

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

PC. CIVIL APPEAL NO. 177 OF 2020

(Arising from Civil Appeal No. 31 of 2020 at Kinondoni District Court)

(Original Civil Case No.58 of 2019)

BETWEEN

TATU ABDALLAH MPUTO.....APPELLANT

VERSUS

HAPPY GOMBA

BERTHA MAHIMBO

JULIANA MWAMBA

}
|
|
|

.....**RESPONDENTS**

JUDGMENT

MRUMA,J.

The Respondent Tatu Abdalah sued the three Appellants Happy Gomba, Bertha Mahimbo and Juliana Mahimbo for payment of Tshs 3,000,000/= (say three million being money allegedly deposited by her in her loan account for purposes of obtaining a three tyred Motor cycle commonly known as Bajaji in Kiswahili or Tuk – Tuku in english on a hire purchase like arrangement, and Tshs 100,000/= say one million being damages for disturbances.

The Appellants in their defence denied any liability or in debtless to the Respondent. The first Appellant Happy Gomba testified that the Respondent paid her debt and by January 2018 she was not indebted. According to the 1st Appellant they had advanced a loan of Tshs 2,400,000/= to the 1st Respondent, daughter which was to be repaid together with 10% interest. That loan was not repaid as agreed. It was further testimony of the 1st Appellant during the trial that the amount alleged to have been deducted was the monies which Respondent had guaranteed her daughter who took a loan of Tshs, 2, 400,000/= and her husband who took a loan Tshs 3,500,000/=

The Respondent did not dispute the fact that her daughter and her husband took loans and that their loans were guaranteed by her and that the loans were outstanding.

It has been submitted for the Appellants that the Respondent's account was deducted to recover the unpaid loans which she guaranteed. In other words her account was used as a security for repayment of monies lent to her daughter and husband. The 1st Appellant in order to prove that the Respondent guaranteed repayment of monies learned to her daughter and husband produced standard form duly filed and signed by the Respondent which reads as follows:

*"Sisi Wanakikundi Kidogo cha Kikundi
cha Vikoba tunakiri kuwa tunamfhamu
vizuri mkopaji huyo na tunaahidi
endapo atashindwa kulipa mkopo kwa
muda uliopangwa tukatwe hisa zetu."*

The Respondent signed as the first guarantor. The guarantee was limited to a sum lent to her daughter and husband plus their interest and charges. However, I note that there is evidence that the amount advanced to her daughter was claimed in Shauri la Madai No.32 of 2020 of Kinondoni Primary Court between BAJAJI VIKOBA (HAPPY) Vs ASMA MOHAMED, 2. TATU ABDALLAH and 3 HALIMA MOHAMED. There is nothing on the record about the money advanced to her husband. Thus, there is no evidence whether there is any outstanding amount in respect of that loan.

Regarding the award of general damages, I note that the Respondent never claimed for general damages at the trial. Thus, it was not proper for the District Appellate court to award general damages which was not claimed.

In summary therefore this appeal is allowed. The orders of the District Appellate court for payment of Tsh 3,000,000/= as a refund to the Respondent is quashed and set aside because there is nothing on the evidence to show that the Appellants' and did deduct any monies from the Respondent's account.

Similarly the award of Tsh 500,000/= as general damages is quashed. It was awarded without any justification. Given the nature of the matter I make no orders as for the Costs.




A.R. Mruma
Judge
25/2/2022

25/2/2022

Coram : Hon A.R. Mruma,J

For the Appellants : 1st Absent (reported bereaved

2nd Present in person

Absent (reported indisposed

For the Respondent : Present

Cc : Delphine

Order: Judgment is adjourned to 2/3/2022 at 9.00 am

A.R. Mruma

Judge

25/2/2022

2/3/2022

Coram : Hon A.R. Mruma,J

For the Appellants: All present

For the Respondent: Present

Cc : Delphine

Court: Judgment delivered.

A. R. Mruma

JUDGE

2/3/2022