IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[ARUSHA DISTRICT REGISTRY]

AT ARUSHA

PC. CIVIL APPEAL No. 10 OF 2022

(Originating from Arumeru D/C Civil Appeal No. 14 of 2021 Originating from Enaboishu Pc. Civil Case No. 134 of 2020)

FESTO SETH SARAKIKYA..... APPELLANT

VERSUS

MWENYEKITI WA KUWAYA YATA SACCO..... RESPONDENT

JUDGMENT

17th June & 11th July 2022

TIGANGA, J

In this appeal, the appellant, Festo Seth Sarakikya is appealing against the decision of the District Court of Arumeru (herein after referred to as the fist appellate Court) in Civil Appeal No. 14/2021 in which he was also the appellant and lost that appeal against the respondent, Mwenyekiti Kuwayayata SACCOS. Before the first appellate court the appellant was challenging the decision of the Primary Court of Enaboishu of Arumeru District herein after referred to as the trial court, in Civil Case No. 134 of 2020, in which the appellant was a plaintiff and the respondent was the defendant.

Initially as earlier on pointed out hereinabove, the appellant filed the Case Civil Case No. 134/2020 before the trial Court of Enaboishu

claiming from the respondent, one cow valued at Tshs 1,750,000/= which was, according to him, erroneously attached by the respondent, pretending to be recovering a debt which the appellant owed to the respondent.

The respondent admitted to have attached the said cow but dispute the value of the said cow. They said the cow was not valued Tshs. 1,750,000/= as alleged, but it was either valued Tshs. 550,000/= according to DW2 or Tshs 600,000/= according to DW1. They also admitted to have attached the said cow in connection by the debt owed to the appellant.

After full hearing, the trial court held *inter alia* that, the cow was really attached in connection with the debt and that it was proved to be valued at Tshs. 1,200,000/=. It was also the findings of the trial court that the value of Tshs. 600,000/= alleged by the respondent has not been supported by any evidence. It was also the decision of the trial court that, it was proved that, the debt accumulated to Tshs. 1,201,600/= as that was not disproved by the appellant. Last, it was also the decision of the trial court that, the evidence was concrete that, the cow was kept as security and was attached after the appellant had failed to pay the debt.

Therefore, it was the final findings of the trial Court that, the plaintiff failed to prove his claim thus, it was dismissed for want of proof.

That decision aggrieved the appellant who appealed to the District Court of Arumeru. In such an attempt to challenge the decision of the trial Court the appellant filed four grounds of appeal as hereunder:

(i) That the trial Primary Court erred when it dismissed the claim by the appellant without justiciable reasons and evidence to prove that there was the permit of the District Commissioner allowing the respondent to attach the said cow.

(ii) That the trial court erred for its failure to give judgment in favour of the appellant while he proved his claim at the required standard, while the defendant/respondent failed to produce necessary documents to support his case of which the court occasioned miscarriage of justice on the appellant.

(iii) That the trial court was wrong in blessing illegal attachment of the property the act which caused miscarriage on the part of the plaintiff in that the trial court slipped out of justice.

(iv) That the trial court erred in law in entering judgment in favour of the defendant, considering that, the defendant's SACCOS was not financial institution to charge more interest on the decretal

amount the act which was against the Financial Institution, Act and against the law.

Having considered all grounds of appeal, the first appellate court was satisfied that all grounds of appeal have no merits, because the evidence was worth the finding of the trial Primary Court. The evidence of the respondent was heavier than that of the appellant. Consequently, the first appellate court sustained the decision of trial court and dismissed the appeal with costs.

That decision too, aggrieved the appellant, he decided to appeal to this court where he advanced four grounds of appeal which in essence raised the following complaints:

(i) That the first appellate Court erred in law when it held that the attachment was proper while there was no evidence to prove that, but to the contrary, the available evidence is that PW2 did not know the exact amount which the appellant was indebted.

(ii) That the first appellate court failed to analyze the evidence on record when it held that, the appellant had failed to prove his case through tangible evidence that he paid a loan while it is

on the record that he paid back a certain amount to reduce the amount of money claimed.

(iii) That the first appellate court erred when it held that, the attachment of the cow was proper because it was pledged as security for the loan while no body was allowed to attach another person's property without the order of the court.

(iv) That the first appellate court erred when it applied the principle of *bonafide* claim of right. While the evidence on record suggests that, there was a point of contention to be adjudicated by the court, the court left the unresolved point in its judgement.

