

IN THE HIGH COURT OF TANZANIA

AT SONGEA

(PC) CIVIL APPEAL NO. 06 OF 2021

***(Originating from Songea District Court Civil Appeal No. 05/2021 Civil Case
No. 3/2021 at Mahanje Primary Court)***

JUMA AJILI YAKITI APPELLANT

VERSUS

JABIRI AWAMI FUSSI RESPONDENT

JUDGMENT

Date of Last Order: 17/02/2022

Date of Judgment: 24/03/2022

BEFORE: HON. S. C. MOSHI,

This is a second appeal. It is from District Court appeal No 5/2021 which originated from Mahanje primary court, Case No 3/2021. It is initiated by a petition of appeal containing a total of three grounds as reproduced hereunder;

1. That, the first Appellate court erred in law and fact to quash the decision of the trial court for the reason that the Appellant herein evidence weigh less to the respondent herein.
2. That, the first Appellate court erred in law and fact to quash the decision of the trial court for the reason that the Respondent herein admitted to the debt in his grounds of appeal in the first appellate court.
3. That the first Appellate court erred in law to quash the whole proceedings, decision and order of the trial court contrary to the law.

At the hearing of the appeal the appellant was represented by MR. Lazaro Simba advocate whereas the respondent appeared in person.

Mr. Lazaro Simba submitted in support of the appeal, and he argued on the first and second ground of appeal together. However, he started by arguing on the third ground of appeal. He inter alia said that; that 1st appellant court erred in law for quashing the proceedings and decision of the trial court illegally. There are two points; one, the principle of estoppel, where in a case, a party admits part of the claim in his/her evidences he is estopped to oppose it in an appeal. He said that, in the primary Court proceedings, it's apparent that the respondent in this case who by then was the defendant admitted that he received Tshs 4,650,000/= from the

appellant who in Primary Court was the plaintiff. They agreed that he would buy fertilizer and supply it to farmers and in return he would give back the appellant 215 bags of maize, each bag contains 120kgs of maize instead, the respondent returned 107Kgs with 120Kgs of maize.

He argued that, therefore, the Primary Court did correctly decide against the respondent. However, the appellate district court decided otherwise while the respondent had admitted the claim, in this respect he cited the case of **Salim Juma Kivara V. Mwanaidi Jumanne Mkwizu Primary Court Civil Appeal No 11 and No 12 Of 2019, HC, Moshi Mkapa J. At Page 10.**

In regard to 2nd point applicability of court's view on point of agency It is was his argument that the 1st Appellant court erred when it decided that the appellant erred when he sued the respondent because the agency issue was illogical. He said that, the evidence regarding the relationship between the appellant and respondent was between the principal and agent. The respondent was given fund to buy bags of maize. The law is settled that when the agent has been negligent in doing his part, the principal may sue the agent for breach of contract. He said that the appellate District Court decided contrary to this principle.

On 2nd and 3rd grounds, relating to appellant's testimony, he said that appellant's evidence was heavier than that of the respondent. The 1st appellant court did not take into consideration keenly of the stronger appellant's evidence relating to the claim; which is the basis in Civil Cases, that a party whose evidence is strong wins in that particular Civil Case; it was stronger compared to respondent's evidence, as he admitted to have given the appellant 107 bags, and 108 were not yet delivered to the appellant whose value was Tshs 5,184,000/= and the respondent said that the problem was caused by third party, that is the farmers.

In reply, the respondent submitted that, he did not admit the claim at the Primary court, and that is why he appealed. He said that he was a middleman as a witness between the person who gave the money and the recipient of the money. The 107 bags were not returned by him, they were returned by the recipient of the money who is the appellant. The appellant told him that he hadn't yet received 108 bags of maize. The appellant does not have a claim. He also gave the third part some money, and he is not yet been paid, he is also the victim.

He finally said that, the district court was correct. There is nothing showing that the appellant gave him the money.

I have considered the submissions, the record and the relevant laws. First, I would like to point out at the outset that the appellate district court magistrate erred in law by quashing the decision of the trial court, the appellate district's order quashing the decision of the trial primary court was not backed by any reasoning. The issue which was supposed to be in court's mind was whether the decision was illegally or unfairly obtained, however, the appellate district court did not illustrate any illegality which was committed by the trial court warranting the order which an effect of nullifying the whole decision. That said, I find that the third ground of appeal has merit.

The first and second ground of appeal revolve around analysis of evidence; I am of the view that the submission which was made by Mr. Lazaro Simba, generally is confined to evidence rather than to procedural issues. I find that counsel's argument is at the upper hand due to the principle of estoppel. To illustrate respondent's testimony before the trial court, I reproduce it in extenso: -

"Ni kweli mdai ananidai kiasi cha mahindi au pesa aliyosema ila hata mimi namdai mtu mwingine niliyempatia pesa yake na kesi yake tayari nimeipeleka kituo cha polisi"

There is no ambiguity in the above quoted testimony. The ordinary plain meaning in English goes like this, "It is true I owe the plaintiff the amount of maize or the sum of money that he is claiming but I also do claim....." Apparently, The respondent did admit the claim. The respondent is now prevented from denying the claim while in his previous statement before the trial court he admitted that what was said by the appellant was true. The principle of estoppel prevents someone from changing their mind about something they have previously said it is true. In this regard, the case of **Salim Juma Kivara** (Supra) is relevant.

Another complaint by the appellant is the appellate district court magistrate's reasoning as to whether the parties' agreement was logical or not, this was not an issue before the court, neither during the trial nor in the appeal. Therefore, the court erred by venturing into a question which was not raised by the parties.

All in all, from the above analysis, I find that the appellant managed to prove his case on the required standard in terms of rule 1 of (2) of **The Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations** which reads that,

“Where a person makes a claim against another in a civil case, the claimant must prove all the facts necessary to establish the claim unless the other party (That is the defendant) admits the claim”

Appellant’s evidence was heavier than the evidence of the respondent, **see rule 6 of the Rules of evidence in Primary court** (Supra).

In fine, I allow the appeal, I reverse appellate district court’s decision; hence the trial Primary court’s decision stands.

Appeal is allowed, costs to be paid by the respondent.

The Right of Appeal is Explained.




S. C. MOSHI

JUDGE

24/03/2022