

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

PC CIVIL APPEAL NO. 59 OF 2022

*(Originating from Civil Appeal No. 11 of 2022 Bariadi District Court,
Original Case, Civil Case No. 19 of 2022 Mkula Primary Court)*

MHOJA ELIAS.....APPELLANT

VERSUS

SYLVESTER SEBASTIAN.....RESPONDENT

JUDGMENT

29th March & 13th June 2023

MASSAM, J:

Dissatisfied by the decision of both the Mkula Primary Court (trial court) and the District Court of Bariadi the appellant is now before this court challenging their decisions based on the following grounds;

- 1. That, the first appellate Court grossly erred in law and fact in holding that, the Money the appellant herein sent to the respondent was for rent.*
- 2. That, the first appellate Court grossly erred in law and fact in Holding that, all the witness who testified at*

the trial Court did not know about the sale of the Furniture. And

3. That, the first Appellate Court grossly erred in law and fact in holding that the appellant herein failed to prove the case on balance of probabilities.

Initially, the appellant filed a case at Mkula Primary court claiming against the respondent Tshs. 1,500,000/= or for him to return his furniture which the respondent agreed to sell and the appellant already sent him the money. On his side, the respondent disputed the claim and stated that the money he received from the appellant was for Rent and not for furniture. Having heard both parties the trial court found that the appellant did prove his claim on the balance of probabilities. Aggrieved the respondent successfully appealed to Bariadi District Court where the decision of the trial court was quashed and set aside hence this appeal.

At the hearing of this appeal both parties appeared in person, unrepresented. By the leave of the court the hearing proceeded by way of written submissions which I shall consider while disposing the grounds of appeal.

It is plainly that this is a second appeal and the court's mandate to interfere with findings of facts of the courts below is where there is

misapprehension of evidence by misdirection or non – directions which has occasioned a miscarriage of justice or where there is violation of some principles of law or procedures as elaborated in the case of **Jafari Mohamed v. Republic**, Criminal Appeal No. 112 of 2006 (CAT-Unreported) the Court observed as follows:

"An appellate Court like this one will only interfere with such concurrent findings of facts if it is satisfied, they are unreasonable or perverse leading to a miscarriage of justice, or there had been a misapprehension of the evidence or a violation of some principle of law."

With the above principle of law in mind this court examines the merit of the appellant's complaints to see whether there is necessity of this court to re-examine evidence in order to come up with a different finding from that of the lower courts.

In the first contention, this court noted that the appellant is challenging the decision of the trial court which was decided in favour of the respondent for the reason that he failed to show sufficient prove that the money sent to the respondent was for furniture and not for rent. He argued further that he submitted enough evidence to the court

proving his claim including the certified copies of the judgment of Nyashimo Ward Tribunal which proved his claim was genuine.

On his side, the respondent disputed the decision of both two courts below for the reason that the appellant failed to prove his claim and the money he received was just for rent purposes. The respondent submitted further that even the electronic evidence tendered and admitted at the trial court was contrary to the law as the primary court are not allowed to receive electronic evidence.

Having revisited the proceedings and the judgment of the trial court, this court noted that the trial court did decide in favour of the appellant herein based on the exhibit D1 (Judgement of Maswa District Land and Housing Tribunal) where the DLHT decided that the respondent owes nothing to the appellant herein in respect of rent arrears. And the 1st appellate court did decide in favour of the respondent herein for the reason that the appellant failed to prove that the money sent to the respondent was for the furniture's and not for rent as he was his tenant.

It is a trite law that the burden of proof in a civil case lies with the one who alleges, the same was provided under Section 110 of **the Evidence Act**, Cap 6 R.E 2022 that:

" (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".

Further to that in **Anthony M. Masanga vs Penina (Mama Mgesi) & Lucia (Mama Anna)**, Civil Appeal No. 118 of 2014 (CAT-Unreported) it was held that: -

"Let's begin by re-emphasizing the ever-cherished principle of law that generally, in civil cases, the burden of proof lies on the party who alleges anything in his favour. We are fortified in our view by the provisions of sections 110 and 111 of the Law of Evidence Act, Cap. 6 Revised Edition, 2002."

Again this was elaborated to the case of **Barelia Karangirangi vs. Asteria Nyalwamba** in Civil appeal no 237 of 2017 Court of Appeal at Mwanza.

Generally, there is no dispute that the burden of proof in civil cases is on balance of probabilities. In fact, the burden of proof lies on the party who asserts the truth of the issue in dispute. If that party adduces sufficient evidence to raise a presumption that what is claimed is true, the burden shifts to the other party, who will fail unless sufficient evidence is adduced to rebut the presumption. The court makes its decision on the "balance of probabilities", and this is the standard of proof required in civil cases. Furthermore, the law is very clear, the burden only shifts to the other party when sufficient evidence is adduced to raise a presumption that what is claimed is true.

See also the case of **Magambo I. Masato and Others vs. Ester Amos Bulaya and Others**, Civil Appeal No 199 of 2016 (CAT at Dar es Salaam, Unreported).

In the instant case, the appellant asserted that he bought the furniture from the respondent, and he sent to him Tshs. 1,000,000/= as a payment as he had already paid him his rent. However the evidence tendered before the trial court did not support his assertion particularly Exhibit...D "2".which shows the money sent was for rent and not for furniture. Having examined the evidence and made my own evaluation, I am again inclined to agree with the 1st appellate court that the

evidence submitted by the respondent was heavier than that of the appellant that the respondent discharges his burden of proof to his claim.

Thus, as per **Section 110 (1) and 111** of the Evidence Act Cap 6 R.E 2019, the appellant miserably failed to discharge his duty of proving his claim on the balance of probabilities as required by the law. For those reasons, this court do concur with the decision of the 1st appellate court which did set aside the decision of the trial court and came up with the decision that the appellant failed to prove his allegation as required by the law, This happened after evaluation of the evidence above, which submitted by both parties and all the exhibits tendered which were considered by this court to find that respondent succeeded to prove his claim. In view of the aforesaid, I find no merit in this appeal. Consequently, I dismiss the appeal in its entirety with costs.

It is so ordered.

DATED at **SHINYANGA** this 13th day of June 2023.



R.B.MASSAM

JUDGE

13/06/2023

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DATED at **SHINYANGA** this 13th day of June 2023.

A handwritten signature in blue ink, appearing to read 'R.B. Massam', is written over the printed name.

R.B.MASSAM
JUDGE
13/06/2023