

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

PC CIVIL APPEAL NO. 01 OF 2023

(Arising from Civil Appeal No. 20 of 2022 in the District Court of Tabora, Original Civil Case No. 75 of 2022, Tabora Urban Primary Court)

SHIJA MATHIAS MANG'OMBE APPELLANT

VERSUS

ABDULHAKIM HAMAD KHALID RESPONDENT

JUDGMENT

Date of Last Order: 24.05.2023

Date of Judgment: 31.05.2023

KADILU, J.

The case originated from Tabora Urban Primary Court in Civil Case No. 75 of 2022 which was decided in favour of the appellant. The respondent appealed to the district court of Tabora via Civil Appeal No. 20 of 2022 which was decided in his favour. The appellant preferred the present appeal to this court. The dispute arose from the contractual relationship between the parties whereby on 08/06/2020, the appellant hired from the respondent two rice milling machines worth Tshs. 90,000,000/=, business building and Tshs. 50,000,000/= as a capital to start up business.

The parties agreed that at the end of contract, the appellant would return the machines and premises to the respondent and pay back the Tshs. 50,000,000/=. On 10/01/2022, the appellant notified the respondent that he wished to return his machines and business premises, but he did not have

the Tshs. 50,000,000/=. Then they signed another agreement whereby the appellant promised that on 30/06/2022, he would return the machines and Tshs. 50,000,000/= to the respondent. On 24/06/2022, the appellant paid to the respondent Tshs. 20,000,000/= and promised to pay the remaining Tshs. 30,000,000/= and return the machines on 30/06/2022.

On 30/06/2022, the appellant handed over three machines to the respondent and informed him that the respondent does not owe him any money as he had spent Tshs. 10,000,000/= to purchase rice grading machine and Tshs. 20,005,000/= for renovation of the business building. The respondent filed a case in Tabora Urban Primary court in which the court ordered the appellant to pay the respondent Tshs. 20,000,000/= and costs of the suit. Aggrieved with that decision, the respondent successfully appealed to the district court where the appellant was ordered to pay him Tshs. 30,000,000/= and costs of the case.

Dissatisfied with that decision, the appellant preferred an appeal to this court on the following grounds:

- 1. That, the district court Magistrate erred in law and facts by failing to assess and evaluate evidence of the trial court hence, he reached into a wrong decision.*
- 2. That, the district court Magistrate erred in law and facts to allow the appeal without considering the principles governing the visiting of the locus in quo by the court.*
- 3. That, the district court Magistrate erred in law and facts by allowing the appeal without ordering the respondent to hand over of the rice grading machine to the appellant.*

On the day of hearing the appeal, the appellant was represented by Mr. Kashindye Lucas, the learned Advocate while the respondent appeared in person, unrepresented. Submitting on the first ground of appeal, Mr. Kshindye stated that the district court's Magistrate failed to evaluate evidence by not considering the appellant's counter claim in respect of the rice grading machine and renovation expenses. Mr. Kashindye referred the court to the case of ***Hassan Mzee Mfaume v R.***, [1981] TLR 167 in which it was held that the first appellate court is required to evaluate evidence as if it is the trial court.

On the second ground of appeal, the learned Advocate for the appellant explained that the district court did not consider the principles governing the evidence taken by the court after the visit to the *locus in quo*. The learned Advocate made reference to the case of ***Kimondimitri Mantheakis v Ally Azim Dewji & 7 Others***, Civil Appeal No. 4 of 2018, Court of Appeal of Tanzania at Dar es Salaam in which the Court laid down five factors to be considered by the trial Judge or Magistrate when visiting the *locus in quo*. He added that in the instant case, the district court Magistrate did not give the reasons for its departure from the decision of the primary court which visited the *locus in quo*.

Arguing the third ground of appeal, Mr. Kashindye stated that the district court Magistrate erred for not ordering the respondent to return the rice grading machine to the appellant.

Responding to the grounds of appeal, the respondent explained that the contract between him and the appellant was clear that the appellant was not allowed to repair anything in relation to the contracted business premise without engaging the respondent. He said, by fixing the rice grading machine to the rented house, the appellant violated the agreement and he had no receipt for the purchase of that machine. Regarding the second ground of appeal, the respondent told the court that he gave the appellant Tshs. 50,000,000/= as a capital to start up business.

