

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

PC. CIVIL APPEAL No.29 of 2021

(Arising from Kishapu District Court in Civil Appeal No. 26 of 2020, Originally Civil complaint no. 07 of 2020 in Kishapu Primary Court.)

NGUSA YEGELAAPPELLANT

VERSUS

1. DOROTHEA KINGI
2. GAUDENSIA PAUL
3. GIGWA PAULIN KADAMA

} **RESPONDENTS**

JUDGMENT

24, March, 2022

A. MATUMA, J.

The appellant and his wife the 3rd respondent were sued by the 1st and 2nd respondents in the primary court of Kishapu for breach of a loan contract.

The respondents in group obtained the loan from Vision Fund Tanzania amounting to Tshs. 3,000,000/= and each was to repay back Tshs. 1,200,000/= which is the principal loan and interest.

The 1st and 2nd respondents claimed that the appellant stood as the guarantor of the loan to his wife the 3rd respondent. They produced in evidence the loan contract exhibit P1, the loan form exhibit P2, affidavit of the 3rd respondent to the loan exhibit P3, the mortgage deed exhibit P4, spouse consent exhibit P5 among other exhibits. In all these exhibits the appellant appears to have been consented and stood for his wife to take the loan as a guarantor. Then the 3rd respondent repaid only Tshs. 150,000/= and defaulted completely to the outstanding loan and interest. As they borrowed in a group, the 1st and 2nd respondents were tied to the default and required to make good the loan and interest to Vision Fund. The 3rd respondent disappeared, and it is when the two respondents decided to drag her husband in court to have the money paid as he was the guarantor thereof.

The appellant, in his side claimed to have not known such loan nor to have stood as a guarantor thereof for his wife. The primary court however found that the appellant stood as a guarantor and ordered him to repay the outstanding loan and interest or course his wife to repay such amount. The appellant was aggrieved and unsuccessfully appealed to the District Court hence this appeal with three grounds. During the hearing of this appeal, the appellant was present in person and the 1st and 2nd respondents were as well present in person. The 3rd respondent was absent but was served through affixation to her residential home where her husband (the appellant) and children resides.

The three grounds of appeal have essentially the following complaints: -

- i) That the appellant's credible evidence was not examined leading to a wrong decision.

- ii) That the respondents' case was not proved to the required standard.
- iii) That it was wrong to decree Tshs. 1,500,000/= contrary to the loan agreement of Tshs. 1,200,000/=

The appellant in the first ground submitted that he did not participate in the loan deal and the signatures thereof purporting to be his are not genuine. He also argued that, even the loan agreement was executed in the nearby hamlet office Mnadani while they have their own hamlet namely Mwasele "B". Responding to this ground the respondents submitted that it is customarily accepted in their locality that if a villager is in need of the hamlet service but the hamlet chairman is absent then the hamlet chairman of the nearby hamlet attends such villager and that is what happened in this case. They executed the loan agreement in the nearby hamlet office because their hamlet chairman was not present.

It is my finding that, the first ground of appeal is without any merit. The trial court and the 1st appellate court properly evaluated the evidence on record. It is on record that, SU2 one Cosmas Jeki testified to the effect that he was the hamlet chairman of Mnadani and attended the respondent because the hamlet chairman of Mwasele was on Safari. He even though consulted the appellant in the loan agreement which was to be executed in his office and the appellant consented. According, to his evidence the appellant's wife now the 3rd respondent was the one who brought to him the loan documents for execution (signatures). As the appellant was indicated as a guarantor, he demanded his physical presence and the appellant appeared before him to execute such loan agreement and guarantee the same.

On the issue of signature, the trial magistrate noted that the appellant has different signatures as per various documents and therefore his denial of a signature to the loan documents is without any substance. The 1st and 2nd respondents also submitted before me that the appellant used to change his signatures.

On this, I agree and concur with the findings of both two courts below. It is undisputed fact that the appellant has different signatures on different documents. He has even admitted before me that his signature on the "kitambulisho cha Makazi" is different to his signature to the "Kadi ya Mpiga kura".

