

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)**

AT MWANZA

PC. CIVIL APPEAL No. 65 OF 2020

(Arising from the decision of the District Court of Ukerewe at Ukerewe in Civil Appeal No. 02 of 2020, Originating from Bukindo Primary Court in Civil Case No. 08 of 2020)

KISUMO LEONARD APPELLANT

VERSUS

SUMIRA BARNABA RESPONDENTS

J U D G M E N T

Last Order date: 16.06.2021

Judgment Date: 21.06.2021

A.Z.MGEYEKWA, J

The appellant appealed against the judgment of the District Court of Ukerewe at Ukerewe in Civil Appeal No.02 of 2020, which was decided in favour of the respondent. The material background facts to the dispute are not difficult to comprehend. We find it fitting to narrate them, albeit briefly, in a bid to appreciate the present appeal. They go thus: that on 10th March 2020 the appellant filed Civil Appeal No.02 before Bukindo

Primary Court claiming from the respondent an amount of Tshs. 985,000/= being the alleged sum of the carpentry tools entrusted to the respondent. At the first trial court, the applicant lost the case and the respondent was to pay the appellant Tshs. 985,000/= as claimed plus 20,000/- being costs of the case. The Respondent could not see justice and appealed to the District Court of Ukerewe at Ukerewe vide Civil Appeal No. 02 of 2020.

Upon hearing the appeal the first appellate court reversed the decision of the trial court and decide in favour of the appellant. Aggrieved, the respondent (now the appellant) decided to file the instant appeal before this court containing two grounds of appeal as follows:-

- 1. That the appellate court grossly erred in law and in fact to hold that the award of 985,000/= to the plaintiff (appellant) was unjustifiable.*
- 2. That the first appellate court misdirected itself and failed to evaluate properly the evidence adduced by the appellant and his witness.*

When the matter was called for hearing on 16th June, 2021 both parties appeared in person, unrepresented.

The appellant being the first to toss the ball, submitted that they had a business together with the respondent at a tune of 985,000/= equipment

which was inside their office. He went on that the trial court order the respondent to pay him Tshs. 985,000/= or return the equipment. Dissatisfied the respondent filed an appeal to the district which reversed the decision. He claims that the trial court decided right and 1st appellate court was wrong to reverse the findings.

Submitting on the 2nd ground of appeal, he submitted that the trial court did not consider his evidence on the trial and his witnesses were truthful and their claims genuine. He ended praying this court to adopt his grounds and allow his appeal.

Responding, the respondent was very brief, he submitted that he never worked with the appellant as claimed alleged debt to a tune of Tshs. 985,000/= being the value of the equipment was a lump sum, the appellant did not break down the price of each piece of equipment. He avers that the 1st appellate court was right to find that the trial court erred and reversed the findings. He prays this court to find that the appeal is demerit.

Rejoining, the appellant reiterates his submission in chief and insisted that the two of them were working together. He valiantly stressed that the appellant has to pay him.

I have keenly followed the parties' arguments for and against the appeal. Now I turn to determine the grounds of appeal whereas I have opted to

address the grounds of appeal separately. The issue for determination is *whether the appeal is meritorious*.

I am not losing sight of the fact that this is a second appeal and as a general rule, this court may not interfere with the concurrent findings of facts by the two courts below. Consequently, the trial court found the appellant's claims were genuine and the first appellate court found that the trial court misdirected itself, as result, it revised the decision of the trial court. Therefore per the general rule referred to above this court may not fault that finding. However, there is an exception to that rule, and that is when the finding has been reached in misapprehension of facts or wrong interpretation of a principle of law. **In Jafari Mohamed v Republic**, Criminal Appeal No. 112 of 2006 (unreported), The Court of Appeal of Tanzania held that:-

"An appellate court, like this one, will only interfere with such concurrent findings of fact only if it is satisfied that "they are on the face of it unreasonable or perverse leading to a miscarriage of justice, or there had been a misapprehension of the evidence or a violation of some principle of law: see, for instance, Peters v Sunday Post Ltd. [1958] E.A. 424: Daniel Nguru and Four Others v Republic, Criminal Appeal No. 178 of 2004, (unreported).

