

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

CIVIL APPEAL NO 20 OF 2021

(Originating from Civil Appeal No 3 of 2021 of the District Court of Liwale)

**ZUWENA MUWANGO.....APPELLANT
-VERSUS-
MTAKULA RASHIDI KWEPU.....RESPONDENT**

JUDGEMENT

Last Date of Order: 10/5/2022

Date of Judgement: 26/7/2022

Laltaika, J.

It is unusual for an appellant in a civil suit to display fear for his/her life to the extend of praying for the court to assist her transfer from her work station to any other place. It is equally unusual for a litigant to admit that he/she has had enough in the name of fighting for her rights and that he/she felt helpless. Apparently, this cry comes from a woman who believes that a group of men have teamed up to make her life unbearable to the extent that she considers herself a "foreigner" in her own country.

The appellant herein **ZUWENA MUWANGO**, a native of Masasi District in Mtwara Region is a civil servant employed by LIWALE District Council as a nurse. She is married to Ramadhani Shekalage who, as it will be explained in this judgement, has had a more than a fair share of suffering while standing for his wife on this case including a three months

imprisonment sentence for, allegedly, contempt of court. Punishment meted by Liwale Urban Primary Court.

The respondent, on the other hand, is a native of LIWALE, a businessman and a farmer. He is also connected to Dar-es-Salaam, Tanzania's business hub as will be apparent in this judgement.

In simple, straightforward and accessible language, the facts of this case as can be gleaned from the lower court records and oral submissions of the parties is as follows: It was in 2015 when the appellant lent a total of TZS 1,000, 000 (One Million Tanzania Shillings Only) to a person called **Saidi Ally Mchekenje**. The borrower promised to use the amount received for business purposes and return back twice the amount that is 2,000,0000 to the appellant after three months.

The borrower did not fulfil his promise prompting the appellant to report him to his (now deceased) parents, way back in 2018. The parents ordered their son to pay the money he owed the appellant but with no avail. In 2019 the appellant reported the matter at Liwale Police Station. The Officer Commanding District (OCD) summoned the borrower and he promised to pay the appellant by September 2015. He did not.

Upon several reminders and attempts by the OCD to ensure the appellant is paid back her money, the borrower kept making even more promises but never fulfilled any. Finally, the OCD, allegedly, advised the appellant to take anything of value from the borrower and report to authorities as a way of compelling him to pay the debts.

Acting on the advice of the OCD, the appellant started making arrangements to retain musical instruments she believed belonged to the

borrower. She decided to call his manager to order music services for a party. When the DJ brought the music instruments the appellant retained them at her home place and called the Hamlet leadership "*Viongozi wa Mtaa*" to witness. The DJ was told that there was no any party and that the purpose was to withhold the music instruments to compel the borrower Mr. Mchekenje to pay his debts. The DJ listed down the music instruments retained and was issued with an acknowledgement note for such retention on 28/5/2020.

The appellant, thereafter, reported the retention of the property at Liwale Urban Primary Court. The borrower was summoned. He entered appearance and agreed that he would pay the appellant the two million shillings.

A few days later, things took a completely different turn. The appellant received a summons from the same court that had ordered the borrower to pay her the stated amount. She was accused of taking away music instruments belonging to one Mr. Kwepu. The Liwale Urban Primary Court (Hon. Emanuel Johanes Monyo, RM) ruled in favour of the respondent and ordered the appellant to, among other things, to return the music instruments to the respondent and pay a compensation of 100,000 for every day that the music instruments were kept by the appellant.

Dissatisfied by the above decision, the appellant appealed to Liwale District Court. The learned Magistrate C. Mtui, with all due respect, found refuge in technicalities and dismissed the appeal albeit with some minor alterations as will be apparent later in this judgement.

When this matter was called for hearing on the 10th May 2022 both the appellant Ms. ZUWENA MUWANGO and the respondent MTAKULA RASHIDI KWEPU appeared in person unrepresented by counsel. Earlier on, the appellant had filed a petition of appeal where she narrated the facts leading to this appeal and prayed that the judgement and decree of the District Court be dismissed with cost.

