

TANZANIA / JUDGMENT

rashid abdallah kivumbi vs china new era international engineering corp ltd others 2021 tzhc 9245 14 december 2021

COURT
TZHCDECIDED
14 December 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA i DAR ES SALAAM DISTRICT
REGISTRY AT DAR ES SALAAM CIVIL APPEAL No. 27 OF 2019 (Judgment and Decree of H.S. ALL
YSRM Kisutu Resident Magistrate Court Civii Case No.47 of 2014) RASHID ABDALLAH
KIVUMBI..... APPELLANT Versus i CHINA NEW ERA INTERNATIONAL
ENGINEERING CORP.LTD.....1st RESPONDENT CRESCENT j ASSURANCE
TANZANIA LTD..... 2nd RESPONDENT ABDALLAH KASSIM.....
3rdRESPONDENT [

JUDGMENT

' 10/05/- 14/12/202(| . J. A. DE-MELLO, 3; Aggrieved by the decision of Kisutu Resident Magistrate Court in Civil Case No. 47 of 2014 delivered on 14th day of January 2019, the Appellant Rashid Abdallah Kivumbi has preferred an appeal to this Court on the following grounds;

1. Tliat, the Trial Magistrate misdirected herself in holding that there was no evidence that the motor vehicle belonged to the i ' Appellant while it is in evidence of DW1 Angela Kessy Mturi given on the 21st day of August 2017 that the Plaintiff was reading as the owner of the motor vehicle in issue on that day.
2. That the Trial Magistrate misdirected herself by holding that there. was no evidence that the motor vehicle in issue belonged to the Appellant while it is in the report of the Insurance Assessor that the Plaintiff was the owner.
3. The Trial Court erred in law in not ordering the 1st Respondent to pay the Appellant the reliefs claimed after it was convinced that the loss complained of is proved on the balance of probabilities that it was caused by the 1st Respondent. On the 11th of August 2020, this Court dismissed the Preliminary Point of Objection on point of law that the Appeal lodged was time barred, with the X , order to proceed to hear the substantive Appeal. On the 6th of April 2021 in presence of Counsel Barnabas Luguwa and absence of the 1st Respondent, but the presence of Counsel Doreen Mugasha holding brief for Catherine Somi for the Appellant and Respondent respectively, were granted prayers to submit the Appeal by way of written

submissions. Notably also here is an ExParte hearing against the 3rd Respondent. The same pattern appears in ; the lower Court proceedings of his defiance to even file written statement of defence amidst service. Apart from the background of the matter as a result of accident plying between Mbeya and Sumbawanga, the vehicle was knocked down by the 1st Respondent's lorry on 23rd of July, 2013. While this is the case, the controversy arises as to who the owner of the motor vehicle is, in line with the first framed issue. In answering that the Court held in the negative that the Plaintiff now the Appellant failed to prove ownership in accordance with section 110 (1) of Cap. 6 RE 2002. However the rest of the issues were answered in affirmative in as far as insurance cover, negligent on the part of the 3rd Defendant as well damages. Counsel Barnabas Luguwa had a detailed submission in support of the Appeal on behalf of both the 1st and 2nd Respondent under the care of Counsel Ally Ismail. Luguwa advocate alleges both incomplete ownership and full ownership of the vehicle by the Appellant. He however points out the vehicle to be sold to the Appellant by one Innocent Mushi the original owner backed up with the evidences from surveyors, certificate of registration and testimonies in Court, while preferring joint claim between the two against the insurer, admitting the process for transfer was yet to be accomplished. Counsel contends that with that joint claim, the Appellant was justified to be indemnified. Furthermore that the TRA records had the Appellant as the owner, which its officer DW1 Angela Kessy Mturi testified so. Corroborated by the surveyor in as far as the registration card was reading. His client the Appellant has been in physical possession of the vehicle in dispute hence proving on balance of probability to be one. Strangely and without justification having answered the four issues in affirmative there was not reason not to grant the Appellant reliefs claimed. He therefore prayed for the Trial Court's decision to be quashed and this Appeal be allowed with costs. In rebuttable, the 1st Respondent opposed the Appellant's ground of appeals on the ground that there is neither error in law nor in fact, that has been occasioned by the Trial Magistrate that can justify this Appeal. He stated that in absence of proof of ownership as alleged either registration card or Tanzania Revenue Authority and Sale Agreement, the allegations are afterthought and bare assertions. Counsel Ismail borrowed a leaf from the case of Lujuna Shubi Balonzi vs. Registered Trustees of Cham cha Mapinduzi . [1996] TLR 203 & Gervas Masome Kulwa vs. The Returning Officer & Others

