

**IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA**

PC CIVIL APPEAL NO. 9 OF 2020

*(Originating from Civil Appeal No. 3 of 2020 Mpanda District Court, original
Civil Case No. 190 of 2019 of Mpanda Urban Primary Court)*

STIVIN S/O SANGA APPELLANT

VERSUS

EMENCHA GPS 17 SECURITY COMPANY RESPONDENT

JUDGMENT

Date of Last Order: 14/11/2022

Date of Judgement: 24/1/ 2022

NDUNGURU, J

This is second. In this Appeal, the appellant is appealing against the decision of Mpanda District Court in Civil Appeal No. 3 of 2020 Original Civil case No. 190 of 2019 of Mpanda Urban Primary Court.

Before Mpanda Urban Primary Court the appellant successfully sued the respondent claiming a total of 6,984,250 being compensation for loss of his properties due to the theft of his shop at which the respondent was

guarding. The facts can briefly be summarizing as follows. That the appellant had a retail shop. While the respondent is a security company. That the appellant entered into contract with the respondent. The contract was that the respondent will undertake to guard the appellant shop at the payment of Tsh. 20,000/= per month. Further the respondent will be responsible for the loss or damage cause by negligence of respondent in the course of his duty. That in the course of the respondent's duty the shop was broken and 217 pairs of vitenge clothes were stolen. That the respondent promised to pay back the cost of Vitenge and of two padlocks but did not heed to his promise. Thus this case

The trial Primary Court duly tried the case. The Court found the respondent liable to pay compensation as per contract. Dissatisfied with the judgment of the trial court, the respondent filed appeal No. 3 of 2020 at Mpanda District Court. The District Court having heard the appeal overturned the decision of the Primary Court on the reason of non-joinder of parties. The first appellate court was of the view that the manager of respondent was a necessary party thus his non joinder was fatal. He thus quashed judgment and set aside the orders of the trial court.

Aggrieved with the decision of the first appaellate court, the appellant filed the present appeal. In his memorandum of appeal, the appellant is confined with five grounds of appeal as listed hereunder

1. That, the appellate court erred in law by adjudicating the ground which wasn't raised by the respondent in her appeal.
2. That, the appellate court erred in law by entertaining an appeal without identifying and recording the authorized official of the respondent who will represent her in the matter before it.
3. That, the appellate court erred in law and fact by its failure to appreciate the fact that the respondent was fully represented by her authorized official in the agreement she entered with the appellant dated 29/3/2019.
4. That. The appellate court erred in law by providing alleged position of law without showing explicitly in its judgment which law or precedent that provides so.
5. That, the appellate court erred in law and fact by its failure to appreciate the fact that **Mathias Malimi** was only representing the respondent in the agreement dated 29/3/2019 and the agreement was entered between the appellant and respondent only.

When the case was called upon for hearing Mr. Laurence John Learned counsel represented the appellant while Mr. Piusi Sangija who introduced himself as the Director of the respondent – Company.

The counsel for the appellant abandoned the 3rd and 5th grounds of appeal and remained with the 1st, 2nd and 4th Submitting on the 1st ground of appeal, the counsel was of the argument that the District court which is the 1st appellate court raised issues which were not pleaded by the respondent in his pleading there were on theft and non-joinder of the necessary party. The appellant and respondent were not afforded with an opportunity to address on the matter raised by the court. He referred the case of **Hassan Kibasa V. Angelesia Chang'a**, Civil Application No. 405/13 of 2018 CAT.

On the 2nd ground, it was the counsel's contention that in the case at hand opened representing the respondent without showing any document as proof of his appointment as a representative.

On the 4th ground the counsel submitted that, the first appellate court's judgment was invalid because there were no reasons for the decision. He referred the case of **Hamis Rajabu Debagula V. Republic** (2004) TLR 181.

The counsel thus prayed the appeal be allowed. Decision of Mpanda District Court be quashed and orders be set aside and judgment of Urban Primary Court be confirmed.

Responding to the submission Mr. Pius Sangija, Director of the respondent, had no objection to the appellant's appeal, saying he supports the appeal.

Having gone through the record and having heard the submission of the parties, the point to be determined is whether the appeal before me is meritorious.

From the record it is quite clear that the appellant entered into contract with the respondent. One Mathias Malimi signed the agreement/contract on behalf of the respondent. The one to be sued on the breach of contract is the company which in law has the power to sue and being sued. Thus the appellate court decision that Mathias Malimi had to be joined as a necessary part is a misconception. Further the fact that the theft was not reported to the Police was not an issue before the court provided that the respondent was satisfied on the occurrence of theft and agreed to compensate the appellant. That was erroneous matter which the parties had no opportunity to address.

On the above alone satisfies to dispose of this appeal. I hereby allow the appealing by quashing and setting aside judgment and orders of the District Court respectively.

I further confirm the decision of the Mpanda Urban Primary Court. No order as to costs

It is so ordered.




D. B. NDUNGURU

JUDGE

24. 01. 2022