In her oral submission, the appellant, by and large, expounded on the facts hitherto recounted in the petition of appeal. The same has been summarized in the preceding paragraphs.

It is Ms. Muwango's submission that after retaining the musical instruments as narrated above, she went to Liwale Urban Primary Court where the borrower Mr. Mchekenje was actually summoned and agreed to pay his debts. However, when she received a summons that the current respondent had complained against her, they appeared before another magistrate. The appellant insists that she does not know the respondent Mr. MTAKULA RASHIDI KWEPU.

Ms. Muwango submitted further that as the case commenced, she left Liwale for further studies at Mlimba College in Morogoro. As a result, she donated a power of attorney to her husband Ramadhani Shekalaghe. The appellant submitted further that in the course of prosecuting the case on her behalf, her husband was sentenced to three months' imprisonment allegedly for contempt of court. He was ordered to produce the musical instruments for evidentiary purposes but failed.

Ms. Muwango went on to submit that sentence meted against her husband hurt her very much. She stated that she reported the matter with the District Commissioner who in turn advised the then District Magistrate to ensure the appellant's husband was treated fairly.

Submitting amid tears, the appellant stated that the courts below had ordered her to pay the respondent a total of nineteen (19) million to the respondent because she had stayed with his music instruments for a long time. The appellant insisted that she was never supplied with a copy of the Primary Court's judgement. She asserted that the case at the Primary Court was a family arrangement to inflict her with pain. She asserted further that the said Saidi Mchekenje was a cruel person. He had conned many people. The appellant concluded her submission in chief by a prayer that this court ensures her rights are protected and that she receives the money she had given to Saidi Mchekenje.

In response, Mr. Kwepu stated that he is the owner of the music instruments in dispute and that he had inscribed his label ***Kwepu Disco Sound*** to all his musical instruments. He stated further that he had been in Liwale since 2019 for entertainment related business.

It is the respondent's submission that one day in 2020 a manager with Samoma Pub called Mfaume Mbegu contracted him to provide entertainment to his customers attending the pub. There was an agreement between them, the respondent asserted, that he would be free to leave the pub for any other job should an opportunity arise.

It is Mr. Kwepu's submission that on 25/5/2020 such an opportunity arose from the appellant. Mr. Kwepu asserted further that the appellant

wanted music for a birthday party of her child. She came on 27/5/2020 and he received a call from his assistant that the appellant the client (Ms. Muwango) had come with 100,000. Mr. Kwepu submitted further that he allowed his assistant to accept the deal but to his surprise, on 29/5/2020 he got a message that his music system had been restrained by a lady called Zuwena because Saidi owed him some money.

It is Mr. Kwepu's submission further that on 2/6/2022 he reported the matter at to the police but was told that the issue was under the OCD. The OCD came to the station after three hours whereupon the respondent introduced himself as the owner of Kwepu Music Sound. The OCD ordered him to produce receipts to prove that he was indeed the owner of the music system. He respondent that he was tied up with farming activities but the OCD insisted he went back for the receipt and for that he was not amused.

It is Mr. Kwepu's submission that he went on with his farming activities till 7/8/2020 when he took the receipts to the OCD who, in turn, checked the validity of the TIN number. Mr. Kwepu submitted further that he tried once again to open a police case but he was denied the opportunity. Mr. Kwepu asserted that he took his complaints against the police to the District Commissioner Hon. Sarah Chiwamba who also dismissed the allegations saying the respondent did not know what he was saying.

Mr. Kwepu submitted further that he was later able to institute a civil case against the appellant and that during trial, he was ordered to provide receipts and the contract he had with the appellant to provide entertainment (music) services. The respondent alleges that he produced receipts but he

had no copy of a written contract since their agreement was, allegedly made orally.

Mr. Kwepu concluded his submission by a prayer that this court orders the appellant to pay him for a total of 713 days that she has retained his music instruments adding that the appellant had kept the music instrument even after she was ordered by both the primary and district court to the contrary.

In a brief rejoinder, the appellant stated that she is a weak woman and could not just go and grab the music instruments without knowing who the owner was. Ms. Muwango submitted further that KWEPU was just a trade name chosen because it was easy and that it had nothing to do with the current respondent.

