IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)
AT ARUSHA

PC CIVIL APPEAL NO. 47 OF 2021
(Appeal from the District Court of Arusha Misc. Civil Revision No. 23 of 2020, Originating from Arusha Urban Primary Court, Civil Case No. 129of 2020)

RUWAICHI LOILOLE KIVUYO ..... 1ST APPELLANT

EMANUEL LOTUBUKOKOKI ..... 2ND APPELLANT

Versus

PHILEMON MANG'EHE ..... RESPONDENT

JUDGMENT

31st August & 17th October 2022

Masara, J.

This is an appeal arising from a decision of the District Court of Arusha (hereinafter "the district court") in Misc. Civil Application No. 23 of 2020. The district court's decision confirmed the decision by the Arusha Urban Primary Court ("the trial court") which upheld the Respondent's claims against the Appellants in Civil Case No. 129 of 2020. The trial court adjudged the Appellants to pay the Respondent TZS 14,000,000/= allegedly due to him. The Respondent claimed that he gave the Appellants a loan worth TZS 14,000,000/= without interest which the Appellants agreed to repay within a month from the date the agreement was signed on 30th August 2019. That the Appellants did not repay the said loan, leading to the case in the trial court.

The trial court's records show that on 23/04/2020 when the case was fixed for mention, the Appellants admitted the claims and promised to repay the same after they had sold their piece of land. Judgment on admission was entered in favour of the Respondent in that respect. On 22/05/2020, the Respondent approached the trial court seeking to execute its decision, as the Appellants failed to repay the decretal sum. The Respondent, in his application for Execution, sought an order to attach and sell the residential house of the 1st Appellant. The prayer was declined because it was found to be a matrimonial house of the 1st Appellant and his family.

Incidentally, the Appellants were aggrieved by the decision of the trial court. On 20/05/2020 they filed an Application for Revision at the district court. the district court found the application wanting on merits and, thus dismissed it. It is against that decision that the Appellants jointly preferred this appeal on a number of grounds, which, due to their repetitive nature, can be condensed into two grounds as hereunder:

a) *The district court erred in law and fact for failure to analyse and scrutinize the two contracts which were annexed by the Respondent, which did not meet the qualifications of a valid contract; and*

b) Both the district court and the trial court erred in law and fact in holding that there was a valid loan contract between the Appellants and the Respondent while there was none.

The Appellants, therefore, prayed that the appeal be allowed by quashing and setting aside the decision of the district court and that of the trial court with costs.

At the hearing of the appeal, the Appellants and the Respondent appeared in Court in person. The appeal was disposed of through filing of written submissions. Incidentally, both of them decided to file their written submissions in Kiswahili language. That is notwithstanding the fact that the language of the Court is English. Parties are expected to file pleadings as well as submissions in the language of the Court, unless the submissions are made orally, whereby the Court would record them in the language of the Court. That said, however, the tenets of justice demand me to accord them a hearing. I will therefore consider them as presented, more so because, as alluded to earlier, both parties are laymen and appeared in Court in person.

In their submission, the Appellants averred that at the hearing of Civil Case No. 129/2020 on 23/04/2020 they informed the trial court that they had agreement with the Respondent that the Respondent would sell ten acres of land at the price of TZS 14,000,000/= each. That he promised

them that he had a buyer who would buy the land, as he was a broker. That both the Appellants and the Respondent agreed that after the sale was completed, the Respondent would have a share amounting to 10% of the sale price. Further, it was the Appellants' submission that the trial magistrate recorded that they agreed to be indebted by the Respondent, which was inappropriate.

The Appellants stressed that the findings of the trial magistrate were inappropriate because the agreement was that the Respondent would get his share after selling the land. They further argued that there was no agreement that was tendered and admitted as exhibit to support the Respondent's claim. According to the Appellants, the district court received a forged document (Loan Agreement) which was never tendered and admitted at the trial court. They concluded by imploring the Court to allow the appeal by quashing and setting aside the decisions of both lower courts.

On his part, the Respondent argued that the Appellants agreed to be indebted to the tune of TZS 14,000,000/= during the hearing at the trial court. They further agreed to have entered into an agreement that the Appellants would pay the said debt. He prayed for dismissal of the appeal with costs.

