



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**SHINYANGA SUB REGISTRY**

**AT SHINYANGA**

**PC. CIVIL APPEAL NO. 202405181000011403**

***(Arising from Civil Appeal No.5179 of 2024 before Busega District Court, the same arise from Civil Case No.3 of 2024 before Igalukilo Primary Court)***

**SYLIVESTER BUNEGIJE .....APPELLANT**

**VERSUS**

**JOHN NTAMBI .....RESPONDENT**

**JUDGMENT**

***11<sup>th</sup> & 21<sup>st</sup> June 2024***

**F.H. MAHIMBALI, J**

The nutshell of the claims is that the respondent had given the appellant a total of Tshs 7,500,000/= for purchasing cotton. The appellant purchased only 4930 kg valued at Tshs 5,830,000/=. The remained Tshs 1,677,500/= was not seen and thus claimed before the trial court. The trial court after a full consideration entered its verdict in

favour of the respondent and the appellant was compelled to pay the respondent the claimed amount. Dissatisfied with the decision, the appellant unsuccessfully appealed to the first appellate court as the same upheld the trial court's decision. In quench of his justice, this is his second appeal armed up with seven grounds of appeal which all fall under the question of evidence.

During the hearing of this appeal the appellant appeared in person and unrepresented, the respondent was not present as nowhere could be traced and thus the matter proceeded ex parte against him. Arguing for the appeal, the appellant stated that he has been aggrieved by the decision of the first appellate court confirming the decision of the trial court that he has to pay the respondent a total of 1,677,500/=. In essence he admits the said claim but the basis of his dispute is this, as he has not been paid his dues/salary and the warehouse rent costs for the said cotton, that amount has been used for such charges. He has thus prayed for his grounds of appeal be adopted by the court to form part of his appeal submission.

I have closely followed the arguments by the appellant. The controversial issue here for deliberation is whether the claims by the appellant are valid.

I wish to preface my decision by stating from the outset that this is a second appeal. It is now settled law that where there are concurrent findings of facts of the two courts below, the Court should not under normal circumstances interfere with such concurrent findings of facts. However, if such courts below have misapprehended the substance, nature and quality of such evidence which result into unfair decision in the interest of justice, the Court may interfere. This position was stated in the case **of Abdallahman Athuman v. Republic, Criminal Appeal No. 149 of 2014; Omari Mussa Juma v. Republic, Criminal Appeal No. 73 of 2005; 8 Josephat Shango v. Republic, Criminal Appeal No. 62 of 2012; and Yohana Dioniz and Another v. Republic, Criminal Appeals No. 114 and 115 of 2009(all unreported).**

Now back to the case at hand, upon a thorough digest, it is not disputed that the parties had entered into the alleged that contract. It is also not in dispute that the appellant was given 7, 500,000/= and worth of Tshs 5,830,000 used for purchasing 4930 kg of cotton. The issue now is the missing of money which is Tshs 1,677,500/=. According to the appellant he used it for paying casual labors who assisted him in the

exercise and the rest of the money spent as his due/salary and payment of rent of warehouse as the respondent did not pay him.

I have gone through exhibit P1 which is a copy of contract, the same in its preamble provides that;

*" nimekubaliana na kampuni ya mapacha cotton co.ltd ,  
kufanya kazi ya kununua pamba msimu wa mwaka 2023 kwa  
malipo ya mshahara/ kamishina kiasi cha Tshs 40 kwa kilo"*

Terms of the contract;

**3.** *" sitatumia fedha ya kampuni kinyume na maagizo"*

**4.** *" sitatumia fedha kwa gharama yoyote ile bila idhini ya  
maandishi kutoka kwa uongozi wa kampuni"*

It is trite law that parties are bound by the agreements they freely entered into, see section 10 of the Law of Contract Act. The cardinal principle of the law of contract being the sanctity of the contract as expounded in numerous cases including **Abualy Alibhai Azizi v. Bhatia Brothers Ltd** [2000] T.L.R. 288 and **Unilever Tanzania Ltd v. Benedict Mkasa t/a Bema Enterprises**, Civil Appeal No. 41 of 2009 (unreported).

Now, in the case at hand and glaring the principle cherished herein above with reference to the contract concluded by the parties, it is of no doubts that the appellant misdirected himself and do away with the contract he entered.

I say so because, his claims that the claimed amount had not been remitted because of his dues/salary for activity assigned to him. This assertion is not backed by any evidence as the contract provides that he ought to be paid 40 per kg of cotton bought. Then since it is undisputed that he bought 4930, then he ought to be paid 197,200/= only. Now, why he holds 1,677,500/=, there is no apparent reason for that.

Whereas, the terms of the contract sanctioned the appellant to use monies without prior permission of the owner, by spending it contrary to the terms, meant that he abrogated the money. Therefore, one to be blamed for breach of contract is the appellant himself.

In my considered view, I do not ignore the claims by appellant that he was not paid, as the records are silent on that. My directives are that such claims would have been channeled in a proper forum. The appellant would have instituted claims against the respondent for claim of his salary/dues if not really paid and not this way as he did.

With all the said, I keenly associate myself with the findings of both lower courts. Entirely this appeal is meritless and consequently is dismissed.

I make no orders as to costs.

Right to further appeal is explained.

DATED at SHINYANGA this 21<sup>st</sup> day of June, 2024.



A handwritten signature in blue ink, consisting of several fluid, overlapping strokes.

**F.H. Mahimbali**  
**Judge.**