It is the appellant's submission further that the respondent is a local of Liwale and had only been to Dar es Salaam occasionally. She insisted that the respondent and the borrower of the money knew each other and that she was sure that the music system belonged to Mr. Mcchenje whom she firmly believes is a conman. The appellant concluded by pleading with this court to ensure her safety because she no longer felt safe and that in her opinion, the town was not safe for presumably people outside the district although she used the word "wageni" which could be translated as "foreigners."

I have dispassionately considered the rival submissions by both parties. I have also made a thorough review of the court file that contains the records of both the first appellate and the trial court. I must admit that this judgement has benefited tremendously from reflecting on the judgements

and proceedings of the courts bellow. I want to thank the learned magistrates for their tireless efforts to ensure justice is done.

Upon deep reflection on the court records, I must state on the outset that this is a unique case. It is one of those cases characterized by systemic injustice. I do not want to turn this judgement into a gender justice platform but I must state albeit in passing that the predicament of an African woman goes beyond domestic violence. Our legal system is yet to respond to systemic injustice that African women encounter in their daily lives. In a span of two years, the appellant has not only lost her hard-earned money to a man who has managed to hide himself through unjust legal processes but also witnessed her husband being sent to jail while trying to stand for her.

Systemic injustice is not easy to detect. This is because, those that benefit from proceeds of the same are usually deeply entrenched in the system to the extend that they can easily turn tables around. A complainant can be turned into an accused and vice versa. In this judgement, I will explain why I think this is a classical example of systemic injustice that must not be allowed to creep into our courts. Since parties were not represented by counsel, I will make reference to the grounds of appeal in a rather haphazard manner. The goal is to keep this judgement simple and straightforward by avoiding legal jargons and unnecessary references.

It should be recalled that when the appellant retained the property, she believed they belonged to her debtor, she not only called a local government leader to witness but also went ahead and registered the same in court. It is very unfortunate that a few days later the same court issued summons to the appellant over a case on the same subject matter.

It is my considered view that the learned Resident Magistrate at Liwale Urban Primary court erred in law and fact for allowing tables to be turned around to the detriment of the appellant who has several times described herself as a weak woman struggling to sustain her family. There is every reason to suspect that one of the court officers was involved in the racket to frame this seemingly fictitious and cruel suit against the appellant.

In her petition of appeal, the 6th ground faults the learned trial magistrate for failure to ascertain the plaintiff's ownership of the subject matter through production of relevant documentary evidence. To be fair, the respondent (then plaintiff) had produced some documentary evidence in the form of hand written receipts and the same were admitted as exhibits. Unfortunately, it only takes a person with ordinary skills in social issues to realize that those handwritten receipts said absolutely nothing about ownership of the business.

The appellant, on her part, believes that the respondent was brought into the picture as an evil plot to ensure that the music system is returned to her debtor through the backdoor. I agree. It is most unfortunate however that the learned trial magistrate failed to employ his analytical skills to uncover this plot that has occasioned untold pain and anguish in the family of the respondent.

In his submission, the respondent had indicated that both the OCD and the District Commissioner gave him a cold shoulder and he was never able to win the police to his side for a possible criminal charge against the appellant. I commend the Honourable District Commissioner and the *Afande*

OCD for their commendable stand against injustice. I allow the sixth ground of appeal.

This brings me to the tenth and eleventh grounds of appeal which are centered on remedies and costs respectively. The appellant has faulted the trial court for awarding the respondent with benefits that he never prayed for. I agree. It is undisputed that all the respondent (then plaintiff) wanted was repossession of the music instruments. The learned magistrate went ahead and granted remedies and costs which, not only were they far from the knowledge of the then plaintiff but also, in my opinion, too sadistic considering that the music system was merely kept at the appellant's home and never used for business purposes.

The appellant in her first ground of appeal has also faulted the (presumably) first appellate court for deciding the appeal against her, based on technicalities emanating from registration of a power of attorney. My fifty cents on this; it is hard to believe that the learned magistrate discovered that the power of attorney had not been registered on the date of composing her judgement, several months after the case file was assigned to her. Be it as it may, her impressive analysis of the issues ended up digging even a deeper grave with which to burry the rights of the appellant. I find this ground not only meritorious but also a timely reminder of our constitutionally ordained duty to dispense justice without being overtly tied up to technicalities. For these grounds, this appeal is partly successful as will be expounded in details bellow.

