IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: MUGASHA, J.A., MWANDAMBO, J.A., And LEVIRA, J.A.)

CIVIL APPEAL NO. 45 OF 2017

PAULINA SAMSON NDAWAVYA.....APPELLANT

VERSUS

THERESIA THOMASI MADAHA.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Mwanza)

(Mwangesi, J.)

dated the 22nd day of August 2014
in
Land Case No. 44 of 2012

JUDGMENT OF THE COURT

4th & 11th December, 2019

MWANDAMBO, J.A.:

Paulina Samson Ndawavya, the appellant herein, was aggrieved by the decision of the High Court sitting at Mwanza dismissing her suit against the respondent in Land Case No. 44 of 2012. She has appealed against that decision on three grounds of appeal as shall become apparent later.

The facts which prompted the appellant instituting a suit against the respondent arise from a deed of conveyancing dated 12th August, 1998

involving sale of land on plot No. 202 Block 'U' Rwagasore Street within the City and Region of Mwanza. According to that deed, admitted at the trial as Exhibit P1, the respondent agreed to sell the aforementioned plot of land to the appellant in consideration for payment of TZS. 25,000,000.00 payable in two installments that is to say: TZS 15,000,000.00 on the execution of the deed (sale agreement) and the balance of TZS 10,000,000.00 was to be paid on or before 25th September, 1998. That agreement appears to have been signed before S. A. Magongo, Advocate who is shown to have witnessed both the vendor (respondent) and the purchaser (appellant). It is common ground that at the time of the signing of Exhibit P1, the plot was subject of a litigation before the Resident Magistrate's Court of Mwanza in Civil Case No. 102 of 1996 in which the respondent obtained judgment against National Transport Corporation (NTC). According to the extracted decree in the said suit, NTC's title to the land was subject to it compensating the respondent.

Although NTC preferred an appeal namely; Civil Appeal No. 43 of 1997 against the decree of the Resident Magistrate's Court, it did not prosecute that appeal resulting into an order dismissing it for want of prosecution. There is no evidence that the said NTC compensated the

respondent to acquire title to the said plot and thus, the position obtaining prior to that decision remained undisturbed. It would appear a lot of water passed under the bridge between the date of execution of the deed of conveyancing and 25th May, 2003 when a transfer of right of occupancy is shown to have been executed by the respondent as the transferor and the appellant as transferee. The said transfer of right of occupancy by way of Exh. P2 is shown to have been executed before A. K. Nasimire Advocate who witnessed both parties. According to Exhibit P2, the respondent transferred her right of occupancy on certificate of title No. 0330411123 to the appellant in consideration for the payment of TZS 25,000,000.00.

Despite the foregoing, not all went well towards actualization of the conveyancing which could have seen the appellant registered as the new owner of the disputed land. That prompted the appellant instituting a suit before the High Court for reliefs, among others, a declaration that the sale of the suit land was lawful and that the appellant was the lawful owner of it, an order compelling the respondent to surrender the title deed to the appellant, general damages and costs.

The respondent's reaction to the suit through its written statement of defence (**the WSD**) was a complete denial of the sale of the land to the

appellant whom she branded to be a total stranger aimed at defrauding her property. In effect, the respondent distanced herself from any transaction involving sale of the land to the appellant herein branding the deed of conveyancing as well as the transfer of a right of occupancy as fraudulent.

By reason of the foregoing, the trial court framed three issues for determination namely; one, whether the plaintiff and the defendant (appellant and respondent respectively) were known to each other, two, whether the defendant sold the disputed plot to the plaintiff and, three, what reliefs the parties were entitled to. After a full trial involving five witnesses for the appellant and four witnesses for the respondent, the trial court found no merit in the appellant's suit and dismissed it. Whilst finding that the plaintiff and the defendant were known to each other, the learned trial Judge came to the conclusion that the appellant failed to discharge her burden of proof that there existed a contact of sale between the parties because there was no meeting of minds between them. It was the learned trial Judge's further finding that at any rate, the appellant had failed to prove fulfilling the conditions in the deed of conveyancing that is, payment

of the purchase price and so she had no right to claim for any relief against the respondent.

