

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA SUB REGISTRY

AT TANGA

CIVIL APPEAL NO. 13 OF 2023

THE REGISTERED TRUSTEES OF THE ANGLICAN CHURCH

OF TANZANIA TANGA DIOCESE T/A HEGONGO

HOLLY CROSS SECONDARY SCHOOL APPELLANT

VERSUS

OCTOPUS SECURITY SERVICES LTD RESPONDENT

(Arising from Civil Case No. 02 of 2022 of the Resident Magistrate's Court of Tanga)

JUDGMENT

29/02/2024 & 16/04/2024

NDESAMBURO, J.:

The appellant was sued before the Resident Magistrate's Court in Civil case No. 02 of 2022 which centred on an alleged breach of contract related to the provision of security services by the respondent. After the trial, the respondent emerged victorious. Dissatisfied with the judgment rendered by the trial court, the appellant now stands before this court, appealing against the said decision.

The material background facts of the dispute are straightforward. In 2019, the appellant and respondent entered a written contract for security services at the appellant's school. The agreement, valid from the 1st of January to the 31st of December, required the respondent to provide seven security guards at Tsh. 1,260,000/= per month. Despite these terms, misunderstandings arose, leading to the respondent's lawsuit in the Resident Magistrate's Court. Notably, the contract was initially with Market Security Company which later changed its trading name to Octopus Company after its director's demise. Additionally, it is worth noting that, before 2019's contract, the record reveals that, the parties had a similar contract in 2018, concluding in 2019.

During the trial, the respondent presented two witnesses to strengthen her case. According to the respondent's testimony, a contractual relationship began in 2018, wherein the respondent was obligated to supply seven security guards to the appellant at a monthly cost of Tshs. 1,260,000/=. In 2019, they formalised the agreement via Exhibit P1. It was further testified that the contract was meant for renewal in 2020, however, the appellant did not sign it, yet the services were continued. The respondent further contended that, despite her fulfilling the terms of the contract by

providing security guards, the appellant only paid Tshs. 2,520,000/=, leading to the initiation of the lawsuit.

The appellant, through her two witnesses, acknowledged hiring the respondent for security services in 2018 and 2019, with a yearly contract at Tshs. 1,260,000/= per month for seven security guards. However, it was her continuous that, the respondent failed to fulfil her obligation and supplied only one security guard. Consequently, she did away with the contract and hired her security guards. However, she paid the respondent Tshs. 2,520,000/= for the provided security guard.

Having heard the parties, the trial court found that the respondent's evidence was heavier than the appellant's and entered the judgment in favour of the respondent, prompting the appellant to appeal. The grounds for the appeal are as follows:

- 1. That, the trial court grossly erred both in law and facts when passed right to the respondent herein in sheer regard that failed to exercise her obligation of proving the claim to the required legal standard.*
- 2. That, the trial court grossly erred both in law and facts when failed to evaluate well the evidence of the parties and pass the right to whom evidence is stronger than the other which led to a miscarriage of justice.*

3. That, the trial court erred both in law and facts when found that the appellant was liable for breach of contract without taking into account that from the beginning the contract was neither specifically performed by the respondent nor there was any evidence to prove such specific performance as agreed.

The appellant therefore prayed for this appeal to be allowed, and the decision of the trial court to be quashed and set aside. At the hearing, the appellant was represented by Mr. Justus J. Ilyarugo, a learned counsel. While for the respondent was Mr. Atranus Method, also a learned counsel. Parties argued the appeal through written submissions.

Mr. Ilyarugo on the first ground of appeal, faulted the trial court's decision contending that, the matter being based on the contract, the respondent was duty bound to establish on the balance of the probabilities that she had a contract with the appellant and indeed executed the contract in her part.

The learned counsel emphasized that parties are bound by their pleadings, and according to the plaint, the respondent pleaded that she had an agreement with the appellant for the supply of security guards since 2018 for 12 months only. It was

further pleaded that the contract was to be renewed for the years 2019, 2020 and 2021. However, during the trial, only the 2019 contract, Exhibit P1 was tendered. Mr. Ilyarugo asserted that the failure to tender the other contracts entails that the respondent failed to prove her case to the required standards.

The counsel further contended that the appellant successfully demonstrated the existence of a one-year contract in 2019. However, the respondent breached the contract by failing to supply the agreed-upon seven security guards, thus violating the terms of the agreement.

Regarding the second ground of the appeal, the appellant faults the trial court for neglecting to analyze the presented evidence. While acknowledging the existence of a one-year contract for security guards supply, the appellant asserts that the respondent breached the contract by failing to provide the agreed seven security guards. The appellant urges this court, as the first appellate court, to reevaluate the evidence on the record and come up with its own decision.

On the final ground of the appeal, the learned counsel urged this court to consider the submission on the two grounds and held

that the trial court erred in holding that the appellant was liable for the breach of the contract as from the beginning the contract was neither specifically performed by the respondent nor there was evidence adduced to prove such specific performance as agreed.

Responding to the first ground, the respondent's learned counsel asserted that his client fulfilled her duty and, on the balance of probabilities, substantiated her claim by presenting exhibits and oral testimonies. The learned counsel rejected the appellant's allegation of a breach of contract, particularly the claim that the respondent provided only one security guard instead of the agreed-upon seven. It was argued that this allegation was a mere assertion, not formally pleaded, and consequently lacked proof.