I did not only intend to make this judgement clear as I have repeatedly alluded to above but also fairly short. I am not sure I can achieve the latter

for the word count on my monitor is running beyond 2765 and counting. In any case I am going to make some not-so-conventional orders. As a result, instead of just listing down the orders, I am going to spare sometimes and add a sentence or two to each order.

1. The appellant is hereby ordered to return the music instruments to the respondent with immediate effects

One would ask, is it not contradictory? How can the same court that has made a finding that the appellant is not the owner of the music system order that the same be returned to him? This will serve two purposes, first it will relieve the appellant of the burden of keeping music instruments in her living room much to the detriment of family enjoyment. Secondly, the instruments are needed out there to support the fast-growing entertainment industry in our country. Continuous retention of the same may affect tax collection. We all need tax for development of our country. The appellant is advised to engage the local government authorities during handover. It is my sincere hope that the Honourable District Commissioner and the OCD will continue where they ended before the matter took an uglier shape through our courts. This will ensure that the handing over is properly documented to prevent anyone else within the borders of this country including the debtor Mr. Mchekenje, from demanding the music instruments from the appellant.

2. I set aside the order of payment of 100,000 per day to the respondent totaling 19,000,000 (nineteen million) by the time of instituting this case.

As discussed, this order by the learned magistrate came from his own imagination. It was never prayed for by the respondent and even though it emerged in the course of the trial, is not based on reality. It is meant to torment the appellant and cultivate a culture of vengeance. Someone would ask, what about the loss of earning occasioned by the respondent? The answer is simple, no one should be allowed to benefit from a wrongful act.

I strongly believe that the respondent simply agreed to be used by the debtor in what is commonly known in the streets as “kununua kesi” as evidenced by his litany of forged receipts with which he purports to be the owner of the Kwepu Music. However, if the respondent is aggrieved, he can appeal to the court of appeal. I must add that I strongly believe that the Honourable DC and *Afande* OCD will assist this court in ensuring that the appellant is not harassed during the handover and that peace is maintained throughout the process and beyond.

3. No orders as to costs

I know that this has been a costly undertaking to both parties. It has involved many other people not just family members. I am equally aware that parties have travelled more than 300 kilometers (one way) across the mighty Selous Game Reserve to access this court. Nevertheless, I am going to make no order as to costs. Each party shall bear their own cost. This should be a reminder that courts of law are not the only platforms for resolving disputes. Alternative dispute resolutions (commonly referred to by the popular acronym ADR) mechanisms should be promoted at all levels. It is also advised that should it be absolutely necessary to take once grievances to

court, attempts should be made to obtain legal advice. Both parties would have had fewer problems if they engaged a professional lawyer or at least obtained sound advice from one.

In summary 1. The appellant is hereby ordered to return the music instruments to the respondent with immediate effects. 2. I set aside the order of payment of 100,000 per day to the respondent totaling 19,000,000 (nineteen million) by the time of instituting this case. 3. I make no orders as to costs.

It is so ordered.



E.I. LALTAIKA


JUDGE

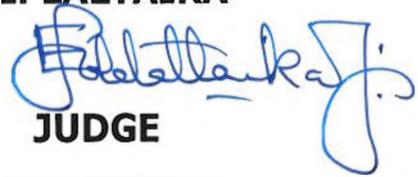
26/7/2022

Court

This judgement is given under my hand and the seal of this court today 26/7/2022 in the presence of both parties appearing in person, unrepresented by counsel.



E.I. LALTAIKA


JUDGE

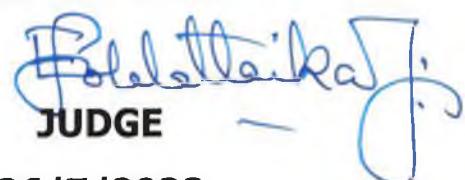
26/7/2022

Court

The right to appeal to the Court of Appeal of Tanzania fully explained



E.I. LALTAIKA


JUDGE

26/7/2022