



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**LAND CASE APPEAL NO. 23 OF 2017**

**IDRISA JUMA.....APPELLANT**

***VERSUS***

**KHALID SULEIMAN GALIATANO.....RESPONDENT**

**JUDGMENT**

*Date of last order 03/04/2020*

*Date of judgment 29/04/2020*

***N.N. Kilekamajenga, J.***

The appellant being dissatisfied with the decision of the District Land and Housing Tribunal for Kagera at Bukoba appealed to this Honourable Court seeking for justice. The gist of the dispute in this case is as follows: On 3<sup>rd</sup> June 2004, the appellant borrowed Tshs. 500,000/= from the respondent and bonded his house. The house is located at the heart of Bukoba town. The applicant agreed to pay an interest of Tshs. 220,000/= to the said loan making the total value of the loan to Tshs 720,000/=. The agreement was written and endorsed by the parties in the presence of an advocate. The appellant later approached the respondent for another loan of Tshs. 45,000/-. Before, the applicant finished paying the whole loan, the respondent filed a suit in the District Land and

Housing Tribunal alleging that the appellant defaulted in paying the loan. The tribunal ordered the appellant to pay the outstanding balance of Tshs. 600,000/- plus annual interest of 12% from 1<sup>st</sup> January 2005. However, the decree thereof stated that the respondent's prayer to attach and sell was allowed. The appellant thereafter preferred an appeal before this Court. He advanced five grounds of appeal thus:

- 1. That the learned Chairman of the trial Tribunal erred in law and in fact to hold that the appellant is still indebted to the respondent to the tune of Tshs. 600,000/=, without taking into consideration that the appellant has already settled the entire debt of Tshs 785,000/=.*
- 2. That the learned Chairman of the trial Tribunal went wrong in law and in fact to enter the judgment in favour of the respondent, without taking into consideration that his claim of the outstanding loan and also the claim of there being a mortgage as the security for the same were not proved to the required standard of strict proof by the respondent as required by the laws of the land.*
- 3. That the tribunal misdirected itself to enter the judgment and decree in favour of the respondent, which are at variance with that between what was tried and what was finally decreed in contravention of the mandatory provisions of the law as provided under rule 4 and rule 6 (10 of order XXX of the Civil Procedure Code Act [Cap. 33 R.E 2002].*
- 4. That the learned Chairman of Bukoba DLHT went wrong in law and in fact to certain the suit and decide the same in favour of the respondent, without according me with an opportunity to defend myself and to produce material documentary evidence to that effect.*

*5. That the learned Chairman of the trial Tribunal went wrong in law to enter the judgment that falls short of what constitutes a judgment in terms of rule 20(1) (a), (b) (c) and (d) of GN No. 174 of the Land Disputes Courts (The DLHT) Regulations 2003 read together with rule 4, 5 and rule 6(1) and (2) order XX of the C.P.C Act supra, for failure to state clearly the facts of the case, establishing each fact by reference to the particular evidence by which it is supported and for failure to give sufficiently and plainly the reasons that justifies the findings of the trial tribunal.*

When the appeal was called for hearing, both the appellant and respondent appeared in person and without legal representation. The appellant had a long submission. The agreed to borrow Tshs. 500,000/= from the respondent with an interest of Tshs. 220,000/-. Thereafter, the appellant paid back Tshs. 120,000/- but later failed to pay back the loan. He approached the respondent and they orally agreed new terms to pay the remaining amount of money. The respondent allowed the appellant to pay any amount of money at unspecified instalments. On 17<sup>th</sup> July 2005, the appellant approached the respondent for another loan of Tshs. 45,000/= with an interest of Tshs. 20,000/=. So, the new loan stood at Tshs. 785,000/=. Nevertheless, when the new agreement was made, the appellant had paid Tshs. 120,000/= to the initial loan. So they agreed to set off that amount of money. Thereafter, the appellant continued to repay the loan as follows:

*(a) On 25/04/2006, he paid Tshs. 30,000/-;*

- (b) On 02/09/2006, he paid Tshs. 30,000/-;*
- (c) On 09/11/2007, he paid Tshs. 70,000/-;*
- (d) On 18/12/2007, he paid Tshs. 535,000/-.*

Therefore, the appellant finished paying the debt on 18<sup>th</sup> December 2007. However, before paying the whole debt, the respondent filed a suit before the District Land and Housing Tribunal applying to attach and sell the appellant's house. The respondent never informed the appellant about the case. The appellant knew about the case through a friend. The appellant later followed-up and attend the case. During the hearing of the case, the tribunal chairman ordered the appellant to surrender all the documents pertaining to the loan. The chairman received the documents and immediately informed the police. The appellant was arrested and charged with forgery before the District Court of Bukoba. Later, the case on forgery was dropped. The tribunal finally pronounced its decision in favour of the respondent.

On the other hand, the respondent submitted that he lend Tshs. 500,000/= to the appellant with an interest of Tshs. 220,000/=. The appellant pledged his house to secure the loan facility. The appellant's wife also consented to the loan. Later, the respondent lend another Tshs. 65,000/=. The respondent confirmed that the appellant paid back Tshs. 285,000/= in different instalments. The respondent denied receiving Tshs. 535,000/= during the last instalment as

alleged by the appellant. He further alleged that the appellant forget documents and signature to show that he paid Tshs. 535,000/=.

