

IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM  
CIVIL CASE NO. 200/2000  
KILUA ALI KISAKA .....APPELLANT  
VERSUS  
AGRICULTURAL IMEUTS  
TRUST FUNDS & OTHERS.....RESPONDENT

J U D G M E N T

LUANDA, J.

Kukopa Harusi, kulipa Matanga. This Kiswahili saying applies to this case. Literally translated in Englishi thus:--to borrow<sup>is</sup> joyous, whereas to pay back is sorrowful.

Having gone through the evidence of the parties and documents tendered in court there is no dispute that the plaintiff agreed with the defendant with the sole purpose of borrowing money. The plaintiff wrote a letter to that effect thereafter he filed in application form.

The plaintiff intended to borrow Tshs 20,000,000/= In return he was required to surrender a title deed as security. The plaintiff did that. The defendant took all necessary steps including filing notice of search in the Ministry of Land to see whether there was any encumbrance.

There was none. The title deed was in the name of the plaintiff. The transaction was completed on 2/4/1997. The plaintiff was to settle the debt latest by 18th March, 1998.

The plaintiff was unable to settle the debt as per the agreement. The defendant through <sup>Newspaper</sup> dated 9th May, 2000 published notice of sale of the mortgaged property. The plaintiff rushed to this court and instituted this suit in that the property attached should be released and the properties of the 3rd and 4th defendants be substituted.

He also filed an application for a temporary injunction. This court refused the order prayed for as there is no serious issue to be adjudicated upon.

The plaintiff denied to have mortgaged his house with the defendant. That is an afterthought. The evidence on record is loud and clear in that he was the one who borrowed the money and mortgaged his house as collateral. And to date he is yet to settle the debt.

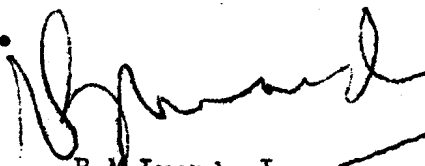
The defendant said they had already sold the house. Let me repeat what I had stated when ~~refusing~~ to grant temporary injunction.

I said:-


"... the only meaningful solution for him as a borrower and alike is to repay the loan and not to rush to the court of law for protection. Court of law will not accept lame excuses in not settling debts. And it will be the last institution, if at all, to protect such borrowers of the applicant's calibre"

In view of the foregoing, therefore, the suit has <sup>no</sup> merits. The same is dismissed with costs.

Order accordingly.

  
B.M. Luanda, J.  
9/7/2003

Judgment delivered Mr Ukongwa for the Plaintiff and Mr Lyimo for the defendant.

  
B.M. Luanda  
Judge  
10/7/2003