

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**CIVIL APPEAL NO. 8 OF 2020**

*(Originating from the District Court of Chato at Chato in Civil Case No. 02 of 2019).*

**SABAS JOVINE.....APPELLANT**

**VERSUS**

**CHRISTIAN MANUNGWA..... RESPONDENT**

**JUDGMENT**

**Date of the last order: 29/1/2021**

**Date of judgment: 1/03/2021**

**F. K. MANYANDA, J**

The above named appellant has come to this Court complaining against the judgment and decree of the District Court of Chato at Chato, hereafter referred to as the "trial Court" dated 07/2/2020 by Honourable D. D. Mlashani, RM.

The complaints are contained in the six (6) grounds of appeal raised by the appellant, namely: -

1. That the trial Magistrate erred in law and in facts for entertaining the case without being seized with jurisdiction.



2. That, the trial Magistrate erred in law for composing an irregular judgment tinted with illegality.
3. That, the trial Magistrate erred in facts by reaching to a judgment in favour of respondent without proving the case to the required standard.
4. That the trial magistrate erred in law and facts for giving weight to a purported contract which was frustrated by operation of law and an act of Government.
5. That, the trial Magistrate erred in fact and law for holding that the appellant breached the contract whereas it was an act which the Appellant was not to blame.
6. That trial Court erred in fact for abusing discretionary powers in awarding costs of the suit and general damages without due regard to circumstances of the case.

Briefly the background of this case is that on 23/3/2019 the Respondent Christian Manunga instituted a Civil Case at the trial Court claiming against the Appellant Tshs 2,038,500/= principal sum and Tsh 1,500,000/= as

general damages and cost of the case. Prior to institution of this case in the trial Court, the Respondent had instituted the same at Muganza Primary Court. The case was transferred from the Primary Court upon request of the Respondent that he wanted to engage an advocate.

Before the trial Court the story of the Respondent was that he gave the Appellant Tsh 2, 650,000/= to buy fish nets in June 2017 on agreement that he would return the money in one year. He managed to repay Tsh 665,000/= only, leaving an outstanding balance of Tsh 2, 038, 000/= which he did not pay. The Respondent instituted this suit because he found the Appellant to have breached their agreements. He claimed to have suffered loss hence claimed Tsh 3, 000,000/= as general damages.

On the other hand the story for the Appellant was that on 25/6/2017 was given 40 pieces of fishing nets by the Respondent on agreement that he would be selling the fish to him at a lower price. However on 14/1/2018 the said fish nets were destroyed during illegal fishing operation. It was his contention therefore that the contract was frustrated by the operation of the Government.





Hearing of the case was conducted by way of written submissions. However only the Appellant submitted the submissions, the Respondent did not file any submission in reply.

In law a party who fails to file his or her submissions pursuant to an order of the Court so directing is taken to have abandoned his right to be heard. It becomes as if he or she has not attended in Court for hearing. Nevertheless the Court is not precluded to consider the evidence tendered at the trial by a party who does not file written submissions when determining the appeal before it through the proceedings.

The Appellant submitted combining grounds 1, and 2, 4 and 5 and contended he would submit the rest separately.

In respect of ground 1 and 2 he submitted that the trial District Court erred in law to entertain a case whose pecuniary value is within the jurisdiction of a Primary Court, being Tsh 2, 650,000/= only. Therefore the trial Court had no jurisdiction as its jurisdiction is above that amount.

Further he complained about transfer of the case from Muganza Primary Court to it contending that the same did not meet the conditions



provided under section 47(1)(b) of the Magistrates Court Act, [ Cap 11 R. E 2019]. That a mere need of engaging an advocate is not in itself sufficient. He cited the case of **Abubakar Mohamed Mlenda vs Juma Mfaume** [1989] TLR 145.

I will deal with these grounds first. In this case the claim of the Respondent was Tsh 2,038,500/=. The pecuniary jurisdiction of Primary Court is a value of not more than Tsh 50,000, 000/=. Therefore it is true that the amount was within the reach of the Primary Court pecuniary jurisdiction. However in my firm opinion, this does not make illegal proceedings tried by a District Court whose pecuniary jurisdiction exceeds Tsh 50,000,000/= but the same is highly discouraged. I say so because such proceedings don't prejudice the parties. More so with the intent of the principle of overriding objectives brought about by the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 8 of 2018 which require court to adjudicate cases justly and dispense substantive justice I find the irregularity in the circumstances of this case curable.

As regard to the complaint on transfer of the case from Muganza Primary Court to the trial District Court on reason that the Respondent (who

was the plaintiff) wanted to engage an advocate as curable irregularity also. I say so because, like for the issue of pecuniary jurisdiction, the rationale for discouraging unnecessary transfer of cases from Primary Court to District Court is to avoid unnecessary congestion and crowding of cases in the District Courts in the event transfer of the case is easily permitted by the District. In a situation like in this case, parties were given opportunity to be heard and a balance and just decision given. I find no prejudice occasioned. The complaints in grounds one and two are baseless.

