

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB REGISTRY)**

AT MWANZA

CIVIL APPEAL NO. 3440 OF 2024

(Arising from the judgment in civil appeal No. 27/2023 before Hon. T.G. Barnabas, SRM at Sengerema District Court dated 18th day of December)

BETWEEN

CHRISPINE MICHAEL MASSAWE t/a T.B.C APPELLANT

VERSUS

ISAKA MACHABA RESPONDENT

JUDGMENT

29th & 29th May, 2024

A. MATUMA, J.

In the Primary Court of Kome within Sengerema District the Respondent successfully sued the appellant for claim of **Tshs. 4,600,000/=** being the value of fuel (petrol) sold on credit herein known as the debt.

The trial court having been satisfied with the evidence of the respondent decreed against the appellant payment of Tshs. 4,600,000/= as the principal claim (debt) and Tshs. 735,000/= as costs.

The appellant was aggrieved and made his first appeal to the District Court of Sengerema but his appeal was dismissed with costs hence this second appeal with three grounds whose complaints are to the effect that;



- i. That the first appellate court erred to uphold the award of Tshs. 4,600,000/= without sufficient evidence and which arose out of illegal business.
- ii. That there was no evidence to establish existence of contract between the parties.
- iii. That the award of Tshs. 750,000/= was not proved.

At the hearing of this appeal, both parties appeared in person. Their respective submissions were revolving into the evidence they adduced during trial. The appellant insisted that the respondent did not prove his claim to the tune of Tshs. 4,600,000/= nor he had any document permitting him to do fuel business. He argued that there was no any document tendered which shown that he was signing anywhere in acknowledgement of the debt. He also argued that there was no evidence to prove that he had any credit contract with the respondent but he was buying the fuel by cash. He finally faulted the costs awarded at the trial court to have not been proved.

On his part the respondent made a brief submission arguing that his claims were sufficiently proved and had documentary evidence tendered to establish the claims.

Having heard the parties for and against this appeal, I now determine the grounds of appeal as follows;

Starting with the second ground on whether there was a valid contract between the appellant and the respondent, I have no doubts that the two courts below were absolutely right in finding that the Respondent proved existence of contract between him and the appellant in which he was supplying fuel (petrol) to the appellant on credit basis.

A part from the evidence of the Respondent, the appellant admitted in evidence during trial that he had business contract with the respondent, He admitted that they made business whereas he was buying fuel from the respondent.

"Mafuta nilikuwa nanunua kwake na nimelipa cash. Yeye aliniambia biashara ile tuifanye kienyeji sababu Serikali haitaki biashara ile kwenye hifadhi....lita anazodai ni nyingi . Ilikuwa ni biashara haramu."

And during cross examination he admitted that they did business an oral agreement,

" Hatukuandikishana. Tulitumia njja haramu"

From such quotations it is obvious that the appellant acknowledges that he had business with the respondent where as the respondent was

supplying him fuel. He only alleges that he was buying the fuel by cash and that such business was illegal because the respondent had no business licence from EWURA. That will be delt in the first found. For the purposes of this second ground, it suffices to conclude that there was sufficient evidence to prove that the appellant and the respondent had an oral contract of fuel business and thus the second ground is without any merits and it is dismissed accordingly.

In the first ground the appellant avers that there was no evidence to prove the claim of Tsh. 4,600,000/=. This complaint is without any merit. The respondent had sufficient evidence to prove such claim. He testified that the appellant was taking fuel from him on credit basis and the total taken fuel were 611 littles. He tendered in evidence an exercise book showing how the fuel were being taken. The appellant then defaulted payments but gave him a machine as security. The respondent's evidence was corroborated by that of SM2 Filbert Gervas Bukoli who previously was a supplier of fuel to the appellant but later he stopped due to the appellant's accumulation of debts and default payments. He conditioned him to pay first the debt before he proceeds to supply him the fuel. The Appellant paid the debt but shifted to the respondent who was a business neighbour to SM2.

Such evidence was further corroborated by SM3 Nyangi Chaha Maswi who testified that the appellant confirmed to him that he is indebted to the respondent. The appellant did not cross examine on such fact which establish that he admitted to have told SM3 that he was indebted to the respondent. During trial the appellant chose to make a general denial and therefore did not contest the amount claimed. In that respect the evidence of the appellant remains intact to the effect that the debt was Tshs.4,600,000/= which was rightly awarded by the two courts below.

