

TANZANIA / JUDGMENT

20160421 TZHC Mwanza3

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TZHCDECIDED
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√4 1 ;c IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY AT MWANZA PC. CIVIL APPEAL No. 45 OF 2014 f4rising from Magu Resident Magistrate Court in Civil Appeal No. 43 of t;~ '013, or(qina/ from Magu Urban Primary Court in Civil Case No. 1 of 2013) ii rJ . ~u:. . IMANUEL MAGAD ULA : APPELLANT ~ti' I 1\$; , \$ J~i AND £\NTONY KAL WANI ■■ .~.I ■■ ■■ RESPONDENT ~ if . ~ Zi1 J UDGEM ENT 'ff~ :,- !./ / ∴ f//11/2015 - 21/4/2016 1; ~, I'if_!• A. De-Mello, !;¾! . ./~: : . J; ieven grounds of Appeal have been lodged by the Appellant having being ~ :fggrieved by the Resident Magistrate Court .of Magu on the first ?.tt . Jppeal. P-.s noted, the suit had its origin from the Primary Court of Magu llich decided in his favour. The dispute herein arosed from a principal lgent relationship in which the Respondent through a cooperative society fntrusted tile Appellant with cash for purchase of cotton from farmers. It I jias alleged that TShs. 29,900,000/= was advanced to the Appellant for Ile sar~~, whereby out of the a ount advanced, cotton worth only TShs. ~1: . . ; ,. . f4, 2111 0'00/= was deliv. - ving thereby a balance of ¾! ' - 'r/5 '7 1:/ 1 16 \.Jr-I ' f _- lShsn t3; :ZF:11 1 820/= . However and, considering lapse of fifteen (15) :jmnths ·since inception of this suit it being a commercial transaction, the ;espondent imposed 2% interest amounting TShs. 1,587, 846/= . liaking a total outstanding of TShs. 6, 880,666/= . Evidence in support :!IF the c!aim was on the balance of probability as the Primary Court I !Jetermirn~;d the suit in favour of the Respondent. ~~ 1:(tt1 ·. jhis:was .alri~sult affirming the three issues that were framed as follows; 1~ ~! • Je pande zote katika shauri hili ziliingia mkataba mdaiwa ;; I amnununlie pamba mdai?

- Je mdai ni wakala wa kampuni ipi kati ya kampuni ya KBL na . . !CK? e Je madai ya mdai dhidi ya mdaiwa yana mashiko? .ffhe verdict ~lad the following as borrowed from page 6 of the judgement; it . 'J'!• . . ,1Mahakama hii baada ya kupitia hoja zote zilizofikishwa {tnahakamani hapa imeridhika kwamba mdai ameweza Iluthib.Etish'a . madai yake kwa kiwango kinachotakiwa katika · fpash~uri ya madai (on balance of probability) na hivyo madai J·,ake ·ya~ ·mashiko na hivyo basi mahakama hii bila kuathiri ·f ,atua nyingine kisheria inaamua kwamba mdai alHpwe fedha yake _tote z ka~a f~~klichoombwa "" mahakama hii namuru mdaiwa i,ulipa. ~ - j . (# r;:, ∴;: 2 17 ' \ . ,,' ~&1ahakama inaagiza malipo yafanyike ndani ya mwezi mmoja ttoka sasa ... endapo halitafanyika mahakama itakamata mali za l·daiwa alizoweka rehani pindi aliposaini mkataba ... " . ~I !1~\s the Appeal was lodged, the Applicant the Appellant herein similarly filed . . I /~ 'Stay of