The respondent contested the appeal, hearing of the appeal was conducted orally by the parties. Parties were not represented by Advocates. They appeared fending for themselves. While the appellant was in person, the respondent was represented by Mr. Moses Merinyo Kaaya, Chairman of the SACCOS.

Being unrepresented lay man, the appellant could not confine his submissions on the grounds of appeal. Despite the facts that on several occasions he was alerted to argue the grounds of appeal, he went astray and presented general complaint on how the trial court did not

do justice for him. In essence he complained that his evidence proved his claim, but the court did not do justice to him.

He said he once filed a case before the High Court where Hon. Moshi, J, ruled that it was the appellant who was supposed to be paid by the respondent.

For the respondent, Mr. Moses Merinyo submitted that, the appellant was a member of SACCOS and that he took a loan which he did not repay. He almost adopted the method used by the appellant of not confining his submissions on the grounds of appeal. Instead, he gave a detailed back ground showing that, there was a default by the appellant to pay a loan he took from the respondent and that, they resorted to attachment of the property after the appellant had defaulted to pay loan and that what they attached was a security pledged to secure the loan. He insisted that, the attachment was justified, he therefore prayed the appeal to be dismissed.

In rejoinder, the appellant said that, he did show the receipt to prove that he paid the loan, and insisted that, in the case decided earlier, the respondent was ordered so compensate him but they did not do so. He prayed, the appeal to be allowed with costs.

That marked the summary of the case and the submissions made by the parties in support of the appeal or against it. Before going to the merit of the appeal, I find it important to point out a number of issues which from the records are not in disputes.

One, there is no disputes that the appellant is a member of the respondent SACCOS. There is also no dispute that the appellant took a loan of Tshs 1,500,000/= from the SACCOS, which he did not repay in full. That fact was proved by the evidence of the respondent before the trial court, which was not disputed by the appellant before that court.

There is also evidence as reflected in Kielelezo No. 2, that is the loan agreement, that on default the properties pledged as security may be attached and sold if the borrower default for more than 30 days.

In this case the appellant was the one who filed a suit claiming his cow to be unjustifiably attached by the respondent. Which means under Regulation 6 of the Magistrates Courts Act (Rules of Evidence in Primary Courts) Regulations, G.N No. 22 of 1964 and 66 of 1972, he was duty bound to prove his claim. In my strong view, he would have been taken to have proved his claim had he proved that, the loan he took was actually repaid in full and therefore the respondent had no

claim against him at all. He was supposed to do so by proving by evidence that he paid all the money he borrowed as a loan.

He was also supposed to prove that, the cow attached is valued at Tshs. 1,750,000/= as alleged. He was supposed to do so by bringing evidence or witnesses to prove that facts which he did not do.

In law, it is always the duty of the plaintiff to prove the case, and the standard of proof is on the balance of probabilities.

It is trite law that, in civil cases a burden lies upon the party who desires for a court to give judgment in his favour. This is a true position of the law as held in the case of **Godfrey Sayi vs. Anna Siame as a legal Representative of the late Mary Mndolwa**, Civil Appeal No. 114 of 2012 CAT – when it was held *inter alia* that;

> *"It is similarly common knowledge that in civil proceedings the party with legal burden also bears the evidence burden and the standard in each case is on the balance of probability. In addressing similar scenario on who bears the evidential burden in civil cases, the court in* ***Anthony M. Masanga Vs. Penina (Mama Mgesi) and another,*** *Civil Appeal No. 118 of 2014 (Unreported) cited with approval the case of* ***In Re B (2008) UKHL 35*** *where Lord Hoffman in defining the term the balance of probabilities states that;*

If a legal rule requires as fact be proved (a fact in issue), a Judge or Jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates in binary system in which the only value is 0 and 1, that, the fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that, one party or the other carries the burden of proof. If a party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."

It is thus upon the plaintiff/appellant to establish and prove his case on the balance of probabilities, that he paid of all the loan he borrowed from the respondent, and that his cow was attached and sold without justification because the respondent had no claim against him, which he did not do before the trial court.

He just narrated how the loan officer from the respondent went to his place and attached his cow without justification. However, he did not disprove the justification contained in the facts that he was indebted.

That said and taking into account the fact that all four grounds of appeal were zeroing around the complaint that the case was proved

on the balance of probabilities but the trial court unjustifiably denied him the victory, I find all grounds of appeal to have failed. Thus causing the entire appeal to crumble.

In light of the above exposition, this appeal is found to be devoid of merits, and dismissed with costs for want of merits.

It is accordingly ordered.

DATED at **ARUSHA**, this 11th day of July, 2022.

J. C. TIGANGA

JUDGE