About the allegations that the business between the parties was illegal, I dismiss this allegation because the appellant who alleges that the respondent had no business licence from EWURA is neither an officer from EWURA nor he brought any witness from such authority to establish and prove such allegation. To the contrary the respondent during cross examination testified that he was doing legal business and had documents to that effect;

*“Biashara yangu ni halali. Nyaraka zipo
nitazileta ndiyo tumeruhusiwa kufanya sheri
(kituo cha mafuta)”*

When the court asked the appellant a classification question on whether he reported the alleged illegality in the business, he clarified;

"Sijawahi kupeleka taarifa popote sababu tulikubaliana"

In that respect issues of illegal business are brought as an afterthought and as a tool to subjugate (anatumia hoja ya biashara kukosa leseni kama nyenzo ya kudhulumia deni halali) and as a tool of humiliating the respondent. I accordingly dismiss this allegation.

Back to the last ground of appeal, the appellant is complaining that the awarded costs of Tsh. 750,000/= was not proved with specific evidence.

I think this ground is misconceived. The awarded costs were made at the discretion of the trial court after it had refused to grant some other costs.

The amount awarded by the court in the exercise of its discretionary powers needs no specific evidence but reasoning on how such amount was arrived at. At page 8 to 9 of the trial court proceedings the trial magistrate reasoned why he granted such costs out of Tshs. 805,000/= which was claimed. The trial court made the following reasonings;

"Mdai anasema ametumia Tshs. 805,000/= kwa mchanganuo huu;

Tarehe 30.05.2023 fundi wa kufungua mashine 1 ya kuchajia betri shs.

120,000/= kwa sababu inachimbiwa kama hizi mashine za kusaga.

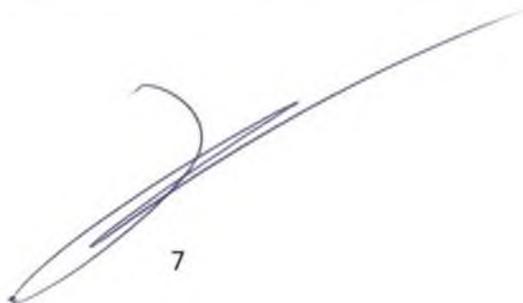
Fundi wa kufungua sola 10 shs. 120,000/= . Huyu ni tofauti na fundi

wa awali kwa sababu zinapaswa kufunguliwa kitaalamu; kupeleka sola

kupeleka sola na mashine ofisini shs. 50,000/=. Makamanda Kwenda kukamata mali hizo shs. 200,000/= kwa sababu kamanda alimpa Tshs. 100,000/= na ofisini shs. 100,000/=. Bajaji ya kubebea mali hizo kutoka ofisini kuja mahakamani shs. 150,000/=. Kupakia na kushusha ofisini na mahakamani sh. 90,000/=, kuwalipa mashahidi wawili sh. 20,000/= kama mahakama ilivyoamuru, sh. 40,000/= kama nauli za mdai kufika mahakamani na sh. 15,000/= za kufungua jalada. Gharama zingine zote zitabaki kama zilivyo isipokuwa sh. 200,000/= ya ofisi imeondolewa sh. 100,000/= iliyoachwa ofisini inatosha. Pia sh. 75,000/= imepunguzwa kutoka sh. 150,000/= za kusafirisha mali Kwenda mahakamani. Hivyo mdaiwa alipe gharama za kesi sh. 630,000/=”

I have no good reason to depart from the reasoning thereat. I join hands with the first appellant court which dismissed this ground. The ground is complaining against the amount which was not even awarded by the trial court. I accordingly dismiss the same.

Having dismissed the three grounds of appeal this appeal remains with no legs to stand. It is hereby dismissed in its entirety with costs.



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It is so ordered.



A. Matuma

Judge

29/05/2024

Court; Judgment delivered in the presence of both parties in person.

Appeal dismissed with costs. Right of further appeal explained.



A. Matuma

Judge

29/05/2024