

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. CIVIL APPLICATION NO. 36 OF 2023

REFERENCE NO. 20230824000522286

(PC Civil Appeal No. 36 of 2022 at High Court of Tanzania Musoma Sub-Registry)

SILAS JOSIAH MARADUFU.....1ST APPLICANT

DEBORA SILAS..... 2ND APPLICANT

VERSUS

NYAMSERA MARUMBA..... RESPONDENT

RULING

20th & 27th May, 2024

M. L. KOMBA, J.:

Applicants has filed chamber summons under section 5(2)(c) of the Appellate Jurisdiction Act, Cap 141 R,E 2019 and Rule 46(1) and 47 of the Court of Appeal Rules GN 368 of 2019 as amended, in which they pray for certification of point of law in the matter between the parties for consideration by the Court of Appeal of Tanzania.

A brief background of the matter a read from the record is that; applicants and respondent had entered into a loan agreement. Upon failure to honour terms, respondent sue applicants at the Primary Court where the consent

judgment was entered. Applicants lost the appeal in two courts hence they filed this application as a way, if granted, to appeal to Court of Appeal. For them to appear to Court of Appeal there must be point of law, which for that the applicants' points are featured at paragraph 3 and 4 of their affidavit. The points reads;

3 (a) That the alleged 25% of the principle sum being almost equal the same principal sum, is indicative as to how incorrect the decretal amount of 14,000,000/ stands be false and untrue

(b) That the court is asked to certify a point of law as to whether what the parties agree to even if incorrect and arithmetically wrong, the same is taken as it is.

4 (a) that the agreement leading to the judgment by admission is a result of interest being charged over and above the principal sum. This court is asked to certify point of law as to whether a Primary Court has powers to preside over matters though contracts, interest at any percentage rate is charged and enforceable.

(b) That since only the Bank of Tanzania has legal mandate to licence person to create others and charge interest then is it legally tenable for a person not so licenced to charge interest on credits advanced to others.

(c) That where parties agree to and enter a contract which indeed is violative of the law of the land can a court of law condone to such contracts?

During hearing, the applicants were represented by Mr. Baraka Makowe who is advocate whilst the respondent stood solo without any representation.

It was Mr. Makowe who started to prosecute application by praying this court to adopt applicants' affidavit. He then invites this court to visit the record of primary court arithmetically and the decision of the High Court. He further prayed this court to review the judgment by admission if at all had qualities of judgment as it was signed by one of the applicants and not both. Revolving on the said legal issue Mr. Makowe referred paragraph 3 of affidavit and invited this court to determine 25% of Tsh.7,800,000/ as featured in the High Court judgment as originating from the Primary Court. While elaborating further on the figures, counsel Makowe submitted that the figure is correct but they have issues on arithmetical and this court to certification on whether the court cannot correct any issue on the base of partys' agreement even if it is incorrect. To him, there is point of law to be determined by Court of Appeal.

The second issue for certification was based under section 11 of the Magistrate Courts Act, Cap 11. It was his submission that there are provisions which allows Primary Court to entertain complains basing on

contracts. However, he said, there was the complain of interest in the loan and pray this court to decide whether as per s. 18 of Cap 11 it was correct for the Primary Court to entertain matter which attract interest and whether the respondent had a Bank of Tanzania (BOT) certificate to provide loan with interest. He prayed this court to certify presence of point of law enough to be addressed to Court of Appeal. He prayed this with costs.

Respondent prayed his affidavit to be adopted and started his submission on the issue of capacity of charging interest that it was a new thing which was raised at this stage. He went on submitting that the loan was Tsh. 7,000,000/= and there were some costs where the interest shot to Tsh 28,000,000/=. He elaborated further that while at the Primary Court, the applicant prayed to solve the matter out of court. The idea was implemented and deed of settlement was prepared and filed where it was agreed through negotiation that applicants have to pay Tsh. 14,000,000/= instead of Tsh. 28,000,000/=. Due to the applicants willingness to pay, they went further to propose the payment plan which was 12 equal installments and the deed to be regarded as the final determination of the suit. Respondent went on narrating that

Primary court ask parties before entered a consent judgment which based on their deed of settlement.

About interest it was his submission that, interest was considered during negotiation and parties arrived to the agreed amount. The decision was issued on 31/7/2018. Instead of implementing what was agreed, in the year 2021 applicants prayed to appeal out of time but failed as it was decided that it was not possible to reverse the decision which was based on agreement even the High Court decided that it was not possible to revise what parties had agreed. He prayed this court to find there is no point to certify for applicants to appeal to Court of Appeal and the matter be dismissed with costs.

Mr. Makowe had a brief rejoinder that applicants are complaining on interest on the loan basing on original claim which is Tsh 7 million. He further averred that though the contract binds parties he find it is not proper to close eye on obvious things. About interest he said the issue of jurisdiction may be raised at any stage of the case.

Having considered the application's records and the submission advanced by each party, the duty of this Court lies to determine whether or not this application is meritorious.

First of all, I wish to state from the onset that this is an application for certification on point of law so that applicants may appeal to the Court of Appeal and not an appeal. In certifying, there must be real point of law worth to be addressed by the Court of Appeal.

Analysing issues as registered by counsel Makowe, I shall join the issue of arithmetical calculation and 25% interest of the loan and Jurisdiction of the Primary Court in entertaining case which attracts interest. Although the two others are not legal issues serve for the jurisdiction of the Primary Court, I find necessary to address them that, from the submission made by respondent and from records, it is clear that parties negotiated and registered their agreement in which they agree their terms to be binding to themselves. There was deed of settlement. It is trite that if there is a deed of settlement what court is doing is just to record what parties had agreed. The loan and interest and calculations are well known to themselves that's why they agreed and signed. The position of the primary court was to register what parties agreed. See **Karatta Ernest D.O & Others vs The Attorney General (Civil Appeal 73 of 2014) [2016] TZCA 734** and **Air Tanzania Co. Ltd vs Capt. Msami Mmari & Another (Revision Application No. 364 of 2020)**.

Coming to the issue of quality of consent judgment, Counsel Makowe lamented that applicants did not sign the deed of settlement which was filed in court and doubt the correctness of the consent judgment. I had a time to read the settlement and the consent judgment. I find the deed was signed by both applicants who were present when trial court was registering what they have agreed. However, the issue of signing the deed of settlement is a matter of evidence not a law although the consent judgment can be a matter of law. Regardless of that the position of this court is that, the deed was signed by both applicants and the consent judgment was rightly entered. I don't find any legal issue concerning the consent judgment. The issue of certificate from the BOT that respondent was authorized to be moneylender, it is trite in our legal sphere that there is no need to prove certificate of registration by relevant authority be it the BOT when lender claim back his money. For the borrower to be safe he has to pay the loan. See **Twiga Feeds Limited & Another vs National Investment PLC** (Civil Appeal No. 295 of 2021) [2024] TZCA 263 (15 April 2024).

Generally, I didn't find anything disturbing to necessitate the Court of Appeal's intervention with regards to the applicants' complaints as some of issues are matter of evidence and others were handled as per law.

In view of the discussion above, the applicant has no legal point(s) worth to be forwarded to the Court of Appeal as the third ladder. In the circumstances, I am obligatory to, as I hereby do, dismiss this application with costs.

DATED at **MUSOMA** this 27th day of May, 2024.



MK
M. L. KOMBA
Judge