

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

CIVIL APPEAL NO. 85 OF 2020

(Arising from Civil Case No. 10 of 2018 Kigamboni District Court)

PROTAS KASHUMBA.....APPELLANT

VERSUS

DICKSON CHACHA..... RESPONDENT

JUDGMENT

Date of Last Order: 12/10/2021

Date of Judgment: 16/08/2022

S.M. KULITA, J.

This is an appeal from Kigamboni District Court. Briefly facts of the case in the record transpire that the Appellant and Respondent herein entered into lease agreement for a premise situated on Plot No. 764 Block 35 Kigamboni, Temeke Municipality by then. The said agreement entered on the 1st day of December, 2008 was for a period lying between 2008 and 2012. The Appellant herein was alleged to have breached the contract. The Respondent successfully lodged a Civil Case No. 10 of 2018 at Kigamboni District Court. Dissatisfied with the its decision delivered on 11th

February, 2020 the Appellant lodged this appeal relying on the following four grounds;

1. That, that the District Court erred both in law and in fact in its failure to consider the evidence tendered by the Appellant.
2. That, the District Court grossly erred both in law and in fact in delivering its judgment basing on the contradictory evidence adduced by the Respondent
3. That, the District Court erred both in law and in fact by its decision to consider the false documentary evidence tendered by the Respondent.
4. That, the District Court grossly erred both in law and in fact by being bias against the Appellant.

The appeal was disposed of by way of written submissions. Both parties were unrepresented. Though the Appellant filed a letter dated 20th February, 2020 to High Court which is read to have been issued by the Tanganyika Law Society (TLS) that they are going to represent the Appellant who is a pauper, but no Advocate appeared to represent the said Appellant in this appeal, nor filed any document for him.

In his written submission in support of the 1st ground of appeal, the Appellant, Protas Kashumba submitted that upon going

through the trial court's judgment, he noticed that the evidence that he had adduced at the trial court was not there in the judgment, hence, not considered by the trial Magistrate in composition of the judgment. The Appellant alleged that the issue of authenticity of the contract that he had raised during trial was not considered by the Magistrate.

In the reply thereto the Respondent, Dickson Chacha submitted in respect of the 1st ground of appeal that the trial Magistrate summarized and analyzed the evidence of all parties to the case. He said that the relationship that he had with the Appellant was of the Landlord and Tenant, and it is that said relationship which led them to enter into a written Lease Agreement (Exhibit P1). As for the issue of authenticity of that said contract the Respondent stated that that issue is an afterthought as the same had never been raised during trial at the subordinate court.

Submitting on the 2nd and 4th grounds of appeal collectively the Appellant stated that, in deciding the matter the trial Magistrate relied on the Respondent's evidence only, and that the District Court grossly erred both in law and in fact by being bias against the Appellant.

On this, the Appellant alleged that in her decision the Magistrate relied on matters which were not in the record, that they were not adduced before the court during trial. As for the issue of biasness the Appellant's submission is not clear on it, but I can relate it with the issue of a Magistrate making decision relying on the facts not adduced before the court.

The Respondent's reply on this was that there is no controversial evidence to prove biasness on the part of the Magistrate. He said that the Appellant tries to convince this court that the Magistrate did not record the evidence that had been adduced by the Appellant during trial, the fact which is not true. The Respondent further submitted that at page 5-6 of the judgment the trial Magistrate put a summary of the evidence that the Appellant had adduced during trial. He concluded that the findings of the trial Magistrate relied on the evidence that were adduced by both parties to the case.

On the 3rd ground of appeal the Appellant submitted that in its decision the District Court considered the false documentary evidence tendered by the Respondent. He asserted that the documentary evidence which were marked as exhibits P1 and P2 were not annexed in the plaint and that they were not authentic,

hence it was wrong for the trial court to rely on them in deciding against the Appellant.

In the reply the Respondent disputed that allegation. He stated that there was no document tendered to court by him which was false. As for the issue of annexing the said documentary exhibits in the plaint, the Respondent submitted that the Appellant did not bother to research the matter before arguing this issue, as the record is clear that the said documents were actually attached in the plaint.

That was the end of both parties' submissions. The following is the analysis of what has been submitted;

In his written submission in respect of the **1st ground** of appeal the Appellant stated that the District Court erred both in law and in fact in its failure to consider the evidence adduced by the Appellant.

According to the Appellant, the evidence that he had adduced before the trial court were not considered by the trial Magistrate during the composition of the judgment. He alleged that having gone through the copy of judgment he did notice that his evidence was not there.

Basically, the evidence adduced by both parties to the case should be considered. If the appellate court notices that the trial court didn't do so, it has to step into the shoes of the trial court to analyze the said evidence adduced before the trial court and make consideration of it. See the case of **ARON ANDREA V. REPUBLIC, CRIMINAL APPEAL NO. 52 OF 2021, HC AT SHINYANGA (unreported)**.

As for the matter at hand I can see the trial Magistrate has summarized all material testimonies (evidence) adduced by both parties including the Appellant herein and considered them in making analysis. In his submission in respect of that allegation, the Appellant has failed to show as to which evidence he had adduced, that the trial court did not consider. He also failed to make it open as to which facts that the trial Magistrate relied upon in his judgment while they were not in the records, as he alleges.

The record transpires that the testimony of the Defendant was summarized at page 5-6 of the typed judgment, and in analyzing the evidence that had been adduced by the said Defendant (Appellant herein), the trial Magistrate noted at page 9 of the typed judgment that the Appellant admitted to have sold the leased premise to the 3rd party, Barongo General Supplies Limited without

informing the Plaintiff (Respondent herein). The court asserted that by doing so, the Appellant violated clause 3 of the contract.