It is from the foregoing that the appellant has come before the Court faulting the trial court on the following grounds of appeal:-

1. *That the learned trial judge found that there was a contract between Appellant and Respondent but erred in law and fact where he held that there was no offer and acceptance.*
2. *That the learned trial Judge erred in law and fact for giving judgment in favour of the Respondent whose credibility was discredited during cross-examination.*
3. *The Hon. Trial Judge erred in law and fact for his failure to properly evaluate the evidence and thus failing to hold that the appellant's case was proved to the balance of probability.*

However, the learned advocate abandoned ground one in his written submissions.

Like in the trial court, the appellant enjoys the services of Mr. Elias R. Hezron, learned Advocate of Juristic Law Chambers in this appeal. The respondent is represented in this appeal by M/s Kabonde Magoiga Law Firm who had acted for her before the trial court. The learned Advocates had, pursuant to rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules), filed their written submissions for and in reply.

The submissions were in respect of ground two and three after the learned advocate for the appellant had abandoned the first ground and argued the remaining grounds as ground one and two respectively.

On the date of oral hearing, Mr. Hezron appearing for the appellant stood by his written submissions and seized the opportunity to highlight on a few aspects in his oral address. Mr. Mollohan Kabonde, learned Advocate who entered appearance for the respondent, equally stood by the written submissions in reply without any further oral arguments.

The essence of Mr. Hezron's submissions in the first ground was to point out pieces of the evidence to support the contention that the respondent who testified as DW1 was not a credible witness and so the trial court should not have believed her. According to the learned Advocate, DW1 gave contradictory evidence with regard to payment of TZS 15,000,000.00 as purchase price towards the sale of the plot, disowned her own signatures in the deed of conveyancing (Exh. P1) and the WSD, denied having gone to PW4's (S.A Magongo) house, feigned ignorance of exhibit P1 and P2 before the same were tendered in evidence. The learned Advocate urged the Court to find that all the above were clear indicators that DW1 was not a credible witness who should not have been believed

by the trial court. Instead, the learned Advocate invited the Court to hold that DW1 told lies which should have been used to prove the case against her in line with the Court's previous decision in **Paschal Mwita and Others vs. Republic** [1993] TLR 295. Counsel urged the Court to sustain this ground.

With regard to the second ground, the appellant's complaint is that the trial court did not properly evaluate the evidence as a result of which it came to a wrong decision dismissing the appellant's suit. On this, the learned Advocate took issue with the trial court's findings on the issue relating to offer and acceptance which the trial court found that they were not proved to have been exchanged before executing the deed of conveyancing (Exh. P1). The learned Advocate contended that since the trial court had already made a finding that the appellant and the respondent had met before and went to the offices of Salum Magongo (PW4) for the purposes of preparation of a sale agreement, the question of offer and acceptance did not arise in the circumstances. As to the receipt of payment of TZS. 5,000,000.00, Mr. Hezron submitted that despite the clear indication in Exhibit P2 that the said amount had been paid, the learned trial Judge found that there was no evidence of payment of the

said amount. It was the learned Advocate's submission that even though the respondent denied having received any money from the appellant, she admitted during cross-examination that she had received money from the appellant for a different purpose, that is, payment of rent on the said plot for the period expiring in 2003 and thereafter, payment for rent from 2004. The learned Advocate argued that all that was a clear testimony that the respondent's evidence was not credible more so when the issue of rent surfaced for the first time during cross-examination. On the basis of the foregoing, Mr. Hezron invited the Court to quash the findings of the trial court and substitute with its own findings after re-evaluating the evidence on record.

In his oral address, the learned Advocate highlighted on a few aspects. One, although the respondent dissociated herself from the deed of conveyancing, the learned trial judge did not make any determination on it and that should have been a basis for the trial court's determination of issue number 1 and 2. Two, the respondent's admission of payment of TZS 15,000,000.00 towards rent which was not pleaded should have been taken as proof of payment of part of the purchase price which the trial court held that there was no proof of payment. Three, the trial court did

not consider the evidence of Biadari John Lebeco (PW5) who was a relative of the respondent which showed that she (the respondent) had agreed to sell her plot to the appellant and received payment but reneged from the sale agreement demanding payment of TZS 50,000,000.00 over and above the agreed purchase price.

