IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CIVIL APPEAL NO. 05 OF 2022

(C/F Civil Case No. 02 of 2021in the District Court of Moshi at Moshi)

JOEL JOAS MTUNGA…… APPELLANT

VERSUS

CHARLES KALANGA……..……..RESPONDENT

JUDGEMENT

Date of Last Order: 16.10.2023
Date of Judgment: 30.11.2023

MONGELLA, J.

In the district court of Moshi at Moshi, the appellant herein filed a claim against the respondent vide Civil Case No. 02 of 2021 for a sum of T.shs. 20,000,000/- being money he obtained from him under false pretences. He prayed for the following reliefs: specific damages at T.shs. 20,000,000/-; 12% interest at court rate; general damages at T.shs. 15,000,000/-; interest of 22% from date of judgement to the date of full payment; costs of the suit and; any reliefs the court deemed fit to grant.

The respondent denied the said claim and therein filed a counter claim of T.shs. 2,800,000/- against the appellant which he averred arose from providing the appellant security services for the year

2019/2020. The respondent sought the following reliefs; payment of T.shs. 2,800,000/-; payment of interest at bank rate on the principal amount till full payment; interest on decretal amount till full payment; costs of the claim and; any reliefs the court deemed fit to grant.

The background of the case is as follows: sometime in 2019 the respondent sold a piece of land to the appellant (PW1). Initial payments were issued and the respondent had his driver collect some of the said payments as he was hospitalized. Later, the parties decided to draft the sale agreement at the village office.

The respondent's children however, obstructed the handover of the land to the appellant and instead, one of his children wrote a letter (exhibit P4) committing to return the money owed to the appellant before 01.04.2020. The appellant tried communicating with the respondent to have the debt settled to no avail. He sent him a demand letter claiming T.shs. 7,555,000/- as compensation and 10% interest. The demand letter was replied vide a letter by the appellant in which he committed himself to pay the amount claimed on 31.10.2020 and also requested for the appellant to write off the interest. The sum was however not paid, hence the suit by the appellant filed in the district court.

Since the respondent denied the claim and further filed a counter claim against the appellant, the matter proceeded to trial whereby the trial court found both parties failed to establish their claims.

Aggrieved by such decision, the appellant has filed this appeal on the following grounds:

1. *That, the learned Resident Magistrate erred in law and fact by not properly analyse and evaluate evidence adduced before it by witnesses upon reaching her decision.* [sic]

2. *That, the trial learned Resident Magistrate erred in law and facts by ordering the respondent not to pay appellant an amount of seven million five hundred and fifty thousand shillings (7,555,000/=) which was the amount the respondent took from the Appellant.*

3. *That, the learned Resident magistrate erred in law and fact by failure to evaluate and recognize that all exhibits which were adduced before her were valid.*

4. *That, the Appeal is in time since judgement was delivered on 14/04//2022 and copies for the same availed on 29/04/2022.*

The appellant prayed that this court allows his appeal and quashes the trial court's order and set the same aside. He also maintained his former prayers made before the trial court.

The appeal was argued in writing. The appellant was represented by Mr. Stewart Emmanuel Shuma while the respondent was unrepresented.

Arguing on the 1st ground, Mr. Shuma averred that the appellant stated in his testimony that the respondent had taken money from him for the purpose of selling him a plot of land and the said fact was reflected in the judgement of the trial court. Further that, the appellant tendered a demand letter (exhibit P2) to prove that he requested payment of T.shs. 7,555,000/- and a reply to the demand letter (exhibit P3) in which the respondent admitted the claim and promised to pay the said amount.

He contended that the trial magistrate did not consider exhibits P1, P2 and P3 which were vigorous evidence in reaching her decision. He averred that the trial magistrate made her decision without scrutinizing the evidence which resulted to erroneous findings. He supported his stance with the case of **Stanslaus Rugaba and AG vs. Phares Kabuye** [1982] TLR 338. He called for this court, being the first appellate court, to re-evaluate the evidence tendered before the trial court as it is duty bound to do so as held in **Ndizu Ngasa vs. Masisa Magasha** [1999] TLR 202 and **Deemay Saat and 3 Others vs. Republic** (Criminal Appeal 80 of 1994) [2004] TZCA 4 TANZLII.

On the 2nd ground Mr. Shuma averred that PW2, who was the accountant at D&J Company, testified that he had been receiving instructions from the appellant that they want to purchase a piece of land and that payment was made to the respondent by way of instalments as instructed by the appellant.

