

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

PC. CIVIL APPEAL NO.10 OF 2022

(Originating from Newala District Court Civil Appeal No.01 of 2022)

SEIFU BAKARI MMONYOKA APPELLANT

VERSUS

SOMOE ABDALLAH MAYONJO RESPONDENT

Date of last hearing: 16/08/2022

Date of Judgment: 11/11/2022

JUDGMENT

MURUKE, J.

Seif Bakari Mmonyoka, (the appellant) sued respondent at Mkunya Primary court, claiming to be paid 800,000 TShs. as his dues following supplying respondent with traditional healing medicine. Trial court dismissed suit ,upon failure to prove his claims. Being dissatisfied, he filed appeal at the District of Newala at Newala, in which his appeal was dismissed for lack of merits. He, thus, filed appeal raising two grounds namely:

1. That the first appellate court erred in law and in facts by holding that the trial court entertained a labour matter while the appellant claim was for payment to services provided to the Respondent. Thus, arriving to erroneous judgment.



2. That the first appellate court erred in law and in facts by failing to analyze the grounds of appeal and the records of the trial tribunal whereby the trial court conceded that the services were rendered to the Respondent but the appellate court disregarded the facts and drew its own conclusion unjustifiably.

Upon being served respondent filed reply to the memorandum of appeal. On the date set for hearing, both were unrepresented, thus argued their case orally.

In brief appellant submitted that he worked as traditional healer to treat respondent, but he does not possess any licence more so, he does not pay anything to the Authority as fees or tax, upon receiving payments from his clients. Appellant insisted that, once client is not paying fees, he send them to the nearest Police station, where they are locked in until they pay. Respondent did not pay despite being taken to the police. Respondent on the other hand submitted very brief that, she is not indebted by appellant at all. What appellant is saying is not right. There is no any agreement. He is just pressing for nothing, insisted Somoe Mayonjo.

It should be noted that, this is a second appeal, proceedings having emanated from the primary court. As, second appeal court, appeal must be on points of law only and not evidence. Having heard both appellant and respondent, gone through lower courts records and this court, issue to be determined by this court is whether, **there was contract between the parties subject of execution.**

For parties to be able to enforce contract, there must exist an understanding giving rise to obligations which are enforced or recognized by law. In actual sense, there must be an agreement of the contracting parties, that will give rise to their obligations.



To the best of my understanding, for a contract to exist there must be a legally binding agreement made between the two or more persons, which rights are acquired by one or more to acts or for aberrances on the part of the other or others. There is no any records to prove that there was any agreement for the court to enforce the terms. Assuming there was an agreement which is not the case, appellant own submission to this court proved that what he was doing is illegal, on the following reasons:-

One: He said, he had no any licence as traditional healer.

Two: He does not pay any tax or fees to the Authority once he is paid by his clients.

Three: He takes his client to police where they are locked in until they pay whenever there are misunderstandings on terms of contract.

Four: Appellant admitted to have taken respondent to police, but she refused to pay.

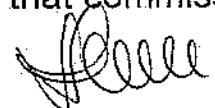
As a general rule, courts will not enforce an illegal contract or provide for any other remedies that arise out of it. However, in determining the consequences of illegal acts carried out pursuant to a contract, the courts will distinguish between those contracts that are said to be illegal at their formation, and those that are illegal through performance. A contract will be considered illegal at its formation when it is incapable of performance without an illegal act. Contracts falling into this category cannot be enforced. Where a contract is illegal when formed, neither party will acquire rights under that contract, regardless of whether there was any intention to break the law. The contract will be void and treated as if it was never entered into.



The case of *David Taylor & Son v Barnett Trading Co* [1953] provides us with an example of a contract that was deemed illegal at its formation. In that case, Barnett Trading agreed to sell David Taylor Irish steak for delivery between April and July for a set price. At the date the contract was entered into, an order was in force preventing the buying or selling of meat over a certain price (which the contract exceeded). When Barnett Trading did not make delivery, Mr Taylor claimed damages. At first instance, the arbitrators ordered that Barnett Trading pay Mr Taylor compensation for non delivery. On appeal, the Court of Appeal held that the contract had been illegal at its formation due to the provision of set prices that exceeded the legal limits and accordingly set aside the award as it was based on an illegal contract.

In the case of *Anderson Ltd v Daniel* [1924], the Fertiliser Act 1906 required every person that sold for use as a fertiliser any soil that had been subject to an artificial process, to provide the purchaser with an invoice stating the respective percentages of certain chemicals. The court held that the effect of non compliance did not merely render the vendor liable to pay a penalty, but made the sale illegal and precluded the vendor from suing for the price of the contract.

In *Colen v Cebrian* [2003], a husband and wife claimed commission that was owed prior to their dismissal from the company for whom they worked. The husband had evaded tax, by giving to his wife commission to which he alone was contractually entitled. The company claimed that they should not have to pay the commission because the contract was tainted by illegality and the employment tribunal ruled that they did not have to pay the commission. The Court of Appeal, however, overturned the tribunal's decision, ruling that there was a clear distinction between the method of calculating the commission and the ultimate destination of that commission.

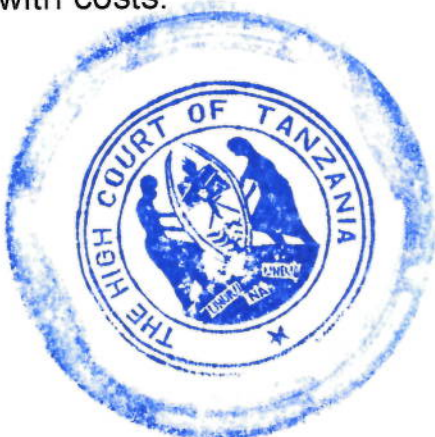
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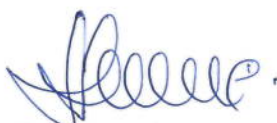
The Court of Appeal upheld the contract, providing that illegality as to performance will not always result in the unenforceability of the contract. Lord Justice Carnwath said that:

'... if at the date of the contract the contract was perfectly lawful and it was intended to be performed lawfully, the effect of some illegal performance is not automatically to render the contract unenforceable'.

To the best of my understanding, a contract which need not necessarily be performed in an illegal manner, but which is ultimately performed illegally by one of the parties, will be considered slightly differently from those that are illegal at formation. In these circumstances, all rights are withheld from the party that committed the illegal act, but the appropriate remedies will still be available to an innocent party that was not aware of the illegality. If, however, the innocent party has been privy to, or taken part in the illegality, they will not be able to enforce or rely on the contract.

It is a long time established principal that one cannot recover for contract which flows directly from loss of liberty or fine or other punishment lawfully imposed upon a person in consequence of unlawful act. It is clear that any contract between the parties in which either of parties or both parties does not pay necessary tax or obtain licence, such contract is against public policy, thus cannot be enforced. In the case at hand, there was no contract, between the parties, thus, there is nothing to enforce. Appeal dismissed with costs.




Z.G. Muruke
Judge
11/11/2022

Judgment delivered today in the presence of Appellant and Respondent,
both in persons.



A handwritten signature in blue ink, appearing to read "Z.G. Muruke".

Z.G. Muruke

Judge

11/11/2022