

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL APPEAL No. 298 OF 2021

(Arising from the decision of the District Court of Kinondoni

at Kinondoni in Civil Case No. 93 of 2020)

ERNEST TARIMO APPELLANT

VERSUS

JASIRI CREDITORS LIMITED..... 1ST RESPONDENT

DR. DEOGRATIUS MATANDA SOKA 2ND RESPONDENT

DR JOHN GAMALIELI MASUKI 3RD RESPONDENT

Last order: 14/04/2022

Judgement date:30/06/2022

J U D G M E N T

MANGO, J

The Appellant and the third Respondents were sued by the first and second Respondents in Civil Case No. 93 of 2020 before the District Court of Kinondoni. Brief facts of the case as contained in Court Record provides that, on 20th March, 2015 the Appellant was granted a loan by Dr. Deogratias Matanda Soka on behalf of Jasiri Creditors LTD. The Appellant did not pay the loan, the act which compelled the 1st and 2nd Respondents

to institute Civil Case No. 93 of 2020 to recover the loan from the Appellant. The third Respondent was a guarantor to the loan thus, he was included in the suit in that capacity. The trial Court ruled in favour of the 1st and 2nd Respondent. Aggrieved by the decision of the trial Court, the Appellant preferred this appeal on the following grounds.

1. That the Hon trial Magistrate erred in law and facts by failing to properly evaluate evidence of witnesses precisely when addressing the 1st framed issue during hearing leading it to reach to erroneous decision that caused injustice to the Appellant
2. That the Hon. Magistrate erred in law and facts by reaching a decision that there was a break of the said loan agreement.

The appeal was argued by way of written submissions. The Appellant was represented by advocate William Mosabi while the Respondents prosecuted the appeal in persona.

In his submission in support of the appeal, the Appellant's counsel challenged the lawfulness of the agreement between the Appellant and the first and second Respondents. He centred his challenge not in the agreement itself but the lawfulness of the first Respondent's business as a money lender. He argued that, the first Respondent has not produced

any evidence to establish that he is a registered money lender. He is of the view that in absence of such evidence the money lending business of the first Respondent should be considered unlawful and the even the alleged agreement with the Appellant is also unlawful. To cement his argument, he cited section 16(1) of the Microfinance Act, [Cap 197 R.E 2018] and section 6(1) of the Banking and Financial Institutions Act which prohibits non licenced persons from engaging in banking business.

In their joint submission the first and second Respondents submitted that the trial Court correctly ruled out that there was a valid agreement between the Appellant and the first and second Respondent. The third Respondent who was the guarantor of the loan agreement submitted that there was a valid agreement between the Appellant and the first and second Respondents. He pegged his argument on the principle of sanctity of the contract and cited the case **Abually Alibhai Aziz versus Bhatia Brothers Ltd** [2000] TLR 288 and the case of **Simon Kichele Chacha Versus Aveline Kilawe**, Civil Appeal No. 160 of 2018, Court of Appeal of Tanzania at Mwanza.

I have considered submissions by both parties and court record on the first ground of appeal, I find that there was a valid agreement between the Appellant and the 1st and 2nd Respondents which was guaranteed by

the 3rd Respondent. The agreement was tendered and admitted by the Court as exhibit A1. The agreement has all features of a contract as required by section 10 of the Law of Contract Act hence, it is a valid agreement. In that regard, I find the Trial Court to have correctly ruled that, there exists valid contract between the Appellant and the 1st and 2nd Respondents.

The issue whether the 1st and 2nd Respondents conduct their business irregularly or not does not affect the sanctity of the agreement between the Appellant and the 1st and 2nd Respondents. I have noted that, legality of the first Defendants business was not challenged during trial so as to require the first Respondent to establish legality of his money lending business. The Courts has been honouring the wishes of the parties as reflected in the contract they have freely entered. In the case of **Simon Kichele versus Aveline M. Kilawe** Civil Appeal No. 160 of 2018 Court of Appeal of Tanzania at Mwanza which was cited by the third Respondent, the Court of appeal of Tanzania being guided by the principle of sanctity of a contract held as follows: -

'With the same spirit of the principle of sanctity of contract and being mindful with the clauses of the Exhibit PI, we are reluctant to accept the appellant's excuse for non-performance of the agreement which he freely

entered with sound mind. On our part, we are satisfied that the contract entered between the appellant and the respondent had all attributes of a valid contract. It was not prohibited by the public policy and it is on record that the appellant was not complaining about his consent to the agreement being obtained by coercion, undue influence, fraud or misrepresentation in order to make it voidable in terms of the provisions of section 19 (1) of the Law of Contract Act, Cap. 345 R.E 2002. We therefore wish to emphasis here that since the appellant at the time he concluded Exhibit PI with the respondent was a free agent and he was of sound mind, he must adhere and fulfill the terms and conditions of it.'

In the appeal at hand there is no evidence that the Appellant was forced or defrauded to enter into the disputed contract. What evidence suggests is that, the Appellant tries to make excuses in performing his duty towards a contract through which he gained advantage by being given a loan.

Evidence on record establishes that, the Appellant did not honour the agreement between him and the first and second Respondents, to be precise, he did not pay the loan advanced to him by the 1st and 2nd Respondents. This is evident from the testimony of the third Respondent who was the guarantor of the loan and the contents of the loan agreement itself which was tendered as Exhibit D1. The loan agreement establishes

that the amount borrowed by the Appellant was Tshs. 9,100,000/- as testified by the Respondents. The agreement also provides for interest in case of failure to pay the loan within the prescribed time limit. Thus, the Trial Court correctly determined the suit before it.

For that reasons, I do not find any reason to fault the decision of the Trial Court. The appeal is hereby dismissed with costs.

Dated at Dar es salaam this 30th June 2022



**Z. D. MANGO
JUDGE**