The impugned judgment also transpires on that same page that the trial Magistrate considered the defense evidence when he stated that the Appellant admitted to have blocked the Luku without notifying the tenant (Respondent herein), hence violated clause 9 of the contract which provides for peaceful enjoyment of the leased premise by the tenant.

Having considered the said testimonies of both parties, the trial court came up with the finding that the Appellant herein breached the contractual terms. Thus, the Appellant's allegation that the Defense evidence at the trial court was not considered, is not true.

I therefore find the 1st ground of appeal with no merit, hence dismissed.

Analyzing the **2nd and 4th Grounds** collectively that the District Court grossly erred both in law and in fact in delivering its judgment basing on the contradictory evidence adduced by the Respondent, and that the District Court grossly erred both in law and in fact by being bias against the Appellant, I have this to say; in his submission in respect of these grounds the Appellant stated that in deciding the matter the trial Magistrate relied on the Respondent's

evidence only leaving away the Appellant's evidence. The appellant has already stated on this while submitting for the 1st ground of appeal of which this court found to have no merit.

On this, the Appellant also submitted that the court was bias against him in making decision of the original case, the reason behind being that, the trial Magistrate did not record what had been adduced by him during trial. Basically, the testimonies of both parties are used to be recorded by the court. The Appellant's allegation that his testimony was not recorded needs evidential proof, otherwise any person can be in a position to say so, only to justify that he/she was so faulted by the trial court, even if it is not true. Unfortunately, the Appellant herein never submitted as to which points he had raised at the trial court, but they were not considered. His allegation on this, is therefore doubtful.

I therefore regard these grounds of appeal meritless, hence dismissed as well.

On the **3rd ground** the Appellant alleged that the District Court erred both in law and in fact by its decision to consider the false documentary evidence tendered by the Respondent.

In his written submission the Appellant alleged that the documentary evidence marked as exhibit P1 and P2 were not

annexed in the plaint and that they were not authentic. The Respondent resisted this ground of appeal. Upon going through the records I have noticed that the said documents were actually annexed as stated by the Respondent. Thus, the Appellant's allegation on this, is not true.

As for the issue of the documentary evidence adduced at the trial court being false, that is they are not authentic, I have this to say; the Appellant raised the issue of authenticity of the Agreement which was tendered to court and admitted as Exhibit P1 by itself, together with the other two documents. My findings on this is that, according to the records this was not among the issues that the Appellant had raised during trial. At page 27 of the lower court's proceedings the Appellant stated that he actually entered the agreement with the Respondent (part of Exhibit P1) of which he admitted to be valid, which means he had no doubt with its authenticity. It is therefore wrong for him to raise this issue of its authenticity at this appellate stage. The Appellant ought to have challenged it during trial. The fact that he never challenged the admission of the said document when it was tendered nor during the defense, challenging its authenticity at this level of litigation (appeal) is regarded as an afterthought, hence cannot be accepted.

Further, the said document (contract) looks to have been signed by the Appellant and the Respondent as parties to it on the 1st day of December, 2008, before the Advocate namely Michael J. Nyambo. Thus, the Appellant is precluded to deny its authenticity.

Another thing to take note on this is that, in his testimony, the Appellant never disputed on the existence of the said contract, as it can be so seen at page 27 of the typed proceedings. The implication here is that even if the said document is expunged from the record, the fact that the parties herein entered into the said contract, stands still.

Having so said, I find this ground of appeal also fails.

Before I wind up I have something to comment on the issue of no-payment of legal fees by the Appellant. In my perusal over the case file, I have noted that the Appellant never paid the legal fees. He tried to show that he is a pauper, that he was incapable to pay the legal fees, hence got an assistance of the Tanganyika Law Society (TLS) to run his case (this appeal). This is according to the letter from the said institution (TLS) to the Deputy Registrar, High Court Dar es Salaam District Registry. But what transpires in the High Court record is that the Advocate who is said to have been assigned the duty to represent the Appellant, one Johnson Msangi, never

turned up to court for this matter. Not only that but also there is no any document including the Appellant's pleading (petition of appeal) and the written submission which has been prepared by the said Advocate nor any other member of the Tanganyika Law Society.

Basically, each party to the case should pay the court fees unless he is exempted according to the law, for example being regarded a pauper. See **ROMANIA MALINGUMU V. MELIKO KILUKA, Misc. Land Appeal No. 7 of 2021, HC Sumbawanga District Registry (unreported)**.

As narrated above that being a pauper is among the reasons for one to be exempted from paying the court fees. However, the indication that one is a pauper cannot be proved just by the submitting a letter from the legal aid institution, but also transparency in the record that there was such aid acted upon for that person. It must be seen that the said person purported to have been aided deserved that service and the said service was actually provided to him. The fact that the Appellant herein stood by himself for this matter in all aspect, makes me to disregard him as a pauper.

In my view, the Appellant knew that the appeal that he was going to lodge, ie. this appeal, is hopeless as it can be so observed in my analysis, his intention was just make justice delay for the Respondent who was a winner in the original case. Further, for his act of pretending himself a pauper, the Appellant intended to persuade this court not to grant costs against him, under the umbrella of poverty, which is not true.

In upshot I find the appeal with no merit, hence dismissed. The Appellant to bear the costs.



S.M. KULITA
JUDGE
16/08/2022