[1996] TLR 320 with regard to the Appellant's Locus in as far as the claim rather suit is concerned, considering evidence of Innocent Mushi and one Harold Moses Mongi exhibits D1 to be original owners. With regard to reliefs, it is Counsel Ally's contention that much as the vehicle was insured by the 2nd Respondent, ready to indemnify the lawful owner but not the Appellant. Sadly, and as the case had been neither motor vehicle inspection report nor Inspector was in Court to testify the damage. The Appeal is without merit and should be dismissed he concluded. Gathered from the 2nd Respondent, was similarly the same with the position held by the 1st Respondent but further that no notification for sale was made in accordance with section 16 of the Road Traffic Act Cap. 168 RE 2019 within 7 days as prescribed by law. As well and in contravention of section 110(1) (2) and section 111 of the

Evidence Act Cap.6 the Appellant failed to stand for his burden. Sadly and in line with the case of Deo Sharma t/a Seema Driving School vs. The Home Insurance Company of New York [1966] 1 EA 8 (SCK) to condense the point that the Appellant the Plaintiff then had no insurable interest in the policy. In rejoining, the Appellant has nothing to add rather than reiterating his earlier submission in chief, that in absence of registration card the records from TRA had already captured the Appellant processing transfer from its system. The accident took place while this was still in the process. There was a recovery by surveyors that there existed a copy of registration card in the name of the Appellant. Defining what Insurance Contract is, Counsel Luguwa alleges that not being privy to the contract does not by itself disqualify a claimant since it is just enough to prove a case against a Tortfeasor. The joint claim by the vendor Innocent together with the Appellant was sufficient for indemnification he reiterates. The Appellant has an insurable interest under that joint claim against the insurer. So long as the process for transfer and change of name was ongoing the claim was lawful he insists. He referred section 2(2) of the Motor Vehicle (Tax on Registration and Transfers) Act Cap.124 RE 2019 of what implies as a transfer. As the only contentious issue revolves on 'ownership' I had to peruse Court .. file proceedings with a view of ascertaining whether the purported sale agreement, registration card and or TRA records were tendered. The testimony of the Appellant then the Plaintiff commences at page 21 of the proceedings and no where do I find rather establish tendering and admission of any. Infact it is on page 23 when cross examined, the Appellant PW1 states; "Evidence of ownership of Motor Vehicle are receipts and other TRA documents. I have not tendered any document on ownership but I have them the name in the vehicle card was reading Innocent Mushi, at the time of accident here I am the Plaintiff". 6 The Appellant claims in as far as DWI Angela Kessy Mturi, an officer from Mo Assurance Co. Ltd is similarly untrue as she testified on page 31; "I know Rashid Abdallah Kivumbi, I came to know him due to his claims our office. I have gone through his claims. In his claim he claims on damages that his car incurred due to accident. From those documents we attempted to verify and we discovered that we have no name of Rashid but the documents were brought by Rashid but the claims are not his. We had no contract with Rashid... The report came and it showed that the one who brought the coming was not the vehicle owner" The rationale of insurance is to indemnify a party to the extent of the sum insured. Thus as long as the Appellant was not the one who insured his car fit was correct for the Court to disqualify him as he was not an owner as well. On a higher note and which I find interesting from the judgment is the answering of the 2nd, 3rd and 4th in affirmative, which the Appellant not being the owner can cause Innocent Mushi to claim payment on his behalf of course by adopting all the legal means to do so. Considering that he is not party to the suit though. It is from the above, I find no reason to fault or rather disturb the findings of the Trial Court, as the Appeal is accordingly dismissed with costs.

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