There is no reconciliation on record why different signatures by the same person. In that regard, it would be dangerous to rely on the mere fact that the signature on the loan agreement as a guarantor is different with his current signatures.

The circumstances of this case dictates that the appellant and his wife have common plan to deceive the rest respondents.

I find that the appellant dully guaranteed the loan in question for his wife and he is liable to repay the same or else the mortgaged properties be sold in execution thereof.

The determination of the 1st ground herein above has covered the second ground as I have found that the 1st and 2nd respondents proved their case to the required standard i.e., on the balance of probabilities. I therefore dismiss both the 1st and the 2nd grounds of appeal.

On the 3rd ground, the appellant laments that the loan agreement is of Tshs. 1,200,000/= only but the lower courts decreed Tshs.

1,500,000/= . The respondents have clarified that the principal loan was Tshs. 1,000,000/= and the interest thereof Tshs. 200,000/= . But on the default of the 3rd respondent to repay such loan the interest increased by Tshs. 300,000/= and therefore made the total amount claimed to be Tshs. 1,500,000/= . They however submitted that the 3rd respondent had already paid Tshs. 150,000/= and therefore the outstanding amount is Tshs. 1,350,000/= .

I agree with the two respondents and dismiss the claim of the appellant. Tshs. 1,200,000/= was the loan agreed sum if there would no default. Since the 3rd respondent defaulted to repay the loan in time, the increase interest of Tshs. 300,000/= was rightly included in the claim despite the fact that the principal agreed sum was only Tshs. 1,200,000/= . Since the appellant and his wife executed the loan contract as herein above found, it is the law that he should abide to the loan contract by executing the terms and conditions thereof.

In the case of **Mohamed Iddrisa Mohamed v. Hashim Ayoub Taku (1993) TLR 280** it was held: -

"Where a party to the contract has no good reason not to fulfill an agreement, he must be forced to perform his part, for an agreement must be adhered to and fulfilled."

I therefore adjudge the appellant to pay Tshs. 1,350,000/= to the 1st and 2nd respondents to make good the loan taken by his wife under his guarantorship. The payment should be effected within 30 days from today. If he fails to do so , the 1st and 2nd respondent are at liberty to sale the collateral properties. The justification to attach and sale the collaterals or mortgaged properties can be seen in the case of **Abdalla**

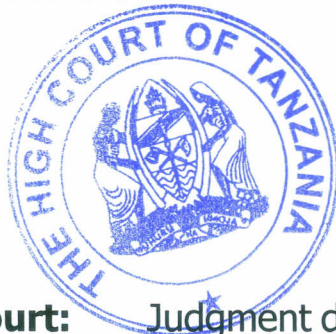
Yussuf Omar v. People's Bank of Zanzibar and another (2004)

TLR 399 in which it was held;

"By failure to repay any of the instalments due until may, 2002 when he was served with a demand notice the appellant was in breach of the loan repayment terms and the Bank was entitled to exercise its power of sale of the mortgaged property"

With the herein above observations, this appeal is devoid of any merit and it is hereby dismissed in its entirety. The respondents to have their costs against the appellant.

It is so ordered.



A. MATUMA
Judge
24/03/2022

Court: Judgment delivered in the presence of the appellant in person, the 1st and 2nd respondents in person and in the absence of the 3rd respondent. Right of further appeal to the Court of appeal subject to the laws governing third appeals explained full to the parties.

A. MATUMA
Judge
24/03/2022

Appellant

I am satisfied with this judgement but I pray to be allowed to sale the attached property on my own under their supervision so that I pay them.

That is all.

1st Respondent

I have no objection.

That is all.

2nd Respondent

I have no objection.

That is all

Court: The appellant is allowed to sale the mortgaged properties on his own but in the presence of the 1st and 2nd respondents so that he pays them the proceeds of sale thereof. If the proceeds shall not meet the decreed sum, the 1st and 2nd respondents shall proceed to sale the plot in question after expiry of 30 days from today.

It is so ordered



A. MATUMA
Judge
24/03/2022