Addressing the first ground, that the appellate court erred in law and in fact to hold that the award of Tshs. 985,000/= to the plaintiff was unjustifiable. I have perused the records of the trial court just to find what actually transpired at a trial court. The basis of this appeal was a claim of TShs. 985,000/= by the plaintiff who is an appellant in this appeal, being the sum equivalent with the carpentry equipment entrusted to the respondent. The trial court decided in favor of the plaintiff. Going through the judgment of the trial court, I noted that there was no any description of the carpentry tools and in fact what was their value to justify the sum awarded.

Going through the first appellate court records, it is my findings that the trial magistrate warned himself in the determination of the appeal which in fact, I find that the first appellate court was right to overrule the first trial court decision. I am in accord with the first appellate court that no evidence shows that the appellant entrusted the equipment to the respondent. There is no any description and value of the equipment to justify the amount awarded and the trial court did not state reasons for its decision to award the appellant a total sum of Tshs. 985,00/= . On page 5 of the typed trial proceedings, when cross examined the appellant mention the carpentry equipment's to include among others: "...mbao 8, mlango 1,

dirisha na meza” I am asking myself whether the same forms part of the equipment's claimed, does that really qualify carpentry equipment?

Additionally, what is of note, however, is the fact that the appellant's prove does not shift the liability to the respondent. The appellant's claims were not supported by any documentary evidence, the same was a mere claim. It should be recalled that a claim is awarded after a thorough assessment of the said claim, supporting documents, and all the prevailing conditions and found on the contrary a mere statement or argument or damages. The same was observed in the landmark case of **Cooper Motors Ltd v Moshi Arusha Occupational Health Service** [1990] TLR 90, in which it was held that:-

“ ...a mere statement or prayer of a claim for damages will not support a claim for any particular injury or loss ...”

Guided by the above authority, the appellant has not moved this court to revise the first appellate court decision. The above said this ground is demerit.

On the second ground, the appellant complained that the first appellate court misdirected itself and failed to evaluate properly the evidence adduced by the appellant and his witness. As I have addressed in length the first ground; the appellant is the one who alleged, however,

he was not able to convince the court that the respondent took his equipment. He claimed that the respondent went to his place and told the appellant to make 20 chairs, table, doors but he did not pay him. He claimed that he reminded the respondent to effect the said debt to no avail. Then he decided to institute a case. The appellant admitted that he rented the equipment to the respondent orally. The first witness of the appellant testified to the effect that the appellant and respondent are carpenters and sometimes they work together. He said that he saw the appellant taking equipment at the respondent's utensils.

In my view, the appellant and his witness were not able to prove their case. The same were mere allegations therefore this ground cannot stand. The law requires that the one who alleges must prove. The burden of proof lies with the persons who instituted the suit. The Rule finds backing from the provisions of sections 110 and 111 of the Law of Evidence Act, Cap.6 [R.E 2019] states categorically to whom the burden of proof lies as follows:-

" 110 (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

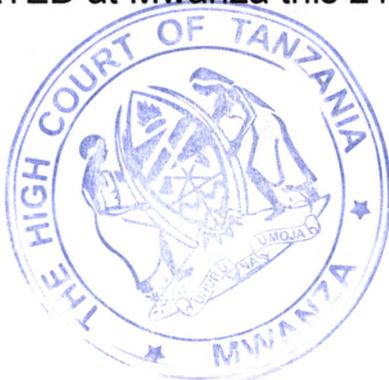
(3) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

From the above position of the law, the burden of proof of the same at the required standard was left to the appellant (original plaintiff) being the one who alleges. However, the appellant failed to prove his allegations as I have elaborated above,

In the upshot, I find that the appellant has failed to prove his case, therefore I uphold the decision of the first appellate court and proceed to dismiss the appeal. Each party to shoulder his/her own costs.

Order accordingly.

DATED at Mwanza this 21st June, 2021.




A.Z.MGEYEKWA

JUDGE

21.06.2021

Judgment delivered on this 21st June, 2021 via teleconference whereas both parties were remotely present.


A.Z.MGEYEKWA

JUDGE

21.06.2021