



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL APPEAL NUMBER 60 OF 2018

BETWEEN:

YOHANE M'BWEZA

APPELLANT

AND

IREEN YALETA

RESPONDENT

CORAM: JUSTICE M.A. TEMBO,

Appellant, present and unrepresented
Respondent, present and unrepresented
Mankhambera, Official Court Interpreter

JUDGMENT

This is this court's judgment following a hearing of this matter on appeal against the decision of the lower court.

The appellant appeals against the decision of the Second Grade Magistrate Court sitting at Nchalo by which the lower court found that the appellant owed a sum of K392 598.75 to the respondent following a business venture in which the appellant was to buy cotton which was sold by the respondent.

Before the lower court, the respondent claimed that she gave the appellant a sum of K2 256 000 to buy cotton on her behalf. The appellant and the defendant agreed that the appellant would receive 25 per cent of the profits from the cotton venture.

With the sum of K2 256 000 the appellant was supposed to buy cotton weighing 8226 kilograms. However that he bought cotton weighing 6133 kilograms leading to a shortage of 2093 kilograms.

The shortage of 2093 kilograms which was found after the cotton was weighed in the appellant's presence and which the appellant also admitted was agreed by the parties to be split in half and its purchase value was calculated at K250/kilogram and K300/kilogram respectively. Expenses were also deducted at K62 520 and the total shortage of cotton tonnage was K512 780.

The lower court found that the appellant had no defence. The shortage represented 20 bales of cotton. And could not be explained by the appellant who also had admitted the same at the time the cotton was weighed.

The lower court then observed that clearly the appellant was counter-claiming for 25 per cent of the profit.

It then ordered the respondent to provide information, including documentary evidence like receipts, on how she sold the 6133 kilograms of cotton.

The respondent appeared at the lower court and provided oral information on how the 6133 kilograms of cotton were sold.

There was already evidence from the appellant himself to the effect that he together with the appellant had found a market for the cotton and agreed to sell the same at K370 per kilogram.

The respondent indicated that the cotton was sold at K365 per kilogram. And that 40 kilograms was deducted for loss of weight due to loss of moisture content. The lower court therefore found that this meant that there was eventually 6093 kilograms of cotton sold at a total sum of K2 223 945.

The lower court found that the appellant actually used K1 743 220 to buy the 6133 kilograms of cotton.

It further found that the difference between cost of buying and selling the 6133 kilograms of cotton is K480 725. And that represents the profit. And that 25 per cent of this sum is K120 181.25.

The lower court then found that the appellant already had the shortage of K512 780 from the purchase of the cotton herein. The appellant's 25 per cent profit of K120

181.25 was used to offset the shortage and the sum owed by the appellant was found to be K392 598.75.

Dissatisfied by the decision of the lower court the appellant now appeals against the lower court decision on two grounds as follows.

Firstly, that the final decision of the lower court ought not to have been rendered before the respondent produced receipts on how she sold the cotton.

And, secondly, that he was not satisfied with the lower court's finding that he owed K392 598.75 to the respondent herein.

On the hearing of civil appeals, this Court has the following powers as provided in section 22 of the Courts Act

In a civil appeal, the High Court shall have power—

- (a) to dismiss the appeal;
- (b) to reverse a judgment upon a preliminary point and, on such reversal, to remit the case to the subordinate court against whose judgment the appeal is made, with directions to proceed to determine the case on its merits;
- (c) to resettle issues and finally to determine a case, notwithstanding that the judgment of the subordinate court against which the appeal is made has proceeded wholly on some ground other than that on which the High Court proceeds;
- (d) to call additional evidence or to direct the subordinate court against whose judgment the appeal is made, or any other subordinate court, to take additional evidence;
- (e) to make any amendment or any consequential or incidental order that may be just and proper;
- (f) to confirm, reverse or vary the judgment against which the appeal is made;
- (g) to order that a judgment shall be set aside and a new trial be had;
- (h) to make such order as to costs in the High Court and in the subordinate court as may be just.

The appeal is by way of rehearing. That means this Court will subject the evidence before the lower court to a fresh scrutiny. Of course, this Court is always mindful that when sitting as an appellate Court it should never lose sight of the fact that the lower court had the advantage of determining the credibility of the witnesses first hand.

With regard to the first ground of appeal, this Court observes that the lower court had ordered the respondent to provide information including documentary evidence on how the cotton was sold.

The respondent only provided oral evidence which the lower court accepted, namely, that the sale price of the cotton was K365 per kilogram.

The respondent's argument on this appeal was that the receipts for the sale of the cotton were actually lost that is why she was compelled to provide oral evidence in that regard.

The appellant could not have any of that. He insisted that he ought to have the receipts in court to be satisfied about the sale price for the cotton.

He however feigned ignorance of the weight of cotton actually sold.

This Court has observed that the appellant's own evidence during trial shows that the price agreed with their cotton buyer was K370 per kilogram. There is little variance between that sum and the sum indicated by the respondent of K365 per kilogram. The sum of K5 is for transport as per the respondent's explanation on appeal.

This Court does not find it outlandish that the lower court accepted the sum of K365 per kilogram as the selling price in the circumstances herein even though the respondent did not provide receipts as the same were lost.

Consequently, this Court will not interfere with the lower court decision on account of the first ground of appeal. The first ground of appeal therefore fails.

With regard to the second ground of appeal, this Court is unable to appreciate why the appellant is not satisfied that he owes K392 598.75.

The lower court aptly explained how that sum was arrived at as outlined earlier on by this Court. The second ground of appeal therefore also fails.

In the final analysis, the appeal herein fails with costs to the respondent.

Made in open court at Blantyre this 5th December 2018.



M.A. Tembo

JUDGE