

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

PC CIVIL APPEAL NO.26 OF 2021

(Arising from the District Court of Nachingwea at Nachingwea in Civil Appeal No.4 of 2021, originating from Nachingwea Urban Primary Court in Civil Case No.13 of 2021)

SAID ALLY MBALIU..... APPELLANT

VERSUS

RANGI MOHAMED.....RESPONDENT

JUDGEMENT

9/6/2022& 18/10/2022

LALTAIKA, J.

This is the second appeal. The appellant herein **SAID ALLY MBALIU** filed Civil Case No.13 of 2021 against the respondent **RANGI MOHAMED** before the Primary Court of Nachingwea at Nachingwea claiming a sum of TZS 15,820,000/= being money he lent to the respondent for the purpose of buying maize.

When the claimant's form was read and explained to the respondent, he partly agreed to have had business association with the appellant but disputed crucial facts particularly the reason the money was given to him. The respondent told the trial court that the appellant gave him the money for informal buying and collection of cashew nuts and not for buying maize as he claimed.

After trial and scrutiny of evidence, the trial court was convinced that the appellant had no valid claims against the respondent hence it dismissed the case with no order as to costs. The appellant was aggrieved thus, he appealed to the District Court of Nachingwea. The first appellate court heard the parties and eventually upheld the decision of the trial court and ordered each party to bear its costs.

Dissatisfied once again, the appellant has appealed to this court on the following grounds: -

- 1. The district magistrate erred in law and in fact by deciding the respondent is not indebted by the appellant.*
- 2. The district magistrate erred in law and in fact by not considering the exhibits tendered by the appellant which evidencing on how the nature of their transaction was conducted as annexure B1 and B2 provided as evidence attached in the appeal.*
- 3. The district court grossly misdirect it and reached wrong decision by failure to evaluate the evidence properly.*
- 4. The district magistrate erred in law and in fact by granting decision favours the respondent without considering the evidence adduced by the appellant.*

When the appeal came up for hearing, the appellant was accompanied by Mr. Chibwana Halidi Lumalanga. The respondent appeared in person, unrepresented.

Submitting in support of the grounds of appeal, the appellant stated that he was a businessman dealing in selling rice at Nachingwea District Market. While conducting his business, the appellant averred, someone introduced the respondent to him. The two (appellant and respondent) became close business associates. The appellant averred further that the respondent would come to his shop, take rice from him on credit and sell

it and bring the money later. This was done for several times and the trust to each other was strengthened.

The appellant narrated that on 23/6/2019 the respondent took 2,000 kg of rice. On 11/7/2019 he took another 1750 kilograms. The price was 1500 per kilogram that brings a total of TZS 2,625,000 as money due for payment to the appellant. On 26th July 2019, the appellant averred, the respondent went personally to explain that he was yet to bring the money but there was new business for selling maize instead of rice. To this end, the appellant averred further, he asked the respondent to sign an agreement that he owed him TZS 5,625,000 (from the rice business). The respondent agreed and the business for maize started.

It is the appellant's submission that when the mutual business for maize started the respondent would collect money in cash in order to buy maize for the appellant. The respondent painstakingly recounted the dates on which the respondent collected the money from him as follows: 11/9/2019 (TZS 200,000), 13/9/2020 (TZS 300,000), 19/9/2019 (TZS 500,000). 24/9/2019 (TZS 500,000). 27/9/2019 (TZS 600,000) 30/9/2019 (TZS 600, 000.) 2/10/2019 (TZS 1,00,000). 6/10/2019 (TZS 1,000,000) 13/10/2019 (TZS 1,500,000) 16/10/2019 (TZS 1,000,000) 23/10/2019 (TZS 1,000,000) 25/10/2019 (TZS 1,000,000) 28/10/2019 (TZS 1,000,000). This brings it to a total of TZS 10,200,000 that was meant for purchasing 12,000 kilograms of maize which is equal to 12 tones. The appellant stated that the total amount of unpaid money was TZS 15,825,000 for both rice and maize businesses.

The appellant emphasized that the respondent was always signing on a piece of paper against every transaction. When the amount due

reached TZS 15,825,000, averred the appellant, the respondent never went back to him. He was not picking up the phone either, asserted the appellant.

The appellant submitted further that he had how the respondent owed him the money 15,825,000, but still the lower courts decided against him. He prayed that his appeal be allowed, and the respondent be ordered to pay back the money with costs of this case.

The respondent, on his side, denied ever having been involved in the business of maize with the appellant. However, he admits that they had a kind of a barter trade business together involving exchanging rice with cashew nuts and later, when availability of rice became difficult, they reverted to cash economy.

The respondent clarified that the appellant used to collect his cashews and would issue money only after he had collected the previous order. The agreement was to buy for the appellant 16 tons of cashews for TZS 24,000,000. However, the respondent averred, he bought only 15 tons.