Mr. Mashaka Fadhili Tuguta, learned Advocate filed written submission for the respondent but, as seen above, it was Mr. Mollohan Kabonde, learned Advocate who appeared before us during the hearing. With regard to the first ground, Mr. Tuguta's submission was that the question of credibility of witnesses is the domain of the trial court rather than any other person and so, it was not open for the appellant's counsel to challenge the credibility of the respondent. The learned Advocate brought into play our previous reported decision in **Stanslaus Rugaba Kasusura And Another vs. Phares Kabuye** [1982] TLR 338 for the proposition that it is the duty of the trial court to evaluate the evidence of each witness as well as his credibility and make a finding on the contested facts in issue. Armed with that decision, counsel argued that the contested facts in issue which the trial court was bound to make findings after the evaluation of each witness's evidence and credibility was confined to no

more than the agreed issues. If we understood the learned Advocate correctly, he appeared to suggest that as the trial court made findings on each of the issues, *ipso facto*, it did so having assessed the credibility of the witnesses and so there is no room for the appellant challenging the trial court's findings.

Regarding ground two, the learned Advocate took issue with the appellant's Advocate criticizing the trial court for the alleged failure to evaluate the evidence. According to the learned Advocate, the impugned judgment was a product of evaluation of the evidence adduced during the trial whereby the trial court found the appellant's evidence falling below the required standard to prove her case. Counsel relied again on **Stanslaus Rugaba Kasusura's** case (*supra*) underscoring the trial court's duty to evaluate evidence. It was the learned Advocate's submission that in the course of such evaluation, the trial court found no proof of payment of TZS 25,000,000.00 to the appellant towards purchase price of the disputed plot, lack of evidential value in the deed of transfer (Exh. P2), the existence of a legally binding contract for the sale of the plot of land to the appellant and, had there been such a contract, she failed to prove fulfillment of her contractual obligations to the respondent. On the whole, the learned

Advocate contended that the appellant failed to lead evidence to prove her case as required of her by section 110(1) of the Evidence Act, Cap. 6 R.E. 2002 and hence the trial court rightly dismissed the case. On the basis of his submissions, counsel urged us to dismiss the appeal. Mr. Kabonde had nothing in addition to the written submissions neither did he find it necessary to make any reply to the oral submissions made by the learned Advocate for the appellant.

We have examined the rival submissions by the parties in the light of the grounds of appeal with the weight they deserve. Before we discuss the merits and demerits, we wish to make a few remarks. Our examination of the plaint shows plainly that the appellant's cause of action against the respondent was founded on breach of contract for sale of a plot of land contained in Exhibit P1. Arising out of the alleged breach, the appellant sought reliefs largely, specific performance with ancillary reliefs, injunction and damages. That means, the determination of the suit in the appellant's favour was conditional upon her proving; **one**, existence of the contract/agreement for sale of the plot of land, **two**, fulfillment of her part of the bargain under the contract and, **three**, breach of the terms of the contractual terms by the respondent entitling the appellant to the reliefs

sought. It is plain that the appellant's plaint made allegations in line with what Sir P.C Mogha in his book titled: **"The Principles of Pleadings India"** (14th edition), observes:-

> *"In a suit brought on a contract, the contract must first be alleged, and then its breach, and then the damages. The actual contract which was in force between the parties should alone be alleged..." (At page 269).*

It is equally plain that regardless of the language used in her written statement of defence, the respondent denied having entered into any contract for the sale of the plot of land or having received any payment in consideration for her parting with the land. That being the case, it seems to us that the parties were at loggerheads mainly on whether; **one**, there was any contract for sale of the plot of land to the appellant, **two**, the appellant fulfilled the terms and conditions under the contact (if any), **three**, the appellant breached any of the terms of the contract.

Apparently, counsel for the parties framed issues which the trial court endorsed but in our respectful view, those issues did not, strictly speaking, deal with the core of the dispute giving rise to the suit. For instance,

whether or not the appellant and the respondent were known to each other was not a material issue and, as it happened, it did not assist the trial court in determining the suit.

The other remark which we find ourselves compelled to make relates to pleadings. In doing so we cannot do better than reiterate what we said in **James Funke Gwagilo vs. Attorney General** [2004] TLR 161 whereby we underscored the function of pleadings being to put notice of the case which the opponent has to make lest he is taken by surprise. From that same decision we reiterated another equally important principle of law that parties are bound by their own pleadings and that no party should be allowed to depart from his pleadings thereby changing his case from which he had originally pleaded.

We shall be guided by the above principles in the determination of the grounds of appeal under scrutiny to which we now turn.