On the other hand, PW3 testified that the appellant and the respondent went to his office for drafting the agreement of sale of the respondent's land but unfortunately received a letter from the respondent's son one Charles Kalanga requesting him to stop the process of drafting the said agreement and averred that his family was ready to pay the money their father had taken from the appellant. He was of the view that the trial magistrate did not consider such evidence in reaching her decision.

As to the 3rd ground of appeal, Mr. Shuma averred that all exhibits submitted before the trial magistrate were valid and there were no any elements of forgery. He maintained that the appeal was meritorious and prayed that the decision of the trial court be quashed and the appeal be allowed with costs.

In reply, the respondent jointly addressed all the grounds of appeal under one issue on whether the trial magistrate properly analysed and evaluated the evidence adduced before her.

In what I find misconceived on his part, the respondent argued that the 1st appellate court cannot interfere with the concurrent findings of facts by the court below unless it is shown that there has been misapprehension of the evidence, a miscarriage of justice or a violation of a principle of law or practice. He cited the case of **Amratlal D. M t/a Zanzibar Silk Stores vs. A.H Jariwala t/a Zanzibar Hotel** [1980] TLR 31. He contended that the facts show that the parties had not entered into a loan agreement or any other kind of

contract involving a sum of T.shs. 7,555,000/- as claimed by the appellant. That, this observation was also noted by the trial magistrate in her judgement.

He contended further that while an exhibit is admitted when it has met the standards set under **Section 65, 66 and 67 of the Evidence Act** [Cap 6 RE 2022], that does not mean that the admission serves as proof of its truthfulness. That, this observation was also noted by the trial magistrate when scrutinizing exhibit P1 whereby the court found that there were different signatures purported to be endorsed by the respondent thus invalidating the document. As to Exhibit P2 and P3, the respondent denied to have instructed any advocate to draft a reply or to have drafted a reply to any demand notice. He also averred that exhibit P4 was obtained by coercions and undue influence contrary to the Law of Contract Act Cap 345 RE 2019.

He further argued that the appellant ought to have called the advocate in question to give his evidence on whether he was duly instructed to reply to the demand notice. He contended that Exhibit P3, the reply to demand notice, was a forged document meant to persuade the trial magistrate to issue judgement in favour of the appellant.

Further, he challenged the pleadings by the appellant saying that the appellant claimed T.shs. 20,000,000/- as a debt the respondent owes him which was not proved by his evidence. He said that it is

also on record that he was sick and that the appellant had paid some amount of money for his medication, but no proof was produced to assist with calculation of the exact amount of the payments made by the appellant so the same would be deducted from the T.shs. 2,800,000/- which he claimed from the appellant as outstanding payment for security services he had offered him. He finally prayed for the appeal to be dismissed with costs.

After observation of the grounds of appeal and the submissions of both parties, I find it clear that the issue raised in the grounds of appeal is whether the trial court properly evaluated the evidence before it. It is trite law that the 1st appellate court is duty bound to re-evaluate or reassess the evidence before it and make its own findings thereto. In **Siza Patrice vs. Republic**, Criminal Appeal No. 19 of 2010 (CAT, unreported) the Court of Appeal held:

> 'We understand that it is settled law that a first appeal is in the form of a rehearing. **The first appellate court has a duty to re-evaluate the entire evidence in an objective manner and arrive at its own findings of fact, if necessary**."

The apex Court also maintained the same position in **Registered Trustees of Joy in The Harvest vs. Hamza K. Sungura** (Civil Appeal 149 of 2017) [2021] TZCA 139 TANZLII where it stated:

> "On our part, we are in agreement with both learned advocates that it is part of our jurisprudence **that a first appellate court is**

> **entitled to re-evaluate the entire evidence adduced at the trial and subject it to critical scrutiny and arrive at its independent decision**."

To prove his case, the appellant gave his evidence as PW1 and called two witnesses; PW2, one Praygod Genivis Malisa and PW3, one Sadiki Abdallah. The appellant testified that he works at Pristine Tours as an operations manager while the respondent was employed as a guard. He averred that the respondent sold to him a plot of land in 2019. That, he met with his co-manager at D&J Distributors Co. Ltd which he owns and they agreed that the company would purchase the said plot. They negotiated the price of T.shs.15 million, which the respondent took from them in instalments. The respondent came to collect the sum alone or at other times when admitted at Kibosho Hospital, the respondent had his driver one Joseph Munisi collect the said sum. To that effect, he submitted payment vouchers signed by the respondent after he collected the said money. The vouchers were admitted as exhibit P1.

