

IN THE HIGH COURT OF TANZANIA
SHINYANGA DISTRICT REGISTRY
AT SHINYANGA

PC CIVIL APPEAL NO. 19 OF 2022

EMMANUEL SELEMANI LULU..... APPELLANT

VERSUS

MARTIN MAGILE MLUNJA..... RESPONDENT

[Appeal from the decision of the District Court of Kahama at Kahama.]

(Hon. Donasian J.A. SRM.)

dated the 28th day of March, 2022
in
Civil Appeal No. 30 of 2021

JUDGMENT

21st February & 2nd May, 2023.

S.M. KULITA, J.

This is an appeal from Kahama District Court, originating from Kahama Primary Court. The story behind this appeal in a nut shell is that, the parties herein entered into a contract whereby the appellant herein borrowed Tsh. 2,600,000/= from the respondent. The conditions among others were that, the appellant had to return the said money on 17th October, 2021 failure of which, the appellant's placed security which was

a motor vehicle make Toyota Rav4 with registration No. T.862 AJC would be sold by the respondent to recover the said amount. As it was anticipated, on the paying back date, the appellant failed to pay back the loan, thus the respondent sold the security. Aggrieved, the appellant instituted a Civil Case No. 127 of 2021 at the Kahama Urban Primary Court. The case was decided in favor of the appellant.

Aggrieved with that decision the respondent herein appealed at Kahama District Court. The court observed that, there was a valid contract between the parties, hence it was lawful for the Respondent herein to sell the collateral security as the parties had so agreed in the fourth clause of their contract. That marked the respondent's victory. That decision was delivered on 28th March, 2022.

Aggrieved with that decision, the appellant herein approached this court with three grounds of appeal as follows; **one**, the first appellate court erred for not upholding the trial court's decision, **two**, the first appellate court erred to entertain the issue of ownership of the vehicle's title whose possession had no legal bases, **three**, the first appellate court failed to evaluate the legality of the loan agreement.

On 21st March, 2023 the matter was scheduled for hearing. Mr. Evodius Rwangobe, Advocate from Rwangobe & Co. Advocates represented the appellant whereas the respondent was unrepresented.

Submitting in support of the appeal Mr. Rwangobe stated that, the trial court decided the case relying on the doctrine of equity. He said that on it, the trial court rightly held that, though the parties had no intention of extending time to pay the loan, yet the respondent was required to exercise in humanity. He contended further that, courts have to dispense justice rather than punishing the defaulters. To bolster his assertion he cited the England case of **CROPER V. SMITHS of 1884 CH. D 700**. He also cited the case of **HENRY PETER MAINA V. CRDB BANK GEITA, MISC. CIVIL APPEAL No. 38 OF 2020 CAT** and the case of **EAST AFRICAN CABLE V. SPESCON SERUCE LTD, COMMERCIAL CASE NO. 42 OF 2016**.

It was Mr. Rwangobe's assertion that, his stand stems on the fact that, the appellant was about to pay the respondent on the fixed date, however it happened that, he, the respondent was not found.

On the second ground of appeal Mr. Rwangobe stated that, as the motor vehicle which was placed as security for loan is not registered in the name of the borrower, it was upon the District Court to declare the loan contract null and void. He went further contending that, even the contract that shows the respondent owns the said motor vehicle falls on the same trap. He added that, as the said contract is neither registered

as per the Registration of Documents Act nor stamped as per the Stamp Duty Act, he thus formed an opinion that, the same is null and void.

Mr. Rwangobe alleged that, following the fact that, one cannot transfer a title that he has no actual possession, he then opined that, the parties' contract was null and void. He cited the case of **SHIRECU V. NBC Holding Co. Ltd (1997) TLR 78.**

Further arguing that the said sale of the security was illegal, Mr. Rwangobe submitted that, the respondent never tendered to court the valuation report for the said security which means that he never made valuation at all.

On the last ground of appeal which is about the legality of the loan agreement, apart from the allegations that the parties' contract was not registered and had no stamp duty, Mr. Rwangobe was of the views that, the parties' contract was uncertain, thus void. He gave the reason being that, name of the holder of the security is different from the name of the lender.

In reply the respondent stated that, he had lent the said money to the appellant which was not his, and the return was to be in four weeks' period without extension of time. He added that, on 16th October, 2021 the appellant wrote a later to him for extension of time. In proving the same, he said that, the appellant himself attached it to the plaint. He

further disputed that, it is not true that he was not found to receive the loan repayment as stated by the appellant. The respondent challenged further that, had the appellant had the intention to pay the debt on the fixed date, he would have sent the said money to the advocate before whom the contract was signed or his witness, not lodging a letter for extension of time.