Moving on to what exactly caused the dispute, the respondent averred that according to the agreement, he was supposed to be paid commission for every kilogram. He therefore owed the respondent TZS 4,500,000 in commission. The respondent averred further that although the appellant knew about such a debt, he was unwilling to honor his part of the promise despite several reminders. At some point, the appellant gave the respondent TZS 1,500,000 with instructions to buy cashews from the farmers. The respondent refused to do so and retained the money as a part payment for the TZS 4,500,000 due in commission. The appellant

was enraged and promised to teach the respondent a lesson. A series of criminal cases followed. They are beyond the purview of this judgement.

It is the respondent's submission that the business he was doing for the appellant was illegal because the government had insisted that cashew nut business needed to be done through cooperative societies. Although the business was illegal, averred the respondent, it was taking place even with support of village authorities because it was more profitable selling to private persons than to cooperative societies.

The respondent concluded his submission by insisting that the claims by the appellant were baseless and there was no way he could have left out so many millions in the hands of the respondent. He prayed that the appeal is dismissed, and the appellant ordered to pay him 3,000,000 because he had already retained 1,500,000, out of a total of 4,500,000 due in commission.

I have dispassionately considered the rival submissions by both parties. I must admit that it has been very difficult to grasp the crux of the dispute. This is because the parties are unrepresented, and they seem to have been working on a not so straightforward business venture. As one reads through the lower court records, it is not difficult to realize that some crucial information was hidden to conceal illegality of the subject matter of the agreement.

As alluded to above, the lower courts have reached a concurrent decision that the appellant had failed to prove his claim on the preponderance of probabilities against the respondent. Hence, his claim was dismissed. It is settled law that, unless there has been a misdirection or non-direction of the evidence occasioning a miscarriage of justice, the

second appellate court is not entitled to interfere with such findings. See various decisions of the Court of Appeal **Oswald Mokiwa @ Sudi v. R**, Criminal Appeal No. 190 of 2014, **Nchangwa Marwa Wambura v. R**, Criminal Appeal No. 44 of 2017 and **The Director of Public Prosecutions v. Simon Mashauri**, Criminal Appeal No. 394 of 2017 (all unreported). It is, therefore, my task to go through the proceedings and judgements of the lower courts to find out if there has been any misdirection or non-direction of the evidence occasioning a miscarriage of justice.

According to the evidence on record, the appellant had initially raised a claim of TZS 5,625,000/= connected to rice business and later TZS 10,200,000/= for maize. However, the respondent strictly disputed the evidence adduced by the appellant and his witnesses. On his part the appellant and his witnesses told the trial court that the respondent admitted in writing that he was indebted to the appellant. However, the respondent partly admitted that was given a consignment of two tons of rice for exchange with cashews but his was not paid his commission.

I am persuaded with the evidence of the respondent that he had cashews business agreement with the appellant which started from taking rice in exchange of cashews and later it changed the form of operation into cash money. To prove the existence of such fiduciary relationship the respondent testified by mentioning two accounts given by the appellant for him which were used when he sold cashews for the appellant at the AMCOS of "Nangongono -Chingunduli". Furthermore, the testimony of the respondent depicts that the appellant used to collect cashews at the respondent's house with PW3. The evidence which the appellant or PW1 did not challenge.

The evidence of the respondent that he was never given more than TZS 1,500,000 at a time and that the appellant used to collect his consignment as soon as he had bought the cashews for him is very compelling. There is no way that the appellant could continue to give the money to the respondent without receiving the cashews.

This schedule of payment, for example, without a corresponding plan for repayment (or *marejesho* as it is commonly known) looks very unrealistic: 11/9/2019 (TZS 200,000), 13/9/2020 (TZS 300,000), 19/9/2019 (TZS 500,000). 24/9/2019 (TZS 500,000). 27/9/2019 (TZS 600,000) 30/9/2019 (TZS 600, 000.) 2/10/2019 (TZS 1,00,000). 6/10/2019 (TZS 1,000,000) 13/10/2019 (TZS 1,500,000) 16/10/2019.

In the upshot, I find this appeal devoid of merit. The same is hereby dismissed. Each party should bear his costs.

It is so ordered



E.I. LALTAIKA

Handwritten signature of E.I. Laltaika in blue ink.

JUDGE

18.10.2022

Court

This Judgement is delivered this 18th day of October in the presence of Chibwana Halidi Lumalanga holder of the Power of Attorney for the appellant and the respondent



E.I. LALTAIKA

Handwritten signature of E.I. Laltaika in blue ink.

JUDGE

18.10.2022

Court

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



E.I. LALTAIKA

A handwritten signature in black ink, appearing to read "E.I. Laltaika", written over the printed name.

JUDGE

18.10.2022