According to the respondent, the appellant had paid Tshs. 20,000,000/= only so, Tshs. 30,000,000/= is still unpaid by the appellant. He added that the appellant had handed the machines to him without paying the outstanding Tshs. 30,000,000/=. He argued that if the rice grading machine truly belongs to the appellant, why didn't he take it and hand over to the respondent the two rice milling machines only? He urged the court to consider this claim carefully and do justice.

Mr. Kashindye then prayed the court to take additional evidence from the parties in respect of the rice grading machine which is being claimed by each party. Invoking the powers conferred to the High Court under Section 29 (a) of the Magistrate's Court Act, this court ordered each party to file any documentary evidence proving his ownership of the claimed rice grading machine. However, none of the parties was able to produce the purchase receipt. The appellant filed digital photographs of the said machine whereas

the respondent filed police loss report and an operational manual of his other grain processing machine as evidence.

I have considered the grounds of appeal, submissions by the parties and records available in the case file. The question for determination is whether or not the appeal is meritorious. In the outset, I wish to make it clear that the appellant has not disputed that he was in 2020 given by the respondent Tshs. 50,000,000/= as business capital and two rice milling machines. The respondent on the other hand, has not disputed that the two rice milling machines and an additional rice grading machine were handed over to him by the appellant together with part payment of Tshs. 20,000,000/=. What is in dispute is whether or not the respondent is entitled to the payment of Tshs. 30,000,000/= by the appellant and, who is the lawful owner of the rice grading machine.

The record shows that in 2021, the appellant had accumulated undisclosed amount of money from the contracted business which he wanted to submit to the respondent. The respondent promised that he would meet the appellant so as to take the said money. Before they could meet, their business premise was destroyed by the wind so, the appellant renovated it for Tshs. 20,005,000/=. Thereafter, he informed the respondent that they needed a rice grading machine. The respondent replied that he would purchase one. He never honoured his promise hence, the appellant decided to spend Tshs. 10,000,000/= to purchase the rice grading machine.

The respondent then emerged claiming to be paid back Tshs. 50,000,000/= at once. The appellant told him that he only had Tshs. 20,000,000/= remaining at that time. He paid the same to the respondent. It was when the respondent claimed that he still owed Tshs. 30,000,000/= from the respondent. To that juncture, the appellant claimed that he cannot pay anything to the respondent because he spent Tshs. 20,005,000/= to renovate business premise and used Tshs. 10,000,000/= to purchase rice grading machine which he handed over to the respondent.

The finding of the primary court was that since the rice grading machine was handed to the respondent, he cannot claim to be paid Tshs. 30,000,000/= by the appellant. The primary court magistrate found further that, as the appellant renovated the business premise in violation of the contract, the expenses used cannot be deducted from the money indebted to him by the respondent. The primary court then ordered the appellant to pay Tshs. 20,000,000/= only after having deducted the Tshs. 10,000,000/= which was used to purchase rice grading machine.

Based on what has been discussed above, I find that the rice grading machine belongs to the respondent as it was purchased for Tshs. 10,000,000/= from the respondent's money accumulated from the contracted business and kept by the appellant. Due to the fact that the said machine has already been handed to the respondent, he can no longer claim Tshs. 30,000,000/= from the appellant. It is my considered view that the respondent is entitled to be paid Tshs. 20,000,000/= by the respondent,

after having accepted the rice grading machine which was purchased for Tshs. 10,000,000/=. I find as well that the primary court Magistrate was justified to disregard the expenses for renovation undertaken by the appellant because it violated the contract and the cost incurred was not sufficiently proved during the trial.

For these reasons, the appeal is dismissed for lack of merits. The respondent is declared the rightful owner of the rice grading machine. The appellant is ordered to pay to the respondent Tshs. 20,000,000/= within ninety (90) days from the date of this order. Each party to bear its own costs. The right of appeal is open to any party dissatisfied with this decision.

Order accordingly.




KADILU, M.J.

JUDGE

31/05/2023

Judgment delivered in Chamber on the 31st Day of May, 2023 in the presence of Mr. Kashindye Lucas, Advocate for the appellant and Mr. Abdulhakim Hamad Khalid, the respondent.




KADILU, M.J.,

JUDGE

31/05/2023.