Regarding the second ground, Mr. Mkago argued that the trial court appropriately assessed the evidence in accordance with the terms of the contract signed in January 2019.

On the final ground of the appeal, Mr. Mkago contended that parties are obligated to honour the terms of the contract. He dismissed the appellant's assertion that there was no specific performance of the contract, deeming it unfounded.

No rejoinder submission was filed.

Having closely examined the record of appeal and taken due consideration of the written submissions guided by the principles governing the burden of proof in a civil case, the court is left with only one duty and that is to assess the grounds of appeal raised.

The three grounds of appeal will be addressed collectively. The first ground of appeal presented to this court challenges the decision on the basis that the respondent failed to substantiate her claim on a balance of probabilities. Additionally, the learned counsel contends that the respondent did not align her claim with the pleadings. The second ground asserts that the trial court neglected to properly assess the evidence presented by both parties, resulting in a miscarriage of justice. Finally, the appellant contends that the contract was not specifically performed, nor was there any evidence to support such specific performance.

Based on the trial court records, the respondent supported her claim by stating in paragraph 7 of the plaint that she had entered into a contract with the appellant for the year 2018 for the provision of security guards. Additionally, she asserted that this agreement was renewed on both 1st January 2019, and 1st January

2020. The oral testimonies of the respondent's witnesses were to the effect that, the parties in 2018 had the contract however, the same was reduced in writing in 2019 and the same was tendered as Exhibit P1. In their testimonies, the respondent's witnesses further narrated how they entered into the 2019 contract for the supply of seven security guards to the appellant's site and that, the seven guards were working at the appellant's site. The presence of the 2019 contract was not contested in the Written Statement of Defence. Furthermore, both witnesses for the appellant acknowledged the existence of both the 2018 and 2019 contracts. The appellant, throughout the testimonies of her witnesses, admitted to making a payment of Tshs. 2,520,000/=, indicating that the contract did not proceed smoothly, leading to the decision not to renew the contract and instead hire security guards independently.

In answering the first and second issues framed by the court of whether there was a contractual relationship between the parties and whether there was a breach of contract, the honourable Principal Resident Magistrate was satisfied that, the parties had a contract commencing from January 2019 to December 2019 which was tendered as Exhibit P1. That among the

contractual terms as exhibited by Exhibit P1, include payment of Tshs. 1,260,000/= for seven security guards. The Bank Statement, Exhibit P3 proved that the appellant only paid for Tshs. 2,520,000/= equals two months' payment leaving behind ten months' payment. The trial court brushed the appellant's claim that, the Tshs. 2,520,000/= was payment for one security guard plus the extra duty as the same lacks support from Exhibit P1 and the pleadings. That being the case, the honourable Principal Resident Magistrate held that the appellant breached the contract for her failure to pay the outstanding balance and hence liable for breach of a contract.

In assessing the grounds of appeal, this court wishes to reiterate the burden of proof in civil cases, which is that, the burden of proof lies on the person who alleges anything in her favour.

This is as per section 110 of the Evidence Act, Cap 6 R.E 2022. Further to that, the standard of proof required is that of a balance of probabilities and the part with heavier evidence will succeed:

Paulina Samson Ndawavya v Theresia Thomas Madaha, Civil Appeal No. 53 of 2017, CAT (unreported).

In this matter, it is evident that the respondent herein successfully substantiated her case to the required standard, and the trial court appropriately evaluated the evidence presented before it, resulting in the correct decision. The evidence presented unequivocally establishes that the respondent entered into a one-year contract with the appellant for the provision of seven security guards at a monthly rate of Tshs. 1,260,000/=, a fact corroborated by Exhibit P1 and confirmed by the testimonies of DW1 and DW2, as documented on pages 26 and 30 of the typed proceedings. This contractual arrangement was explicitly outlined in paragraph 7 of the plaint and remained uncontested in the Written Statement of Defence.

During the trial, DW1 affirmed that the parties had initially engaged in a one-year contract for the provision of seven security guards. However, this agreement was not renewed due to unsatisfactory performance. Under cross-examination, DW1 stated that the intention to terminate the contract was communicated to the respondent in 2020. Similarly, DW2 attested to the existence of a 2019 agreement between the parties, which terminated after the respondent only provided one security guard instead of the contracted seven. However, both testimonies lacked substantial

evidence to substantiate the claim of non-supply of the agreed-upon number of security guards within the contract period. Conversely, ample evidence indicates the appellant's failure to adhere to the agreed-upon payment terms.

Based on the above evidence and analysis, it is evident that the respondent met the burden of proof to the required standard, and the trial court thoroughly evaluated the evidence presented before it. Consequently, this court cannot uphold the appellant's position, and therefore, the grounds of appeal are unlikely to succeed.

In the view of the foregoing and in the light of what I have endeavoured to discuss, the decision of the trial court is upheld. The appeal is therefore dismissed with costs.

It is so ordered.



DATED at **TANGA** this 16th day of April 2024

A handwritten signature in blue ink, appearing to be "H. P. Ndesamburo".

H. P. Ndesamburo

JUDGE