

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

DC CIVIL APPEAL NO. 28 OF 2022

SHARIFA KHALFAN NASSOR.....APPELLANT

VERSUS

SAORE COMPANY LIMITEDRESPONDENT

(Originating from the District Court of Dodoma at Dodoma)

Dated 22th day of June, 2022

In

Civil Case No. 09 of 2021

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JUDGMENT

Date of last Order: 30th October 2023

Date of Judgment: 17th November 2023

SARWATT, J:-

The present appeal stems from the decision of the District Court of Dodoma at Dodoma (the trial court), where the plaintiff (now the appellant) sued the defendant (now the respondent) for the breach of contract. That, vide Civil Case No. 09 of 2021 of the trial Court, the plaintiff claimed to be paid, inter alia, a total sum of Tshs 126,680,000/= being a loss suffered of an expected income from the harvest of rabbits and as per the agreement.

Briefly, the background of this matter is that the appellant and the respondent signed a one-year contract on 16th September, 2020 in which both parties mutually agreed that the appellant will buy some rabbits from the respondent at a price of Tshs 3000,000/= per rabbit. Both parties had also agreed that the respondent will provide free professional guidance on properly constructing hatches, cuniculture, and breeding domestic rabbits. The parties had further decided that the respondent will buy the rabbits whose weight is 3 kgs and above at a price of Tshs 10,000/= per kg.

The trial Court entered judgment in favor of the respondent by dismissing the suit. Being aggrieved by the decision of the said decision, the appellant preferred the instant appeal and raised a total of three grounds of appeal as hereunder:

- 1. That, the trial court erred in law and in fact to hold that the defendant/respondent has not breached the contract.*
- 2. That, the trial court erred in law and in fact for failure to order the appellant be paid compensation for the breach of contract occasioned.*
- 3. That, the trial Court erred in law and in fact to dismiss the plaintiff's case basing on weak and contradictory evidence of the respondent.*

When the appeal was called on for hearing, both parties were represented. Mr. Fred Kalonga, learned Counsel, appeared for the appellant, whilst Mr. Elisante Kimaro represented the respondents. By consent of the parties, the matter was ordered to be disposed of by way of written submissions. Both parties filed their submissions before the Court timely.

In supporting the appeal, Mr. Kalonga submitted, on the 1st ground, that the respondent neither offered training to the appellant nor visited her premises to make a follow-up of the rabbits as per the contract. Because of this respondent's breach of contract conduct, the appellant failed to get the intended outcome.

On the 2nd ground, Mr. Kalonga submitted that, since the respondent had breached the contract, the appellant should be compensated the expected income, that is, Tshs 120,680,00/=.

Mr. Kalonga, as far as the 3rd ground, submitted that, despite the admission by the respondent that he had never executed his duties as per the contract, the trial court decided in his favour. He added that, so long as the respondent breached the contract, there is no excuse to warrant them not being liable for the compensation claimed. To emphasize this, the Counsel cited the case of **Abualy Alibhai Azizi V Bhatia Brothers Ltd (2000) TLR 288.**

Mr. Kalonga, having submitted as above, prayed this Court to find merit in the appeal and allow the same accordingly with costs.

On his part, the respondent, through his advocate, Mr. Kimaro, submitted that, as far as the 1st ground, the respondent had not breached the contract as the respondent bought some of the rabbits from the appellant. Mr. Kimaro also submitted that the rabbit purchase is evidenced via payment vouchers, which have been admitted as exhibits at the trial court. To back up his contention on the 1st ground, Mr. Kimaro cited the case of **Masanyiwa Shindano V Maryciana Shabani, PC Civil appeal No. 08/2020 HC Mwanza.**

On the 2nd ground, Mr. Kimaro submitted that the claims by the appellant are unfounded as it is based on illusion and false expectation. This is because, before the trial Court, there was no evidence given by the plaintiff, whether direct or indirect, to prove her claim for compensation.

Concerning the 3rd ground of appeal, the respondent's Counsel submitted that the evidence by the respondent was neither weak nor contradictory. He proceeded to submit that this appeal has nothing other than misleading the Court.