After making initial instalments in 2019, he told the respondent that if he intends to continue to receive the instalments, they should draft an agreement for sale of the said plot. They met at the village office and met a newly elected village head who told them to go back in December 2019. They went back on the said date but were again told to come back in January 2020. When they came back,

they were informed that the respondent's children had prohibited him from selling the said plot and the children promised to pay the money the respondent had collected from him on 01.04.2020 and the sum they agreed to pay back by then was T.shs. 800,000/-. Such agreement was effected at the village office before village administrators. The respondent, however, did not pay back the sum which led him into consulting an advocate who wrote a demand letter to the respondent. The same was admitted by the trial court as Exhibit P2. The letter was replied by the respondent's advocate wherein he promised to pay the sum on 31.10.2020. It was admitted as Exhibit P3.

After seeing that no payments were made, they decided to file the case in the primary court which the respondent requested to be transferred to the district court. He also contended that the money belonged to the company and it had been obtained from a loan of 20 million.

PW2, an accountant at D&J Distributors Company stated that he was instructed by the appellant to issue payments in instalments for purchasing land. He initiated the payments vide payment vouchers that contained the company's logo. He identified Exhibit P1 as being the said vouchers.

PW3, the village chairman, testified that in November 2019 the parties came to his office intending to prepare an agreement for sale of land. By then he was not yet sworn into the office, so he

instructed them to come after he had been sworn in. On 28.02.2020 the respondent's son came to his office saying that he had heard that his father wanted to sell his farm and stated that he was ready to pay anyone's claim over the farm. The letter showing such commitment was admitted as Exhibit P4.

In his defence, the respondent testified as DW2. He called one witness, DW1, one Reagan Charles Kalanga. DW1, the respondent's son, testified that in 2020, the chairman at Kindi village told him that the appellant wanted his father's farm as he has claims against him. He was surprised as the farm belongs to the family. He was then forced to write a letter committing himself to pay the claims since he contested the sale of the farm. He thus wrote the agreement in which he was forced to state that he would pay the appellant a sum of T.shs. 750,000/-. There were five (5) people when the same took place, but the respondent was in the hospital. He averred that his father admitted that the appellant owed him money and that the appellant also owed the respondent some money as salary.

The respondent testified that he owns a watch guard group called Mangao Security group which started in 2019 and the appellant is his client. He added that he also worked at Pristine Company since 2019 whereby his salary was T.shs. 150,000/- for security and T.shs. 130,000/- for home security making a total of 280,000/-. That, they provided services to him but the appellant did not pay them for the whole year and, the appellant owes him. T.shs. 2,800,000/-. That, he fell sick and informed the appellant who came to visit him at Moshi

Arusha hospital and agreed to pay his hospital bills in consideration of him charging his farm as bond. That, he agreed to that arrangement.

He said that when he was discharged, he went to the chairman to put the farm on bond, but the chairman did not have the official stamp. The appellant told him that they claimed T.shs. 5,000,000/- from him and a profit of T.shs. 2,000,000/- making the total T.shs. 7,000,000/-. He told the appellant to wait for his children to arrive. When they arrived, the appellant filed the case. He said that he tried to have the matter settled out of court to no avail. The respondent denied the receipts (Exhibit P1) claiming that he never signed the vouchers except for only one receipt for T.shs. 300,000, which was payment voucher 000001110.

In cross examination, he averred that he started getting sick in 2020 and the appellant helped him settle the hospital bill. That, he did not give him cash, but only paid the hospital bills. He also denied to have replied to the demand letter. He said that when he had received the demand letter, he only waited for his children to come.

What I have gathered from the record is that the appellant brought the action claiming T.shs. 20,000,000/- from the respondent which he averred the respondent had acquired from him under false pretences. In his plaint as well as evidence, he averred that he agreed to purchase a plot of land from the respondent, but the

said transaction could not materialize because the respondent's children prohibited their father from selling the said plot. He also claimed that there were initial payments made in instalments.

The respondent on the other hand, admits that he owes the appellant certain amount of money which he did not disclose, but the same emanated from payment of hospital bills made by the appellant in the year 2020, allegedly the year he had fallen sick.