In a rejoinder, the Appellants echoed that the alleged debt does not amount to loan, but rather a contingent agreement that the Respondent, being a broker, would be paid his commission upon selling the 10 acres of land. They reiterated prayers made in the submission in chief.

I have carefully considered the grounds of appeal, records of both lower courts as well as the submissions from both parties. The pertinent issue for determination is whether the appeal has merits.

At the outset, it is my considered view that the Appellants are not certain of what they intended to achieve in this appeal. In the first place, in their grounds of appeal, the Appellants intimated that their appeal in the first appellate court was against the ruling of the district court dated 8th October 2020. On the contrary, a scrutiny of the grounds raised in this appeal reveals that the Appellants are challenging the decision of the district court made in the Revision they had filed.

In their submissions, the Appellants faulted the decision of the trial court stating that the trial magistrate did not consider their evidence that the debt was not a loan but a commission in case the Respondent succeeded to sell the 10 acres they had agreed. Also, that in the trial court they were denied opportunity to cross examine the Respondent. They further

contended that in the trial court there was no documents tendered and admitted as exhibits.

As the record has it, in Civil Case No. 129 of 2020 the Appellants had agreed to be indebted TZS 14,000,000/= and the trial court entered judgment on admission. The fact that the Appellants admitted the claim, their present contention that the debt was upon selling a parcel of land is nothing but an afterthought. According to the trial court records, while admitting the claim, the first Appellant had this to say:

> *"Madai ya shilingi 14,000,000/= yanatokana na shamba tulilopigania Mahakamani baina yetu, SU1, SU2 na mimi kwa kupatikana ilo shamba na kuliuza. Ili SU1 apate fedha zake hizo shilingi 14,000,000/= shamba hilo lipo sokoni mpaka sasa ivi na huyu kaka yangu SU1 anakaa Songea amekuja juzi baada ya shamba hilo kupata mnunuzi shillingi 48,000,000/= na lile la chini pia tupo na SM1 kurekebisha mambo madogo tu ili nalo liuzwe SM1 apate fedha zake. Lolote litakalotangulia SM1 atapewa fedha zake kwa mujibu wa mkataba wetu ni kwa sababu shamba hilo halijauzwa, likiuzwa atapata fedha zake. Na makubaliano yetu 22/04/2020 tumekubaliana tuje kulitoa hili shauri. Hivyo ni kweli ananidai hizo sh millioni kumi na nne 14,000,000/=."*

Further the first Appellant stated that: *"Deni hilo ni sawa tunadaiwa maana ni c/o ya biashara."*

From the above exposition, the first Appellant did acknowledge that they were indebted. From the quoted words, I see nothing suggestive that the

Respondent was a broker and that his payment was contingent upon him bringing a buyer. It is a clear admission that they were indebted to him for the amount stated.

In the case of **Southern Highlands Participatory Organization vs Wafanyabishara Njombe SACCOS Ltd, Commercial Case No. 112 of 2015,** this Court highlighted standards of granting judgment by admissions. The alleged admissions must be clear, unambiguous and unequivocal (leaving no doubt). Having carefully considered the admissions of the Appellants at the trial court, I have no flicker of doubts that the admission was clear, unambiguous and unequivocal. They even admitted existence of the agreement that they entered into with the Respondent which they now dispute. I am of the view that the Appellants are employing delaying tactics.

I note the Appellants' contention regarding the copy of agreement relied by the district court in the determination of the Revision before it. I do agree that the genesis of the agreements may be inappropriate. There is no record, other than the admission of the first Appellant, to indicate that the said agreements were received in evidence at the trial court. On that basis, the district court could not rely on a document that was not properly

presented at the trial unless it sought for additional evidence, which is not the case.

Notwithstanding the anomaly stated, I do not find any grounds to fault the ultimate conclusion of the two courts below. The Appellants should pay the Respondent what is due to him, instead of protracting the dispute.

That said, the appeal is devoid of merits. It stands dismissed in its entirety with costs. The decision of the trial court and that of the district court are, serve for the observation above, upheld.

Y. B. Masara

JUDGE

17th October, 2022