

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBWA DISTRICT REGISTRY

AT BUKOBWA

(PC) CIVIL APPEAL NO. 19 OF 2021

(Arising from Civil Appeal No. 01 of 2021 of the District Court of Bukoba at Bukoba and Originating from Civil Case No. 163 of 2020 of the Bukoba Urban Primary Court)

JACKLINE MAJID----- APPELLANT

VERSUS

TAYUSO ENTERPRISES----- RESPONDENT

JUDGMENT

Date of Last Order: 07/02/2022

Date of Judgment: 18/02/2022

Hon. A. E. Mwipopo, J.

Jackline Majid, the Appellant herein, filed Civil Case No. 163 of 2020 in the Bukoba Urban Primary Court claiming for recovery of shillings 3,200,000/= from the Respondent namely TAYUSO Enterprises for the service she rendered to the Bukoba Prison. The Appellant alleged that on May, 2013 she supplied some goods to Bukoba Prison by using Respondent's Contract and invoice after her contract which expired was in process of being renewed on agreement with the Respondent that after the Prison Authority paid the Respondent for the service she rendered

the Respondent will give the money back to her. The payment from the Prison Authority was delayed and was paid in 2020 where Musoke who was the owner of the Respondent was already dead since 2017 and his wife namely Shani Twaha was administrator of his estate. After the money was deposited in the Respondent account the Appellant requested Shani Twaha to give back the money paid from Bukoba Prison for the service she rendered but Shani Twaha rejected as she was not aware that the service rendered to the Bukoba Prison was not done by her late husband. Then, the Appellant successfully instituted a civil suit for the recovery of the said money in the Primary Court. The Respondent appealed successfully to the Bukoba District Court against the decision of the Primary Court. The Appellant was not satisfied with the decision of the District Court and she filed the present appeal.

The Appellant filed in this Court a Petition of Appeal which contains two grounds of appeal. The said grounds of appeal are as follows hereunder:-

- 1. That the appellate Court erred in law and facts to decide that the Appellant had neither brought even the single witness nor documentary evidence to attest that the Appellant had the contract with the Respondent.*
- 2. That the appellate Court erred in law and facts to decide in favour of the Respondent while the Appellant proved her case on balance of probability.*

The Appellant, who appeared in person, being a lay person submitted generally on all grounds of appeal. She said that the District Court erred to hold that there is no evidence to prove that she entered into agreement with the Respondent to use his company to make supply to the Prison. Her witnesses proved that she was the one who tendered service to the Prison by using Respondent's name. The testimony of Prison Officers who were responsible for supervision of the store proved that she supplied some items to the Prison. All these testimony proved that she was the one who supplied Bukoba Prison with the goods and not the Respondent. The same is proved by invoice and a letter informing the Prison that she was the one who supplied the goods to the Prison and Respondent never supplied anything to the Prison.

She said that the evidence prove that after the payment was ready the Prison Authority called to inform her and handled payment document to her. She was the one who sent those document to the Respondent and after the payment were made to her account the Respondent decided not to pay her. The Appellant argued that it was normal for suppliers to use another company order or businessman to supply goods to prison when her contract was not renewed yet. There was no contract but they were working together in trust. As businessman oral agreement start before the written contract is entered. There was no need to tender a written contract as there was no contract.

In response, the Counsel for the Respondent Mr. Peres Mutasingwa, Advocate, argued that the Appellant has no claim whatsoever to the Respondent. He said that the exhibit tendered to prove that she supplied goods to the Prison were in the name of Respondent. If the Appellant did go to the Prison, she was escorting the goods on behalf of the Respondent. The District Court observed that in its judgment as result it held that the Appellant had no contract between her and the Respondent to use TAYUSO Enterprises document to supply goods to the Prison. In absence of the contract to prove that the Appellant owes Respondent anything it cannot be said that she has claims against Respondent. It is for the same reason the Prison Authority paid Respondent and not the Appellant.

The testimony of Prison Officer namely Philbert Rwegasira SM2 revealed that the goods supplied to Bukoba Prison belongs to Respondent and not to anybody else. This evidence proved that Appellant has no claims against the Respondent. The claims came after the owner of TAYUSO namely Twaha Musoke has died. If the Appellant supplied goods to Prison, the Appellant was supposed to include the Prison Authority as the defendant. There is nothing in record to show that the Appellant supplied goods to the Prison. The Appellant's claim was not listed among the debts the deceased Twaha Musoke recorded. This proves that the deceased was not owed anything by the Appellant.

