

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

DC.CIVIL APPEAL NO 4 OF 2022

(Originating from District Court of Masasi in Civil Case No.2 of 2022)

HAMISI MOHAMED APPELLANT

VERSUS

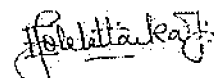
NILESH PATEL RESPONDENT

JUDGMENT

30/11/2023

LALTAIKA, J.

The appellant, **HAMISI MOHAMED**, expresses dissatisfaction with the decision of the District Court of Masasi in Civil Case No. 02 of 2022. In this case, the respondent sued the appellant for the total sum of TZS. 58,777,700/=, encompassing principal sum, special damages, punitive damages, and general damages for the breach of contract. The claimed debts included TZS. 14,000,000/= for the appellant's failure to pay the debt, TZS. 13,572,700/= for the appellant's failure to pay the costs of

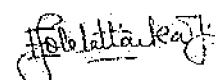


goods taken on credit, TZS. 6,205,000/= as costs of unpaid goods taken on credit, and TZS. 25,000,000/= as compensation for the loss of business, costs, sufferings, and disturbances faced by the respondent in pursuing the debts. It is further alleged that the total outstanding debt of TZS. 33,777,700/= arises from specific amounts reduced into contracts between the parties at the Chikundi Primary Court.

After the trial, the court ruled in favor of the respondent, ordering the appellant to pay a total of TZS. 37,572,700/=. The appellant, dissatisfied with this decision, lodged the present appeal based on six grounds.

1. *The learned Magistrate of Masasi District Court erred in law and facts by holding that the respondent deposited Thirty-One Million Shillings (31,000,000/=) in the bank account of the appellant without any proof.*
2. *The learned Magistrate of Masasi District Court erred in law and facts by holding that the appellant borrowed goods from the respondent's shop without any proof.*
3. *The learned Magistrate of Masasi District Court erred in law and fact by accepting the exhibits tendered by the respondent to be paid by the appellant without any justification, and the said costs of goods are unfounded.*
4. *The learned Magistrate of Masasi District Court erred in law and facts by accepting the exhibits tendered by the respondent without considering that the said exhibits are fabricated by the learned magistrate of Lisekese Primary Court and Masasi District Court.*
5. *The learned Magistrate of Masasi District Court erred in law and facts by deciding the matter in favor of the respondent while the claim by the respondent was not strictly proved by the respondent as required by the law.*
6. *The learned Magistrate of Masasi District Court fails to evaluate evidence properly, hence reached an erroneous and unjustified decision.*

Upon hearing on 1/8/2023, the learned counsel for the respondent raised an issue concerning a defect in the judgment and decree, specifically the different names of the respondent in these documents. Additionally, this court ***suo moto*** raised a question about the propriety



of the current appeal in relation to a previous suit decided in favor of the appellant (**Consolidated Civil Appeals Nos. 2 and 12 of 2020 between Hamisi Mohamed v. Damian Michael Mgalagasye, judgment delivered on 10/12/2020**).

On 7/11/2023, both parties appeared, and the learned counsel for the respondent addressed the court on the propriety of the current appeal in light of the previous suit. He cited a case instituted at Chikundi Primary Court, namely Civil Case No. 6 of 2018, and another case, Civil Case No. 7 of 2018, both featuring the same parties. Counsel for the respondent contended that the appellant, dissatisfied with the decisions, appealed to Masasi DC and subsequently to this court.

The learned counsel argued further that the previous suit determined the issues of locus standi and the sufficiency of the power of attorney, leading to a dismissal of all orders. He argued strongly albeit unconvincingly against the doctrine of res judicata, citing section 9 of the Civil Procedure Code and the case of **PENIEL LOTTA VS. GABRIEL TANAKI & ANOTHER** [2003] TLR P. 312.

In response, the appellant questioned the increase in the amount claimed and asserted that NILESH PATEL was involved in the proceedings at Chikundi Primary Court.

In a brief rejoinder, the learned counsel for the respondent clarified that Mr. Honorius testified on behalf of the plaintiff in the past.

After a dispassionate consideration of the lower court's records, grounds of appeal, and submissions, it **is evident that the respondent abused the court process by instituting a suit while being aware**



of the prior judgment in Consolidated PC Civil Appeals No.2 and 12 of 2020. The court had already decided on the issues of locus standi and the sufficiency of the power of attorney, rendering the subsequent suit an abuse of court process.

In the case of **Dhirajlal Walji Ladwa & 2 Others vs Jitesh Jayantilal Ladwa & Another** (Misc. Commercial Application 62 of 2020) [2023] TZHCComD 63 (8 March 2023) my brother Nangela, J. borrowed a leaf from other jurisdictions in defining the term abuse of court process and stated:-

*"Perhaps I should consider first what an abuse of court process is all about. Essentially, the issue regarding abuse of court's process by litigants is a problem which courts across common law jurisdictions have time and again confronted and uniformly understood or defined it. In the case of UK - **Attorney General vs. Baker** [2000] EWHC 453 (Admin), for instance, the Court defined it to mean the:*

"use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process."

*In other cases, from Nigeria, the case of **Central Bank of Nigeria vs. Saïdu H. Ahmed & Ors** (2001) 5 SC (Part 11) 146; and the case of **Edjerode vs. Ikine** (2001) 12 SC (Part 11) 125, the Supreme Court of Nigeria, was of the view that, an abuse of Court process means that the process of the Court has not been used bona fide and properly. These cases were cited by this Court in the case of **Starpeco Page 13 of 19 Limited and 40thres vs. Azania Bank Ltd & Another**, Misc. Commercial Application No.11 of 2021 (unreported). In the Indian case of **K.K.Modi vs. K.N.Modi and Others**, (1998) 3 SCC 573 the Indian Supreme Court, citing Sweet & Maxwell, *The Supreme Court Practice* (1995) at page 344, in relation to the phrase "abuse of the process of the Court", noted that:*

"This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent improper use of its

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machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And, for this purpose, considerations of public policy and the interests of justice may be very material."

Premised on the above, I hereby allow the appeal, quash, and set aside the decision of the trial court in Civil Case No.2 of 2021. Furthermore, I order each party to bear his own costs.

It is so ordered.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
30.11.2023**

Court:

Ruling delivered this 30th day of November 2023 in the presence of the appellant and Mr. Florence Mwanawima, learned counsel for the respondent.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
30.11.2023**

E.I. Laltaika

Court

The right to appeal to the Court of Appeal of Tanzania is fully explained.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
30.11.2023**

E.I. Laltaika