The respondent's advocate concluded his reply by urging this Court to dismiss this appeal with cost for want of merits.

Mr Kalonga, in his rejoinder submission, reiterated his submission in chief and insisted that, at the trial Court, the appellant's case was well stated as far as the breach of the contract and damages suffered are concerned hence, submission by the respondent is baseless.

Having analysed the submissions by both parties and the trial Court's record, what follows is to make findings on the rival matters before this Court. Thus, the key issue to be answered is whether this appeal has merit before this court subject to the contention raised by the respondent's advocate.

As the record reflects through exhibit P1, the appellant certainly entered into a contract with the respondent for buying and selling rabbits. Upon such agreement, the appellant paid a total of Tshs 3,200,000/= to the respondent to start the said business. According to the appellant in her testimony at the trial court, the amount paid was for rabbits, insurance, construction of hutches, and training as a measure of quality assurance. In consideration, the respondent was to purchase the said rabbits. However, according to the appellant, the said business ended unsuccessfully as the respondent did not offer the said training or even visit her premises to make a follow-up of the progress of the said rabbits. The appellant added that the

respondent did not purchase the rabbits as agreed. Hence, she incurred the loss.

On the other hand, the evidence of the respondent was to the effect that before they signed the said contract with the appellant, they had given her a professional advice through a telephone call and that they had constructed the said hatches. Still, for unknown reasons, the appellant had demolished them and built another one on her own using iron sheets. The respondent tried to give professional guidance and instructions to the appellant and visit the hatches. However, the efforts were in vain, and in the end, the final products were below the required standard. According to the respondent, despite the said challenges, they purchased some of the rabbits, as evidenced by exhibits D1 and D2, payment vouchers. However, according to the record, the appellant did not fault the respondent's evidence.

I have also noted that exhibit P1 under clause D 1 stipulates conditions under which the contract between the appellant and the respondent may be terminated the said clause stated;

"Mkataba huu utakoma kufika mwisho iwapo;

1. Mfugaji atashindwa kufuata kanuni na taratibu za SAORE LIMITED, ikiwa ni pamoja na kufuga sungura za SAORE LIMITED tu na kufuata taratibu zote za ufugaji za SAORE LIMITED"

As per the trial Court's record, it is evident that the appellant went against the terms of the contract. According to clause D1, as quoted above, she had breached the said contract by not complying with what they had agreed with the respondent in the said contract.

It is settled law in our jurisdiction that he who alleges must prove, that is, the Evidence Act under sections 110 (1) and (2) puts the burden of proof on the person who alleges the existence of a particular fact and wants the Court to decide. Many decisions support this legal position. Among them is the case of **Paulina Samson Ndawavya vs Theresia Thomasi Madaha, Civil Appeal 45 of 2017 (unreported)**, the Court of Appeal held that: -

It is trite law and indeed elementary that he who alleges has a burden of proof as per section 110 of the Evidence Act, Cap. 6 [R.E. 2002]. It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved.

However, in the case of **Barelia Karangirangi vs Asteria Nyalwamba, Civil Appel No. 237 of 2017**,(unreported) the Court of Appeal held that;

"At this juncture, we think it is pertinent to state the principle governing proof of case in civil suits. The general rule is that he who alleges must prove.

The Court went further and stated that;

"It is similarly , that in civil proceedings, the party with legal burden also bears the evidencial burden and the standard in each case is on balance of probabilities."

In the instant case, since the appellant is the one alleging that there was a breach of contract, she has to produce proof to substantiate their claims on the balance of probabilities, which, as per the authority above, meant that her evidence on such claims ought to have been more probable than the respondent's evidence. However, as I discussed above, she fails to prove the claims against the respondent according to the standard provided by provisions of the law cited above, hence, the evidence from the respondent's side remains heavy.

I find no merit of the appeal in the circumstances and for the foregoing reasons. I hereby dismiss it accordingly, and I make no order as to costs.

Ordered accordingly.



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S. S. SARWATT

JUDGE.

17/11/2023

Dated at Dodoma this 17th day of November, 2023.



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S. S. SARWATT

JUDGE.

17/11/2023