As regards ground three, the Appellant complains that the Respondent failed to prove the case to the required standard. The argument advanced is that he agreed to be given 40 pieces of fish nets on condition that he would be fishing and sell the fish to the Respondent for a period of one year. He contends that the fish nets had no value.

On record, the proceedings show that the Respondent testimony was that he advanced Tsh 2, 650,000/= to the Appellant so that he would buy fish nets and return the money in a period of one year.

The Respondent did not produce any document to support his oral testimony but relied on documents, copies of which were annexed to the





written statement of defence of the Appellant. The documents annexed to the Written Statement of Defence of the Appellant included an agreement for hiring 40 fish nets. The Respondent stated in cross examination that: -

*"There are documents which shows that I gave you that money you have that document which shows you borrowed Tsh 2,650,000/= it was cash."*

However in examination in chief the Respondent stated as follows; -

*"The document which the defendant tendered in pleadings are the same which I had because I misplaced my document."*

By these pieces of testimony of the Respondent, he was admitting the evidence of the Appellant that the documents which were with the Appellant were the same documents the Respondent relied upon.

This is also evidenced by "none objection" on tendering of exhibit DE1 which is termed "*mkataba wa uchukaji nyavu*" This exhibit shows that the Appellant was given 40 fish nets of six inch ply nine (9)

Therefore it goes without minting words that the Appellant was given nets, he did not borrow cash money as was alleged by the Respondent in his testimony.



The Appellant contend that the 40 fish nets had no value. This Court has asked itself a question at what reasons the Appellant accepted valueless fish nets from the Respondent in return to selling fish to him at lower price?. Probably the Appellant meant that the value of the fish nets was not established at the time he received the same. Exhibit DE1 does not show the value of the said fish nets.

Be it as it may, the 40 fish nets had value which was not directly ascertained.

The Appellant contend that the contract was frustrated by the act of the Government destroying them pursuant to Operation Illegal Fishing. This carries me to the next complaint.

In grounds four and five the Appellant contends that if it is blame, it is for the Respondent who purchased fish nets of low and prohibited size hence the same were destroyed by the Government during Operation Illegal Fishing.

In law a contract is discharged by frustration when some event (s) which is the fault of neither party that makes the contract impossible, illegal



or radically different from that originally undertaken. It typically occurs where some events outside the control of the parties occur. In the case of **Kanyware Building Contractor vs Attorney General and Another** [1985] TLR 161 this Court held, *inter alia* that:-

*"The doctrine of frustration may be involved where events occur that make the performance of the contract impossible and these frustrating events are not the fault of either party".*

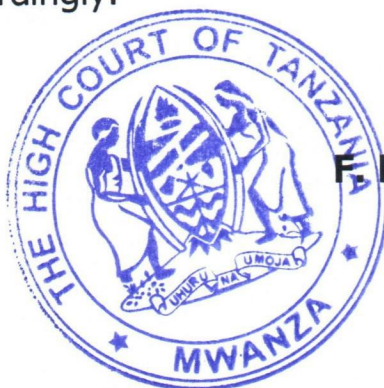
In the current case, the fish net were purchased by the Respondent. The Appellant only picked them from the respondent as per exhibit DE1. This means that the Respondent purchased prohibited fish net by the law. The Respondent cannot take refuge in the doctrine of frustration because he was at fault when he purchased the fish nets. I say so because the maxim **"Ignorantia juris non excusat"** operates here. Also the Respondent cannot rely on a defence of ignorance of the law because the same is not a defence in law.

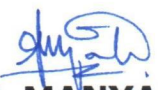
Now if the Respondent had banned fish nets by law and he entered into an agreement with the Appellant for using the same banned fish nets to fish, can such an agreement be enforceable in law?. The answer is in

negative. In my opinion such a contract is invalid "*ab initio*" such a contract is not a contract at all and can not bind the parties, no action can be maintained. Although the Respondent and the Appellant tried to make a contract, the same is void in law on reasons that the fish nets are prohibited by law and use of the same for fishing is also prohibited by the law, therefore under section 2(1)(g) of the Law of Contract Act, [Cap 345 R.E 2019] an "*agreement not enforceable by law is said to be void*".

The consequences of entering into a void contract which is not a contract at all is that no party can benefit from it.

In the upshot and for reasons given, this appeal succeeds. I hereby quash the judgment of the District Court of Chato and set aside the decree thereof. I make no order as to costs; since none of the parties benefited. Order accordingly.



  
**F.K. MANYANDA**  
**JUDGE**  
**1/3/2021**