The appellant faults the trial court in ground one for entering judgment in favour of the respondent whose credibility was discredited in cross-examination. Several matters have been singled out to demonstrate that the respondent should not have been believed because she was not a

credible witness. As seen above, the matters singled out to demonstrate that DW1 was not credible related to her denying almost everything including her own signatures in her written statement of defence. Not surprisingly, the respondent has taken a different view arguing that credibility of the witnesses is a domain of the trial court. We agree with the submission by the learned Advocate for the respondent. Be it as it may, we think the success of the appellant's case did not depend on the respondent's credibility. It depended on the appellant discharging her burden of proof on the required standard in civil cases relative to the issue to be proved.

It is trite law and indeed elementary that he who alleges has a burden of proof as per section 110 of the Evidence Act, Cap. 6 [R.E 2002]. It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved. If any authority will be required on this, a statement by Lord Denning in **Miller v. Minister of Pensions** [1937] 2 All. ER 372 will be sufficient to emphasize the point and we think we can do no better than reproducing the relevant part as under:

"If at the end of the case the evidence turns the scale definitely one way or the other, the tribunal must decide accordingly, but if the evidence is so evenly balanced that the tribunal is unable to come to a determinate conclusion one way or the other, then the man must be given the benefit of the doubt. This means that the case must be decided in favour of the man unless the evidence against him reaches the same degree of cogency as is required to discharge a burden in a civil case. That degree is well settled. It must carry a reasonable degree of probability, but not so high as required in a criminal case. If the evidence is such that the tribunal can say - We think it more probable than not, the burden is discharged, but, if the probabilities are equal, it is not...." (At page 340).

It is again trite that the burden of proof never shifts to the adverse party until the party on whom onus lies discharges his and that the burden of proof is not diluted on account of the weakness of the opposite party's case. We are fortified in this view by the extracts from the celebrated works of Sarkar on the Indian Evidence Act, 1872 largely borrowed by the Tanzania Evidence Act, Cap 6 [R.E 2002]. At the risk of making this judgment unduly long, we take the liberty to reproduce the relevant passage from Sarkar's Laws of Evidence, 18th Edition **M.C. Sarkar, S.C. Sarkar and P. C. Sarkar,** published by Lexis Nexis as below:

"...the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for negative is usually incapable of proof. *It is ancient rule founded on consideration of good sense and should not be departed from without strong reason....Until such burden is discharged the other party is not required to be called upon to prove his case.* ***The Court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such a conclusion, he cannot proceed on the basis of weakness of the other party....****" (At page 1896)*

[Emphasis added].

We subscribe to the above position being satisfied that it reflects a correct legal position in the context of the matter under scrutiny. In our view, since the burden of proof was on the appellant rather than the respondent, unless and until the former had discharged hers, the credibility of the respondent was irrelevant. It is thus our firm view that the appellant's criticism against the learned trial Judge is, with respect, without any justification and so, ground one is held to be devoid of merit. It is accordingly dismissed.

The second ground deals with evaluation of the evidence whereby the learned Advocate for the appellant contends that the trial court failed to evaluate the evidence as a result of which it came to a wrong conclusion. Mr. Hezron pointed out several matters on which the trial court is said to have abnegated its duty to evaluate evidence as seen above. We are not oblivious to our previous **Stanslaus Kasusura's** case *(supra)* that it is, the duty of the trial court to evaluate evidence of each witness and make findings on the issues. However, sitting as first appellate Court we are guided by rule 36(1) (a) of the Rules which empowers the Court to re-appraise the evidence on the record and draw its own inferences and findings of fact subject, having regard to the fact that the trial court had the advantage of watching and assessing the witnesses as they gave evidence. The Court has done so in various cases amongst others, **Jamal A. Tamim vs. Felix Francis Mkosamali & the Attorney General,** Civil Appeal No. 110 of 2012 (unreported) and **Martha Wejja vs. Attorney General and Another** [1982] TLR 35. The appellant has urged us to re-evaluate the evidence adduced at the trial and we accept that invitation within the confines of the above cited rule and the decided cases in determining this ground.