In rejoinder Advocate for the Appellant, Mr. Rwangobe, reiterated his submission in chief.

I have earnestly gone through both parties' submissions and the available records. The issue is whether the appeal is meritorious.

According to the parties' submissions and the available record, the following things are not in dispute. First, that, the appellant borrowed money from the respondent and the two executed a contract for that purpose. Secondly, that, for securing the said loan, the appellant placed a motor vehicle make Toyota Rav4 with registration No. T.862 AJC and its Registration Card. Thirdly, among the conditions set in the said contract were that, there would be no extension of time for the date of repaying the loan and that, on default to repay it, the respondent was empowered to sell or own the said security for recovery of the money advanced to the appellant. Fourthly, that, the repayment date was on 17th October, 2021.

From the trial court's records the said parties' contract is seen to have been witnessed by each parties' witness before the Advocate. The records provide further that, the appellant had written and submitted a letter to the Advocate seeking for 13 days' extension of time to repay the said loan. The said extension of time was sought on 16th October, 2021, one day before the repayment date which was 17th October, 2021.

With this situation, can we say with certainty that the appellant was able to repay the loan within the agreed time only that the respondent was not available? The answer is "not". The reasons for that answer are not far to fetch.

Firstly, with the appellant's letter asking for 13 days' extension of time to repay the loan, it shows the appellant's status on 16th October, 2021 was that he had no money till 13 days later from that date. Secondly, had the appellant had the repayment money on the fixed repayment date which was 17th October, 2021, he would have sent it to their Advocate before whom the contract was entered, and withdraw his letter for extension of time or he would have sent the said money to the people who witnessed the said contract, particularly his witness. On these premises, I am firm that, the appellant defaulted the loan repayment as it was agreed in the parties' contract.

In his submission Mr. Rwangobe was of the views that, the respondent was to exercise humanity and extend time for appellant's loan repayment. He had this view standing on the ground that, the appellant had the loan repayment money on the fixed date only that the respondent was not found. As we have seen above that, there is no possibility that the appellant had the money for the loan repayment on the fixed date, thus the said point of humanity falls down as well.

The laws of the country provides for different types of contracts. There are oral contracts, as well there are written contracts. Oral contract cannot be stamped but they are allowed. It follows therefore that, failure of the parties to register or stamp their agreed terms, in itself, does not mean those parties have not agreed on those particular terms.

Again, the fact that, the appellant had time to think, choose and place motor vehicle make Toyota Rav4 with registration No. T 862 AJC and its Registration Card as security for loan, even though the card is not in the name of the appellant, the same does not invalidate the loan contract. This falls on the fact that, act of the appellant to deliver the said car and its card to the respondent, implies that, either the said car is legally owned by the appellant, only that he has not changed the holder's

name in the card, or that the owner of the car has consented for it to be placed as security for the said loan.

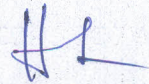
If the appellant wants this court to believe that the said car was placed as security without being consented by the owner of it, impliedly the appellant tells that, the real owner of the secured car has to sue him or the Respondent for theft of the said car.

As for the issue of valuation report of the collateral security, the records show that, in securing the said loan of Tshs. 2,600,000/= the appellant willingly placed a motor vehicle make Toyota Rav4 with registration No. T 862 AJC and its Registration Card. At that time, the appellant himself found no need of making a valuation for and prepare a report for the same, that's why there is nowhere in the records which shows that he ever claimed for it.

In clause 4 of the loan contract, the appellant was able to bind himself with the condition that, on default to pay the loan, the respondent was allowed to either sell or own the said security in recovery of the said loan amount. This shows that, the appellant placed as security the property which, he knows that its value was equal to the loan that was advanced to him. That is why he was able to bind himself with the

condition that, in default to repay the loan, the security could be owned by the respondent.

As all grounds of appeal have failed as I have endeavored to discuss above, I find that, the parties' loan contract was valid. The appellant has defaulted the same, thus, it was lawful for the respondent to exercise selling power of the security as it had been so agreed by the parties themselves. On that note, I hereby see no point to fault the decision of the first appellate court, its decision is therefore upheld. Appeal dismissed with costs.

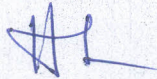
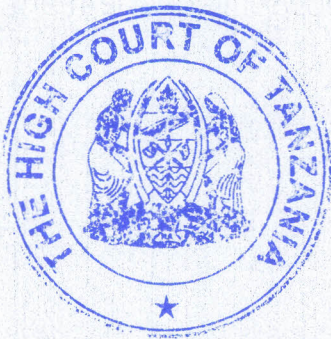


S.M. KULITA

JUDGE

02/05/2023

DATED at SHINYANGA this 2nd day of May, 2023.



S.M. KULITA

JUDGE

02/05/2023