It is pertinent at this stage to determine whether the appeal have merit. I should point out that, both the appellant and the respondent never argued the appeal in line with the grounds of appeal. This phenomenon is always commons to lay parties because it is difficult for them to argue as lawyers do. However, this Court cannot deny somebody's right on the ground that he/she failed to argue the case/appeal in line with the grounds. In the instant case, I carefully perused the whole file and discovered some pertinent information which I believe were necessary in disposing this appeal. First, both parties submitted that the appellant borrowed money from the respondent. He later failed to pay back the debt and approached the respondent for another amount of money. Still, the appellant failed to pay back the debt. Nevertheless, the first debt was secured by the appellant's house. The agreement of the first debt was reduced into writing in the presence of an advocate.

When the appellant failed to pay back the debt as agreed, the appellant approached the respondent and they both decided to alter the terms of the first agreement. The second loan of Tshs. 65,000/- was not secured by any collateral than the oral promise that the appellant would back as soon his financial position normalises. In fact, all these facts are not denied by the parties. It was later

agreed that the appellant would pay the respondent at an unspecified instalments. The appellant paid the whole debt in four instalments. The major dispute is hinged on one contention of whether the appellant paid the final instalment of Tshs. 535,000/=. The respondent does not object the fact that the appellant paid the first three instalments. He denied the fact that the appellant paid Tshs. 535,000/= to finish payment of the whole debt. On the other hand, the appellant argued that all the instalments were recorded in the note book which was kept by the appellant. The respondent had no any record on how the appellant paid the debt. The respondent vehemently argued that the appellant forged the respondent's signature showing that he paid Tshs. 535,000/= to justify payment of the debt. The issue of forgery was previously reported to the police who commenced a criminal investigation. The handwritings landed in the hands of handwriting expert who opined that the respondent's handwriting was forged. However, the criminal case against the appellant was later dropped and the appellant was discharged.

I have closely examined the contested handwriting and the report of the handwriting expert, in my view, I do not think if the report is worthy to be believed by this Court. In my view, the alleged forged signature appears to be the same as the one appearing on other documents. Furthermore, the respondent does not object the three instalments which he signed on the

appellant's book. The fourth instalment which is objected also appears on the same page and the respondent signed. In fact, the signature appearing on the fourth instalment is the same as those on the other instalments.

Furthermore, there is striking information worthy consideration. When the appellant paid the three instalments, before paying the fourth instalment, the respondent secretly filed a suit before the District Land and Housing Tribunal. The appellant was not informed about the suit against him. Thanks to the appellant's friend who went to the tribunal and heard the appellant's name. The major question that crops-up is, why the respondent failed to inform the appellant. The respondent possibly intended to take the pledged house maliciously. In my view, when the appellant discovered about the suit and entered appearance, the respondent doctored a criminal case against the appellant. As a result, the appellant was arrested and charged with forgery. The respondent might have wished for the appellant to be imprisoned for the respondent to take the house from behind doors. It is actually very sad how a four bedroomed house, which is located at the centre of Bukoba town, could be taken and sold for the debt of Tshs. 535,000/= under the pretext of un-cleared debt.

Furthermore, the judgment of the tribunal that determined the fate of the parties is contained on two pages. Anyway, the length of the judgment does not matter

if it contains substantial information. In the instant case, the judgment of the tribunal lacks reasoning contrary to the requirement of the law. Also, the tribunal chairman did not consider the assessors' opinion something which renders the decision defective. With respect, it does not deserve to be called a judgment. Furthermore, in the so called judgment, the chairman concluded with the following sentences:

*'That said I hereby allow the application before me. The respondent to pay the outstanding balance a total of Tshs. 600,000/= plus annual interest of 12% from 1<sup>st</sup> January 2005.'*

The judgment was followed by the decree. It was expected that the decree could capture what the appellant was ordered to do. Instead, the decree contains information different from the judgment. I take the discretion to quote the excerpt of the decree for clarity. The decree reads as follows:

*'The applicant in this application prays this tribunal the following orders:*

- *That the pledged house be attached and sold to enable the applicant to get back his money.*

*This application is coming up for final disposal this 28<sup>th</sup> June, 2017 before Kitunguru, E-Tribunal chairman assisted by Bwahama Tribunal assessors, in the presence of both parties.*

***IT IS DOTH (sic) HEREBY ORDERED THAT:***

*Application allowed with costs.'*

The above information prompted me to examine the relief claimed by the respondent in the District Land and Housing Tribunal. I found out that the respondent sought the following relief:

*'That the pledged house be attached and sold to enable the applicant to get back his money.'*

The information reveals the respondent's motive. He never intended to enforce the agreement to push the appellant to pay the debt. He intended to attach and sell the pledged house before the attachment procedures. As a matter of procedure, after the judgment and the appellant failed to honour the order of the tribunal, then attachment procedure could take the course. The respondent could file execution proceedings to enforce the order of the tribunal later. It is unprocedural how the chairman entertained the execution proceedings before determine whether the appellant failed to pay the debt. The information contained in the file does not move this Court to trust even the hand writing report. It seems as if the report was made to fortify the desire and wishes of the respondent who wanted to attach the appellant's house from the beginning.

Based on the above brief analysis, I find the appeal to be meritorious. I hereby set aside the judgment of the trial tribunal for containing blatant irregularities. On the other hand, I find the appellant proved his case at the balance of

probability that he paid back the debt and he does not owe the respondent any debt. It is so ordered.

Dated at Bukoba this 29<sup>th</sup> April 2020.

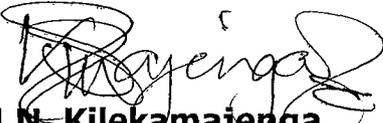


  
**N.N. Kilekamajenga**  
**Judge**  
**29/04/2020**

**Court:**

Judgment delivered in the presence of the parties this 29<sup>th</sup> April 2020. The right of appeal is explained to the parties.



  
**N.N. Kilekamajenga**  
**Judge**  
**29/04/2020**