The first aspect relates to the existence of the contract for the sale of a plot of land. To this, the learned trial Judge found as a fact that none existed because there was no proof of exchange of offer and acceptance. It is true that a contract is naturally a product of an offer and acceptance but was such proof required in the circumstances of the case? Mr. Hezron brought to our attention the trial court's finding at page 185 of the record where he stated that the appellant and the respondent had met at the offices of PW4 for the purposes of asking him (PW4) to prepare an agreement for sale of the plot of land which was sufficient proof that parties had already agreed on the sale of the plot. We respectfully agree with Mr. Hezron that the fact that the appellant and the respondent had met at the offices of PW4 for the purpose of preparation of sale agreement, there was already a *consensus ad idem* contrary to the learned trial Judge's finding holding that there was none.

There was yet another evidence from PW5 which, Mr. Hezron submitted that the trial court omitted to consider. We agree with him. The record shows that this witness was a relative of DW1 (the respondent) who had been asked to accompany her to PW4 in the company of their sister in law for an advice. PW5 is on record having told the trial court that DW1

and the appellant had made a transaction for the sale of the plot and had received the purchase price only to retract later demanding to be given TZS 50,000,000.00 extra. We think that had the trial court considered this piece of evidence and subjected it to PW1's, testimony it would have reached a different conclusion on the existence of the contract.

The other aspect is related to the execution of the deed of conveyancing (Exh. P1). It is common ground that the respondent distanced herself from Exhibit P1 both in her WSD and in her evidence as well. She alleged in her WSD that Exhibit P1 was fraudulently made to defraud her of the plot of land. However, the WSD did not give any particulars of the fraud contrary to the provisions of Order VI rule 4 of the Civil Procedure Code, Cap 33 [R.E 2002]. She did not lead evidence to prove fraud. It may not be completely irrelevant to observe that since fraud imputes criminal offence proof of it ought to have been above mere preponderance of probabilities. See: **Omary Yusufu vs. Rahma Ahmed Abdulkadr** [1987] TLR 169 and **Ratilal Gordhanbhai Patel vs. Layi Makany** [1957] EA 314.

Be it as it may, the burden of proof that the appellant and the respondent had executed the contract fell on the appellant. Mr. Hezron

submitted that the trial court did not make any determination on the execution of Exhibit P1. With respect, we agree with that line of argument. In our view, the omission may have been attributed to partly by the manner in which the issues were framed. All the same, we think there was sufficient evidence from PW1 regarding execution of Exhibit P1. Indeed, PW1 was not contradicted in this regard during cross-examination. More often than not, the Court has held that failure to cross-examine a witness on a particular important point may lead the court to infer that the cross examining party accepts the witness' evidence and it will be difficult to suggest that the evidence should be rejected. For instance, in **Shadrack Balinago vs. Fikiri Mohamed @ Hamza, Tanzania National Roads Agency (TANROADS) and Attorney General,** Civil Appeal No. 223 of 2017 (unreported) it stated:

> *"As rightly observed by the learned trial judge in her judgment, the appellant did not cross-examine the first respondent on the above piece of evidence. We would, therefore, agree with the learned judge's inference that the appellant's failure to cross-examine the first respondent amounted to acceptance of the truthfulness of the appellant's account."* [At page 20)

That will be enough to show that the evidence by PW1 went unchallenged regarding the execution of Exhibit P1. That aside, there was other evidence from PW4 who knew the respondent as his neighbor who, on 12th August, 1998 visited by his officers accompanied by a Joan Ndawavya and his mother, the appellant. According to PW4, the respondent and the appellant requested him to prepare a sale agreement involving a plot of land which he did and the same was signed by both the respondent and the appellant in his presence and witnessed both signatures. PW4 was not contradicted during cross-examination on the execution of Exhibit P1. On the whole, despite the respondent disassociating herself from Exhibit P1, the trial court ought to have found that the appellant proved the execution of Exhibit P1 to the required standard and on that basis, the appellant had proved the existence of contract for the sale of the disputed land. Had the trial court taken into account this evidence, it should not have relied on DW1's bare denials of the existence of contract as proof of its non-existence.

