appellant was supported by her witness SU2 who also witnessed the sale of the said car. He is the one who looked for the buyer and he claimed that, the car was tested before the contract was executed.

With the above analysis of evidence, there is no doubt that at the time the contract was executed between the parties, the car in question was working in the sense that it was moving. Whether the contract contained a close showing the state of the car on not, what is needed to be established is the intention of the parties to the contract. It is not shown anywhere if the Respondent gave the description of the car she wanted for her to claim that there was misrepresentation. This makes me to believe that, there was no condition precedent to the state of the car as the Respondent tried to invent.

The Respondent claimed that she discovered the defects on the same day but she brought a witness SM3 showing that the car was sent

to garage three days later. It was admitted and captured by the trial court that the Appellant was informed of the defect 11 days later. I understand that there is no time frame for the car to suffer mechanical defect and as so acknowledged by the trial court, within 11 when the Appellant was informed of the defects, the car can be damaged. Even if we assume the Respondent stayed with the car for three days to discover the defects, still within that time, the car can be damaged.

The Respondent claimed that she was not informed if the car was involved in an accident, but she did not present evidence proving if the alleged accident occurred before the car was sold to her. This is because she sent the car to the garage after three days of staying with the same. In that regard, there is no straight evidence proving that the Appellant was involved in car accident and the car was damaged but the Appellant opted to hide that fact while selling the car to the Respondent. I therefore agree with the Appellant that, had the lower could looked into that evidence, it could have arrived to a different decision that there was no proof that the car had mechanical defects at the time of sell to which the Appellant was aware of.

I therefore do not agree with the conclusion of two lower courts that the contract was void. The terms of the contract were clear and

both parties agreed to have read and understood the terms before signing the contract. The contract was signed before the purchase price was paid thus, if the Respondent wanted a clause on the state of the car, the same could have introduced in their contract. I therefore find merit in ground 1 and 3.

Reverting to the second ground of appeal, it is the claim by the Appellant that the 1st appellate court introduced new evidence that the motor vehicle was involved in a car accident with no any particulars of the said accident. I find no merit in this ground because, the claim that the car was involved in accident was raised by the Respondent during her testimony, however, reading from page 5 of the trial courts typed judgment to where the trial court started deliberation on the issues, the trial court and the district court decisions were not based on the fact that the car was involved in accident. The trial court was only convinced that, the car having been inspected 11 days later and found to have defect in the engine and the gear box, the Appellant knew that the car had defect even before the sell the position that was blessed by the district court. I therefore dismiss the second ground of appeal.

On the 4th and 5th grounds of appeal, the main issue for the determination by this court is whether there was a proper analysis of

evidence done by the subordinate courts. It is the claim by the Appellant that the 1st appellate court ignored the fact that there was an agreement sufficient to bind the parties in terms of consideration, sealing price and other condition relating to the sale.

I agree with the Appellant's argument that the trial court ignored to discuss the necessary evidence resulting to its conclusion and the District Court never bothered to take its position of re-evaluating evidence in that matter. It is in record that, the claim by the Respondent was for payment of 6 million as purchase price to which the trial court confirmed. The trial however, failed to analyse the evidence if the Respondent proved the amount of 6 million claimed. It is in record and not disputed by either of the parties that, the amount written in the contract as purchase price was 5 million. Looking at the trial court's judgment, the trial court did not bother to state why it was convinced to award the amount of 6 million claimed by the Respondent. The district court did fall in the same trap by concluding that, as the contract was void, the Appellant was liable to refund 6 million to the Respondent without analysing the evidence proving the same.

I agree that, parties are bound by their contract and the contract in this matter contained the amount of 5 million as purchase price. Having

found that the contract was valid, it becomes obvious that the purchase amount of the car was 5 million and not 6 million claimed and approved by the two courts below. I therefore find merit in this ground.

Basing on all what has been stated above, I find this Appeal to have merit. The judgments and or-orders of two courts below are hereby quashed and set aside. The appeal is therefore allowed with costs.

DATED at **ARUSHA** this 20th day of September, 2022.

D.C. KAMUZORA

JUDGE