

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

PC. CIVIL APPEAL NO. 41 OF 2018

(C/F Civil Appeal No. 22 of 2018 in the District Court of Arumeru, Original, Civil Case No. 53 of 2018, Enaboishu Primary Court)

NAFTAL LOTHO MOLLEL.....APPELLANT

VERSUS

JACKSON LANGEI.....RESPONDENT

JUDGMENT

18/08/2020 & 16/11/2020

GWAE, J

This is the second appeal filed before this court by the appellant. The appellant above was the defendant before the Enaboishu Primary court where a claim of Tshs. 1,500,000/= was instituted against him by the respondent herein. The trial court's findings were that a claim of Tshs. 1,500,000/= was proved only to the tune of Tshs. 1,000,000/= and therefore the respondent was entitled to the payment of Tshs. 1,000,000/= by the appellant.



Aggrieved by the said decision, the appellant appealed to the District Court challenging on the evaluation of evidence which he alleges to be contradictory on the justification of the sum of Tshs. 1,500,000/=. The first appellate court entirely upheld the decision of the trial court and hence this second appeal.

Before this court as the second bite, the appellant has raised four grounds of appeal namely;

- i. That, the trial and appellate courts erred in law and fact by adjudicating the matter in favour of the respondent herein, while there was no evidence justifying the claim of Tshs. 1,500,000/=
- ii. That, the trial and appellate courts erred in law and facts by giving judgment in favour of the respondent herein while there was a contradiction of evidence.
- iii. That, the appellate court erred in law and facts by adjudicating the matter in favour of the respondent herein by conceding with primary court trial judgment which was not based on any law by citing a law to justify the primary court judgment as if he was the trial Magistrate.
- iv. That, the appellate Magistrate erred in law and in fact by adjudicating and giving judgment in favour of the respondent herein beyond of what was appealed against without any justification.



When the matter came for hearing the appellant was represented by the learned counsel **Mr. Priscus Massawe** whereas the respondent appeared in person and by the leave of the court the appeal was argued by way of written submission.

Supporting his appeal, the appellant's counsel submitted that both the trial court and the first appellate court erred to ascertain the claim in the absence of sufficient evidence as to a valid contract between the respondent and the appellant taking into account the value of the subject matter. Furthermore, the counsel contended that even the status of the respondent is questionable as to whether he is a registered court broker capable of executing court orders or whether he is a registered business man capable of doing business on behalf of another person. The counsel went on submitting that even the evidence of the respondent and that of his witness one Joel Rivangosi is contradictory on the amount claimed. The respondent in his testimony stated that the money he is claiming against the appellant is Tshs. 1,500,000/= whereas his witness stated that the money claimed is Tshs. 1,000,000/=. According to the learned counsel this kind of evidence distorted the whole had no weight in justifying the claim.

In reply, the respondent submitted that the absence of a written agreement does not in any way invalidate the oral contract which they entered. Citing section 10 of the law of Contract Act Cap 345 R.E 2002 the respondent stated that for a



contract to be valid and legally enforceable there must be capacity to contract, intention to contract, consensus ad idem, valuable consideration, legality of purpose and sufficient certainty of terms. According to him the oral contract entered between him and the appellant met all the requirements as provided by section 10 of the Law of Contract Act. On the issue of contradiction of evidence, the respondent stated that his witness SM2 who was the ten-cell leader witnessed the oral agreement between the parties where the agreed amount was Tshs. 1,000,000/= however the parties later on had another agreement which was not witnessed by SM2 and in this agreement the appellant agreed to add another Tshs. 500,000/= making a total of Tshs 1,500,000/=. The respondent therefore prayed for the dismissal of this appeal as the appellant is only trying to play delaying tactics.

In rejoinder, the appellant basically reiterated what he stated in his submission in chief, and added that the court cannot rely on a single witness to prove oral agreements.

After considering the parties submission, I am of the considered view that the issue for determination by this court is on evaluation of evidence of the trial court. The respondent's case before the trial court was that he is claiming a total of Tshs 1,500,000/= from the appellant being the consideration agreed by the parties upon the respondent selling the land belonging to the appellant. The parties

had agreed that the respondent to sell four plots belonging to the appellant for Tshs. 26,000,000/= and upon completion of the selling the appellant was to pay the respondent the amount claimed. The respondent went on stating that he managed to sell three plots worthy Tshs. 20,000,000/= and before he completed selling the last plot the appellant stopped him and denied to pay him the agreed amount. Supporting his claim, the respondent brought two witnesses.

The appellant on another hand had a different story where he claimed to have sold his land on his own and that the respondent did not help in any way to the selling of his land.

From the given circumstance of the case, to begin with the amount of the money claimed, I think the trial court made a settle position on the amount that the respondent is claiming against the appellant and I support such findings basing on the evidence of Sm2 Joel Kivangasi who was the ten-cell leader who witnessed the oral agreement between the parties. According to this witness the amount agreed between the parties was Tshs. 1,000,000/= even though the respondent alleges that the said amount was later on increased but he failed to prove on the same therefore the amount claimed shall remain to be Tshs. 1,000,000/=.

In this appeal the appellant is also challenging the contract between the parties, the appellant is of the firm view that this kind of agreement ought to have been concluded in writings, while the respondent maintained that the parties

executed an oral agreement and according to him this contract was valid and binding to the parties. Supporting this argument, the respondent cited section 10 of the Law of Contract Act. The said section is reproduced hereunder;

“All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration, and with a lawful object.”

From the cited provision of the law the question that arises is whether the respondent was a competent person to enter into the alleged oral contract. The respondent alleges to have entered into a contract of selling four plots of land belong to the appellant for a consideration of Tshs. **1,500,000/=** in simple words the respondent here was playing the role of a broker where he would look for the buyers and sell the plots on behalf of the appellant or they friendly entered into family and mutual agreement with legal effect.

The respondent's act of looking for buyers of the parcels of land denotes that he was acting as a broker while in actual fact he is not a director of company registered and licensed under section 4 of the General Actioners' Act Cap 227 R.E, 2002.

The respondent if truly entered into an oral agreement with the appellant he did so on his perils since a court of law cannot enforce agreements which are contrary to laws. In the similar predicament, this court (**Mackanja, J**) at Mwanza

where an individual not registered advance a loan to such other person was found to be illegal in **David Charles v. Seni Manumbu**, Civil Appeal No. 31 of 2006 it was held;

“There is no doubt that when advancing the loan to the appellant, the respondent did not do so as a bank or a financial institution. To that extent the transaction through which the plaintiff advanced the loan to the appellant is totally illegal”

In this present case, the respondent a director of a company duly registered for doing court broker’s businesses,

In the end result, this appeal has merit, the appellant’s appeal is allowed. The decisions of the lower courts are quashed and aside, in the circumstances of the case, each party shall bear costs of this appeal and those incurred in the courts below.

Order accordingly.



M. R. Gwae
Judge
16/11/2020

Court: Right of Appeal fully explained



M. R. Gwae
Judge
16/11/2020