The third piece of evidence relates to fulfillment of the contractual obligations. The learned trial Judge took the view that if he was to accept that there was a contract, the appellant proved neither the payment of

the amount stated in clause 2 of Exhibit P1 nor payment of the balance of TZS 10,000,000.00 which was payable before 25th September, 1998. Mr. Hezron invited us to hold that DW1's denials were, but lies, for she admitted in cross-examination that she received the money for rent for the period up to 2003 and the payment to cover the period from 2004. Apparently, the learned trial Judge paid no regard to the contents of clause 2 of Exhibit P1 which stipulates:-

> *"That upon execution of this agreement the purchaser shall pay to the vendor the sum of Tshs 15,000,000/= i.e. Tshs. 10,000,000/= being in cash and Tshs. 5,000,000/= by cheque No. TBT CA 311622 receipt of which the vendor hereby acknowledges."*

According to Exhibit P1, the vendor was Theresia Thomas Madaha (the respondent) whereas Paulina Samson Ndawavya (the appellant) was the purchaser. By clause 2 of Exhibit P1, payment of TZS 10,000,000.00 by cash and TZS 5,000,000.00 was paid on the execution of it the receipt of which the respondent acknowledged. Truly, PW4 testified as such (at page 145 of the record) that TZS 15,000,000.00 had been paid to the respondent. This evidence was again not contradicted during cross-

examination. But to cap it all, as rightly submitted by Mr. Hezron, DW1 (the respondent) who had categorically denied having received any payment from the appellant admitted payment of TZS 5,000,000.00 as rent for a period of 5 years expiring in 2003 (as reflected at page 154 of the record). However, as rightly submitted by Mr. Hezron, the respondent never pleaded in her WSD that she had entered into any lease agreement with the appellant for which she received the amount claimed to be part of purchase price as rent. What the respondent did was to depart from her own pleadings which she was not entitled on the authority of **James Funke Gwagilo's** case (*supra*). Had the learned trial Judge taken into account the evidence of payment per Exhibit P1, the evidence of PW1 and PW4 against that given by DW1, he could have come to a conclusion that the appellant had proved her case on the payment of TZS 15,000,000.00 as part of the purchase price for the sale of the disputed plot.

Lastly on the payment of the balance amounting to TZS 10,000,000.00. It is common ground that this amount was not paid on the agreed date. In fact, it has not been shown anywhere in the plaint when that payment was effected. We appreciate that PW1 was candid in explaining the reasons for the delay in the payment as a result of the delay

in obtaining a title deed in the respondent's name for the purposes of transfer of the right of occupancy. However, we are satisfied that the criticism regarding payment of TZS 10,000,000.00 is not justified since the appellant did not prove that the sum was paid to the respondent any time after 25th September 1998. In the event, having evaluated the evidence on record, we endorse the submissions by the learned Advocate for the appellant regarding existence of the contract for sale and payment of TZS 15,000,000.00 as part payment for the sale of the disputed plot to the appellant. The trial court's finding in relation to payment of TZS 10,000,000.00 balance remain undisturbed.

That said, the appeal is hereby allowed and the judgment of the trial court dismissing the appellant's suit is hereby quashed and substituted with an order that the sale of the disputed land on plot No. 202, Block 'U' Rwegasore Street was lawful. Considering the circumstances behind the non- payment of the balance of the purchase price and the conduct of the respondent in the sale transaction, we are settled in our minds that the justice of the case compels us making an order that the transfer of the title in the appellant's name be effected subject to payment of that sum of TZS 10,000,000.00 to the respondent within sixty (60) days from the delivery of

this judgment. For avoidance of any doubt, we have made the order under the head any other reliefs asked by the appellant before the trial Court and in this Court guided by our previous decision in **Zuberi Augustino v Anicet Mugabe** [1992] TLR 137. The appellant shall have her costs in this Court and in the High Court. Order accordingly.

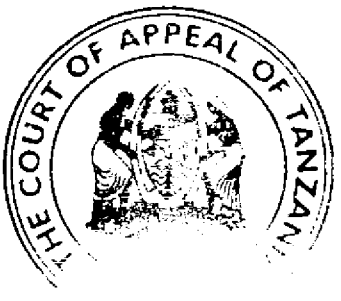
DATED at **MWANZA** this 10th day of December, 2019.

S. E. A. MUGASHA
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

This Judgment delivered on this 11th day of December, 2019 in the presence of Mr. Raphael Lukindi, learned advocate holding brief for Mr. Elias Hezron, learned counsel for the appellant and Mr. Mollohan Kabonde, learned counsel for the Respondent, is hereby certified as a true copy of the original.



S. J. Kainda
DEPUTY REGISTRAR
COURT OF APPEAL