Execution' Application No. 3 of 2014 before the same District Court and, which was dismissed on the 26th of March, 2014. -I ~ j i ft this juncture I am constrained for failing to establish the judgement and l:ceedings typed from the District Court of Magu on which this Appeal Rjt ~fl)anates. However on the date of judgement which I set and, on l'uestioning how did the Appellant lodge his grounds of Appeal without ; · ~))PY of judgement, nothing was forthcoming other than confirming that ~~J le never had a copy himself either. Strangely, the Respondent admitted to ".!!· fave one duly signed from the c;ourt. It is now in the Court record and, ,~tisfied it to be a genuine one, bearing the signature and stamp of the listrict Court of Magu by one Hon. Lugakingira L. t~r,/n loth parties appeared in person unrepresented, with each pulling his side. ft~ fi~ ffihe Appellant submitted to have been dissatisfied by the upholding of the . .;rimary Court findings in favour of the Respondent which disregarding the Jct that he was disqualified from employment in that transaction. Further 1lat, the relying of the two documentary evidences for both ICK & KBL ~l f/r proof as agent was wrongly admitted it being a fraud. Strangely, the lppellant even registered bias towards the Respondent claiming him to be Jlated to the Magistrate hand ·n the case. . 61;~ fl f-, ,::, _., 3 I ' , _ / _; - ~ fhe Respondent strongly opposed the Appeal stating it to be an ;,:' i~t:erthought as the Appellant attempts to delay execution arising from a lwful decision of the Primary Court which the District Court found no fault !hats over. The suit was proved on balance of probabilities. with the l.espondent's ev;dence both docu~entary and, persons quite convincing. :!T'he admission that he. delivered cotton is in itself sufficient admission that le 1 received payment towards the agreement. TShs. 29,900,000/ = the · ,~lance of which forms basis of this suit. An outstanding of TShs. 1,292,820/= with interest at 2% as per agreement makes a total of ishs. 6,880,666 / ti =. · · -i'.n;,: j: is trite law that, the 'onus of proof' in Civil suits. is on balance of j;obabilities and, whose duty lies on the 'one who alleges'. Several case {fpve subscribed to this principle of law and, for the sake of my findings is lle case of Kwiga Masa vs. Samwel Mtubatwa [1989] TLR 103 and tat of Lukasi Paskali vs. Mgwabi Mkaka (Dodoma Registry) PC jivil Appeal No. 130 of 1987 (Unreported). ~r. 1:his being a second appeal, I am even mindful of the principles that, . 'l\" i,nless satisfied there is 'mis~pprehension of evidence, miscarriage ::It justice and or violation of principles of law or procedures', my ~- 'l ~.ands are tied to temper with the concurrent findings of the lower Courts. ~ ~:,: :tiany cases have subscribed to this as I prefer the case of Sylvan us ~ . leonard Nguruwe vs. R, [1981] TLR 66. • f. ij; ({then_ took qua_li~ ti~e to peruse b~th the proceedings and judgement of ;le Primary Court in tnal addu evidence both documentary and '-~ : :: 'r . 4 8 j 'j ,. i. · · ~;itnesses, Sospeter Bukwimba, John Masanja, and, the Respondent .,J.. ,,-~i !~mself Antony Kalwani. The respondent now the Appellant, had all the Ii.il],9hts for cross examination, insisting to have been disqualified for the job lfaving not attended the training. That, he was approached by a lady one flartha Mihambo who had cash but inexperienced, in the said .fl . ~ansaction and, opted to. join forces through KBL license. He refuted to lave entered into any agreement with ICK and not to know the ~; j.espondent at all. He however failed to have any written official supporting I' l focument for his case. He categorically disputed the signature endorsed in j Ire form for agreement, claiming to be a 'forgery thus fraud'. Not even 1 j,e said Martha Mihambo was summoned to

build up on the defense, let t . . . flone any other witness for the Appellant. ,/}.: ~ifhe Trial Court in aid of the Assessors found the case proved and entered I . . tdgement in favour. of the Respondents. 'j~ 'Vithout hesitation, from the foregoing, I too find no fault in the Primary J.1, lourt's findings which the Respondent discharged his 'onus for proof' in ficcordance with the standards set _in Civil cases. I cannot bring myself to lintertain doubts from ·matters allegedly of criminal nature as alleged by the i\ppellant, those of forgery and fraud here. If any, they ought to be heard .,_ .a,~ind determined in a Court of competent jurisdiction . ~ . . lhis Appeal has no merit and is •dismissed. ./~ ,,,f ·ffhe Respondent will have his costs I. i~f k' ! { : r 5 9 ij I:- ~- Judge 21/04/2016. 6 11 ,,

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