

TANZANIA / JUDGMENT

19730329 TZHC Mwanza

COURT
TZHCDECIDED
29 March 1973

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- (c) CIVIL APL NO.. 105 0 (Prom the decision of tha District C.ourt qf forth Mera at Tarimo in C1vi1An-!al No...7 80.f 971 - 3f0rQ A. G 1 ...Korosso'sq; Resident Magistratr'. dnd Trirne Primary, Court Civil 'Ca,so No.16/71). ISI(AS/0HITA s g....r.:i (Orignai Dofojidant) NANGI CHACHA..... ;.... RFSPOND'NT (Or1 iginal Plaintif) JUDG3I ?NT. l— Ki.ndy, J. . . . This is a second anneal by Issack Mwita. He was sued by the rosnondent in-.rc act. of a claim of Shs.330/— naid to himby the resnondont, . Th tr'i-al court allowed the resnondont's claim in.: full but the ae113t but reduced the resnondentts claim to Shs..270/— with - of costs. The- anellant took his anneal to this court.. The resnondent was a decree holder in a cart 'in civil case,. He wished to execute that decree. hen ho w.is making enuiri3s about nnallan, who claimed to b'aPublic latter driter and Advisor o what was: discussed was a matter of disnute, but the trial court felt that the annellant had misled the rosnondant when ho c]aimxl that he was the agent of a Court Broker, .and that he was aiithorisod.te:,snaak and transect business on b3half ofa Court Brokor,ac1 that since ha had not nrovid.ad the requisite service - i,-e.. to effect exbutjon of decree in jals favour - tnero failure of c5nsd6ation, end, therefore, the annollant should rō'nd the full amount of..Shs. 330/— nraid for the alleged .Q',ntreif: sice. The annellant's stnd'was (and still is) that ho hlinad'no such ms'enrosentation, and that he had iven advice, written letters and managed to obtain coay of judnont and decree from the relevant court for execution nurnose, and, therefore, the sum of Shs. 330/— W3S a reasonable charge for services rendered. However, the annellate court held that there was no misrenresontetion and that it wab a genuine cisc of misunderstanding between the two sides as to the natu.re of the services sought and obtained from the annellant. He held that due to this and due to the fact that tiac anncllant had rendered some visible s arvid th * o'-ti1'rOo consideration and f that the annollant should retain nart of the neid money on the basis of quantum moru.it. He alleced his. anne1. On anneal to. this court, the nnClInt said that the amount of She.. 330/— was a f-air charge for the services rendood and, therefore the lower, court, should not have directed that he should refund the whole or nart of the money naid to him. He urged that this anneal should b-a allojod fally. I agree jith the views of the annollat District Court. It was a clear caso of misIndorstanding of the obliations of, the service contract antorod into between the am'-ollant and the re3pondont. There was no evidence that the annellant had doliverately

set out to mislead the respondent.- But it was a type of transaction which could easily be misunderstood by an ordinary layman. The role of the Court Broker and that played by the annellant can easily be misunderstood.. I must confess that I have been unable to say what is the status of a 'public writer and advisor' in law although the annellant claimed that he was authorised to perform the duties * whatever they are - of a public writer and advisor by virtue of Btisinosa-Nemes (Registration) Ordinance, Cap. 2130- whatever the case- the annellant as - the learned magistrate held, . . . -, rendered useful. However the execution of the decree was not accepted. He advised him now to proceed with executions of his decree, and manage to secure a Court Judgment and decree for the Decree. Beyond this I cannot say so' he did.. In all the circumstances I therefore, both charge of Sif's. 30/tis excessive and onscorable, by any standards.;The respondent took effect execution of decree by attaching &nt of head of cattle. 'for paying the fall Shs. 330/-, which was not., by, ordinary standards, a small sum for a peasant like the respondent, he would require further charges for a Court Broker when eventually a Court Broker had to be employed.. There were 1 thousand 1 hundred pounds cause, for the reason not-to think that somewhere somebody is capitalising on his unfortunate position. He seemed to have been a good bait for all and sundry. I, agree with the assessment of the district court that Shs. 601— for the service rendered was quite reasonable,' and that the annellant should refund Shs. 270/- to the respondent as ordered. I see no valid ground for saying that decision, in result, this appeal is dismissed. It is neither a party answer, I make no order as to costs. Delivered in Court on the 29th day, of March, 1973,

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