In her rejoinder, the Appellant emphasized that the goods which were delivered to the Prison was not property of the Respondent. The Prison Officers proved that she was the one who delivered the goods. There are witnesses who testified that they know I used Respondent's document to supply goods to the Prison. Witnesses who know the Respondent testified that Respondent never supplied goods to Prison.

From submissions, the issue for determination is whether or not the appeal has merits.

In determination of the appeal, I'm going to consider both grounds of appeal in Appellant's petition of the appeal together as they relate. The Appellant argued that she brought a witnesses Prison officers from Bukoba Prison who received the goods from her, other businessmen who conducted business with her and the Respondent, and the invoice from the Respondent. All of these were supposed to prove that she was the one who supplied the goods to the Prison Authority and not the Respondent. She said that the evidence proved that she is entitled to recovery of the payment made by the Bukoba Prison to the Respondent.

The Respondent on her side argued that the exhibit tendered to prove that Appellant supplied goods to the Prison were in the name of Respondent. If the Appellant went to the Bukoba Prison, it was for escorting the goods on behalf of the Respondent. The Appellant had no contract with the Respondent to use

TAYUSO Enterprises document to supply goods to the Prison. In absence of the contract to prove that the Appellant owes Respondent anything it cannot be said that she has claims against Respondent. It is for the same reason the Prison Authority paid Respondent and not the Appellant.

As it was submitted by both parties, the District Court held that the exhibits tendered by the Appellant proved only that Respondent rendered service to the Bukoba Prison and that the Appellant failed to present witness to prove her claims. The District Court went on to make findings that there is no documentary evidence adduced to prove that there was a contract between the Appellant and the Respondent. Section 10 of the Law of Contract Act, Cap. 345, R.E. 2019, provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object. The agreement which has all the above factors is enforceable by law. The law does not state that the contract is required to be made in writing or in the presence of witnesses. Thus, the contract may be oral or written and may be entered even in absence of the witnesses.

In the case at hand the Appellant alleged that there was agreement with the Respondent to use Respondent's contract and invoice to supply the Bukoba Prison with some goods and that she supplied the goods to Bukoba Prison. But, as the payment were made after the owner of the Company (Respondent) died and

deceased wife was appointed the administrator of the deceased estate. The said administrator rejected to give money back to the Appellant since there is no proof whatsoever that the Appellant was the one who supplied the goods to Bukoba Prison.

In the record proceedings of the trial Court, there is no witness who supported Appellant's claims that there was agreement between her and Twaha Musoke who was the owner of the Company. As it was rightly held by the District Court, everything including the documents tendered prove that it was the Respondent who supplied the goods to the Bukoba Prison. The letter which the Appellant did write to Bukoba Prison informing them about the alleged agreement does not prove at all that there was such an agreement for the reason that there is nothing to prove that the Respondent consented to the alleged agreement. I agree in principle with the Appellant that the agreement may be oral or in written form and that the business is conducted through Trust, but in the present case it is Appellant's testimony only which shows that there was such an agreement. The testimonies of remaining Appellant's witnesses based on assumption and hearsay.

On the other hand, the Respondent also brought some witness to prove that the Respondent used to supply goods to the Bukoba Prison and that he had the contract to supply goods to Bukoba Prison. As a result the Bukoba Prison Authority decided to make payment to the Respondent and not to the Appellant. The

Respondent testified that the Appellant's name was not among the list of the person whom her late husband said that they owe to them. The Respondent evidence appears to be more heavier than that of the Appellant as a result I find that the District Court rightly held that the Appellant failed to prove her claims on balance of probabilities.

Therefore, the appeal is hereby dismissed for want of merits and the decision of the District Court is upheld. Each party has to take care of his own cost of the suit.

A handwritten signature in blue ink, appearing to be 'A.E. Mwipopo'.

A.E. Mwipopo

Judge

18.02.2022

The Judgment was delivered today, this 18.02.2022 in chamber under the seal of this court in the presence of the Respondent and Respondent's counsel and in the absence of the Appellant.

A handwritten signature in blue ink, appearing to be 'A.E. Mwipopo'.

A. E. Mwipopo

Judge

18.02.2022