

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

PC CIVIL APPEAL NO. 149 OF 2020

(Originating from the Judgment and Orders in Civil Appeal No. 69 of 2019 of Kinondoni District Court Delivered on 26th June 2020, Hon. H. A. Kikoga – RM)

LUCY SWAI APPELLANT

VERSUS

CAROLINE FELINANDI RESPONDENT

JUDGMENT

MRUMA. J;

From the records of the two courts below, this is a straight forward case.

The facts giving rise to the suit were not disputed. What is in dispute is the exact amount which was borrowed by the Respondent from the Appellant.

The records of the Trial Court show that the Appellant claimed Tshs. 5,030,000/= as the amount she advanced to the Respondent. She gave evidence to the effect that on 25.2.2018 she gave the Respondent Caroline Felinandi a loan of Tshs. 5,030,000/= the loan which the Respondent promised to repay before 8/5/2018, but by the time the suit was instituted on 29/8/2019 the amount had not been paid.

The Respondent in her evidence admitted to have borrowed some money from the Appellant. She however contended that she borrowed Tsh. 3,750,000/= only and not Tshs. 5,030,000/= as claimed by the Appellant. She told the Trial Court that the amount was not given to her in lump sum but in instalments. She also said that the said money did not belong to the Appellant but it belonged to a group. She said that because she had a sick relative she could not repay the amount as she had promised. At the time she gave her testimony she prayed to be allowed to repay the amount by instalments of Tshs. 100,000/= per month till the whole amount is liquidated. Her suggestion was refused by the Appellant. She did not call any witness to support her case.

The Trial Primary Court found that the Plaintiff (The Appellant herein) had been able to prove her claim and it entered judgment in her favour and went ahead to order the amount to be paid within sixty (60) days from the date of judgment.

The respondent herein was aggrieved and she appealed to the District Court on the grounds among others that the trial Magistrate did not properly consider and analyze the evidence before him.

The District Appellate Court partly allowed the Appeal by reducing the decreed amount to Tshs. 3,750,000/= which was admitted by the Respondent. The basis of the district appellate court's finding was the first was of the view that there were contradictions in the evidence of the Appellant, and her witness Hassan Mwamba Masoud (SM2) regarding the amount given to the Respondent.


I have carefully reviewed the pleadings of the case and the evidence on record, and with due respect to the district appellate court, I find that the district Court went astray to hold that there was contradiction on the Plaintiff's evidence. During the trial the Appellant gave evidence to the effect that she was claiming Tshs. 5,030,000/= from the Respondent. This Evidence was supported by that of Hassan Mwamba Masoud (PW2) who testified that the two parties went to his office but the Appellant refused to be paid Tshs. 3,000,000/= which amounted to half the amount she was claiming from the Respondent. The Respondent did not give any evidence to contradict PW1 and PW2's evidence.

In her own testimony the Respondent told the trial Court that in the Office of PW2 she proposed to pay cash Tsh. 2.5 Million, and the balance to be paid by instalment but the Appellant refused and on Eid day she proposed

to pay Tshs. 3,000,000/= and the balance by instalments but the Appellant refused. It defeats normal common sense that out of Tshs. 3,750,000/= the Respondent could be ready to pay Tsh. 3,000,000/= at once and request to pay the remaining balance of Tshs. 750,000/= by instalments. On the evidence of PW2 that Tshs. 3,000,000/= proposed to be paid by the Respondent was only half of the amount claimed, it is most probable the amount claimed was more far than Tshs. 3,750,000/= which is admitted by the Respondent and on the undisputed evidence of the Appellant that she gave the Respondent Tshs. 5,030,000/= I find that the Appellant's evidence was much better than that of the Respondent.

In conclusion therefore, I allow the Appellant's Appeal with costs. The decision and orders of the Kinondoni District Court in Civil Appeal No. 69 of 2019 are quashed and set aside, and that of the Magomeni Primary Court in Civil Case No. 125 of 2019 restored.

Order accordingly.


A. R. Mruma

JUDGE

4/10/2021