There are strange matters featured in the plaint, as well as, in the evidence on record. **One**, the appellant's claim was of T.shs. 20,000,000/-, but in his evidence he stated that they had agreed the purchase price was to be 15,000,000/- payable in instalments. Still, the appellant did not substantiate the amount of money that had already been paid to the respondent. Instead, he simply presented payment vouchers signifying multiple payments made to the respondent. Upon going through the said vouchers and as admitted by the appellant and PW2, all vouchers had been issued by D&J Distributors Co. Ltd. In fact, the appellant himself admitted that the plot was to be purchased by D&J Distributors Co. Ltd.

At this point, upon finding such strange features, I ordered the parties to clarify on the issue of *locus standi* under the circumstances. The respondent did not enter appearance so the appellant's counsel, Mr. Shuma gave his *ex parte* clarifications. Mr. Shuma averred that the appellant entered into a contract with the respondent at individual capacity and not as a company, but the

payments were made through his company, D&J Distributors Ltd. He said that the contract was oral and involved individual persons. That, no company was part of the contract.

Mr. Shuma submissions have hardly explained the strange nature of the agreement he entered with the respondent. It seems he submitted on facts from the Bar completely forgetting his client's assertion in testimony that the land was to be purchased by his company and that is the reason that D&J Distributors made payments to the respondent. By stating that the company merely made payments over a personal sale between himself and the respondent, it further renders his averments contradictory.

It seems Mr. Shuma forgot the concept of corporate liability. A company being a corporate body is an artificial person existing independently from its shareholders. With its corporate liability, the company can sue or be sued. In this matter, the appellant is claiming a sum of money from the respondent while claiming that the said money was given to the respondent by the company for the sake of purchasing land. Despite the circumstances, he still alleges that the transaction was merely between two individual persons and not the company. The appellant has sued in his own capacity as an individual not as director of D&J Distributors Co. Ltd. who allegedly gave the money to the respondent.

Even if I were to ignore the contradicting statements of the appellant, there is still a fact that remains intact, that is, the

appellant is claiming company property from the respondent, in his individual capacity. This would have been a different case if he was presumably suing the respondent plainly over money, he personally handed the appellant or at least, the company was also a plaintiff in this matter. This brings me to a vital point on lack of *locus standi*.

Locus Standi entails that a person who brings a matter must demonstrate an interest in the same. In **Lujuna Shubi Ballonzi vs. Registered Trustees of Chama Cha Mapinduzi** (1996) TLR 203, Samatta, J. (as he then was) had the following to say on *locus standi*:

> "Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with."

Locus standi is an issue of Jurisdiction. this was well stated by the Court of Appeal in **Registered Trustees of SOS Children's Villages Tanzania vs. Igenge Charles & Others** (Civil Application 426 of 2018) [2022] TZCA 428 TANZLII, whereby it held:

> "Moreover, borrowing a leaf from our neighbour in Malawi, the Supreme Court in the case of **THE ATTORNEY GENERAL VERSUS MALAWI CONGRESS PARTY AND ANOTHER,** Civil Appeal No. 32 of 1996 observed as follows:

> "Locus standi is a jurisdictional issue, it is a rule of equality that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say, unless he stands in sufficiently dose relation to it so as to give a right which requires prosecution or infringement of which he brings the action."

See also: **Peter Mpalanzi vs. Christina Mbaruku** (Civil Appeal 153 of 2019) [2021] TZCA 510 TANZLII, and **Omary Yusuph vs. Albert Munuo** (Civil Appeal 12 of 2018) [2021] TZCA 605 TANZLII. In the latter, the Court of Appeal emphasized the essence of *locus standi*. It stated:

> "We are aware that *locus standi* is all about directness of a litigant's interest in proceedings which warrants his or her title to prosecute the claim asserted which among the initial matter to be established in a litigation matter. That said, it is a settled principle of law that for a person to institute a suit he/she must have *locus standi*…"

The question of *locus standi* stems from the appellant's initial averment that he has sued the respondent claiming T.shs. 20,000,000/- seemingly paid to him by D&J Distributors in process of the company acquiring land from the respondent. Although Mr. Shuma claimed that the agreement was entered in personal capacity, I am afraid I cannot buy his contention for the same

differing from the appellant's client. Clearly the appellant had no *locus* to sue the respondent in the first place.

In consideration of my observation as hereinabove, I dismiss the appeal, with costs.

Dated and delivered at Moshi on this 30th day of November 2023.

X

L. M. MONGELLA
JUDGE
Signed by: L. M. MONGELLA