

TANZANIA / JUDGMENT

DOMU SHAURI

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1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA [ARUSHA SUB- REGISTRY] AT
ARUSHA CIVIL APPEAL NO. 9049 OF 2024 (Arising from Civil Appeal No. 17 of 2024 of District
Court of Karatu, original Civil Case No. 3 of 2023 of Primary Court of Karatu District at Karatu)
DOMU SHAURI APPELLANT VERSUS LULU SHAURI RESPONDENT

JUDGMENT

04th Septemba & 31st Octoba, 2024 I.e. MUGETA, J. The contending evidence between the parties is whether the appellant took from the respondent on loan maize worth Tshs 780,000/= or Tshs. 180,000/=. The trial Primary Court found that they were worth Tshs. 780,000/=. On appeal, the District Court found that it was Tshs 180,000/=only and that the claim for cash loan was not proved, hence, this appeal. The complaint in the three grounds of appeal is that, the 1st appellate court disregarded the evidence of the appellant which sufficiently proved the claim. I take note of the fact that in the petition of appeal, the appellant refers to the first appellate court as the trial court. This, in my view, is just a slip of a pen. The appeal was disposed of by way of filing written submissions. The appellants in her submissions repeats that the District Court ignored his evidence including their written contract. However, such contract does not feature in evidence as admitted document. In reply, the respondent has argued that the evidence of the appellant fell short of proving the claim on balance of probability. In rejoinder the appellant submitted that the parties had a legal oral contract. The evidence from both parties suggest that the parties had a written contract which they made at the village office in the presence of SU3. However it was not tendered by any party. The allegation by the appellant on the value of the maize is not supported by any document or oral evidence than his. There is, however, on record a contract between parties for Tshs 780,000/= but since it was not admitted as evidence it remains useless. The appellant brought one Awack Bilosi Akunay (SM2) to testify on his side but his evidence is limited to the fact that the respondent borrowed the maize. This fact is undisputed. SM2 was unequivocal that he saw the respondent taking away the maize from the appellant's residence but he does not know the value. The reasons he gave for his lack of knowledge is that he was not present when the parties executed the contract at the village office. The appellant testified that the value of the maize was in the contract which was prepared by Thoma Hedri Boay (SU3). However, SU3 testified for the respondent and conceded to have prepared a contract but it was worth Tshs 180,000/= only. It is my view that, since none of the parties tendered the contract prepared by SU3, this case wholly depends on credibility of witnesses. The trial court rightly found that there

was a contract between the parties. However, without assigning reasons, the trial Court held that the value was Tshs 780,000/=. It completely failed to discuss the evidence of the respondent and his witnesses that the value was Tshs 180,000/=. It also said nothing about the Tshs 200,000/= cash loan. I have reviewed the evidence on record, it is my view that the evidence on the value of the maize came from the appellant, the respondent and SU3. SU3 testified that the contract between the parties which he prepared was that the maize were worth Tshs. 180,000/=. I see no fact on record by which I can discredit SU3 as the only witness other than the parties who is aware of the contract and its contents. In his evidence, the 3 appellant said SU3 has turned hostile against him without assigning

reasons.

On cross examination he was not shaken about his statement of the value of the maize. It is on consideration of this fact that the case of the respondent was supported by SU3, the District Court found that the case of the respondent was stronger than the appellant for being supported by independent evidence. I agree with the District Court. Consequently, I hold that the District Court was right to find in favour of the respondent. The appeal is dismissed. I do so with costs. 31/ 10/2024 Court: Ruling delivered in chambers in the presence of the appellant and Nicodemus Mbugha holding brief for Patrick Maligana, Advocate for the appellant and in the presence of the respondent in person. Sgd: I.C. MUGETA JUDGE 31/ 10/2024

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Prepared on 13 October 2026 · Esheria