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LEGAL NEWS

12 February 2024



Court Invalidates Controversial Settlement Agreement Involving the Government for Lack of Free Consent and Consideration

On 31 January 2024, the Court of Appeal of Tanzania at Mwanza (the Court) rendered its judgment in the case of Amos Njile Lili vs. Nyanza Cooperative Union (1984) Limited, Gerald Kusaya, and the Attorney General, Civil Appeal No. 126 of 2020. The Court made a detailed analysis of the elements of a valid contract as stipulated under section 10 of the Law of Contract Act, Cap. 345 [R.E. 2019] (the Act). Further, the Court concluded that the Appellant's consent to enter into the said agreement, which was the centerpoint of the dispute, was procured by threats from the Government and lacked consideration, which are among the essential elements required by the law for any agreement to be valid and enforceable. As a result, the Court declared the agreement void ab initio for falling short of the mandatory legal requirements.

Background of the Case

The Appellant, Amos Njile Lili, filed Land Case No. 12 of 2018 at the High Court of Tanzania at Mwanza (the High Court) seeking declaratory orders that: one, the purported settlement agreement dated 15 January 2018 between the Appellant and the Government of the United Republic of Tanzania (disputed agreement) is void ab initio and, therefore, unenforceable; two, the Appellant is the lawful and registered owner of the suit property; three, for payment of special damages of TZS 150M per annum from January 2018; four, for payment of TZS 2B for general, exemplary, and punitive damages; and five, for commensurate interests and costs. The High Court dismissed the land case for want of merit, hence the appeal to the Court vide Civil Appeal No. 126 of 2020.

By way of background, the Appellant, in January 2007, at an auction conducted by a court broker, purchased the suit property on Plot No. 104/1 Block A, Igogo Industrial Area, Mwanza Region. Originally, the suit property was owned by Nyanza Cooperative Union (1984) Limited (the 1st Respondent). Upon his purchase and transfer, the Appellant was issued with a certificate of title registered in his name.

In December 2017, the Appellant received information that the certificate of occupancy related to the suit property was cancelled. However, the Appellant followed up with the relevant authorities and was assured that it was still valid. Later, through tenants premised at the suit property who had received a letter from the Regional Commissioner Mwanza, it was communicated that the suit property was no longer owned by the Appellant, instead it belonged to the 1st Respondent. The Appellant was informed that his title to the disputed land had been revoked.

Further to the foregoing, in January 2018, the Appellant attended a meeting at Dodoma convened by the Prime Minister to discuss matters in relation to the sale of the suit property. At the Dodoma meeting, the Appellant's title to the suit property was questioned and he signed a document named "Makubaliano ya Kurejesha Mali" (agreement to surrender property/settlement agreement) which later became the centerpoint of the controversy between the Appellant and the Respondents.

At the Court, the Appellant lodged the memorandum of appeal challenging the decision of the High Court on the following grounds: one, holding that the Appellant and the Government had a valid contract; two, finding the Appellant to have signed the contract out of free consent; three, finding that the suit property was lawfully acquired by and under the ownership of the President; and four, failing to properly evaluate the evidence on record, thus arriving at an erroneous decision.

Arguments Raised

The Appellant's arguments, among others, were that the validity of the contract is doubtful, for while the contract is alleged to be between the Government and the Appellant, it is signed by the 2nd Respondent in his capacity as the chairman, and he has no capacity to represent the Government. Further, it was argued that the trial Judge did not address the issue of whether the contract was signed out of free will, a requirement under the law. Furthermore, the Appellant argued that, in determining this matter, the trial Judge was expected to have ascertained how the Appellant travelled to Dodoma and the motive behind it. Also, it was submitted that there was no free will on the part of the Appellant when signing the disputed contract, taking into account the circumstances surrounding his attendance there, including having no witness on his side at the signing of the contract, his legal counsel having been denied access to attend the meeting.

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Moreover, the Appellant faulted the trial Judge for failure to properly analyze the adduced evidence as required by law. He contended that there was no evidence adduced at the trial for the trial Judge to conclude that the Respondents proved the contract to have been properly executed since none of the Respondents' witnesses adduced evidence on how the contract was entered into between the parties, negotiations and involvement of the parties. The Appellant wound up his submissions by praying for the appeal to be allowed, the disputed contract to be declared null and void, and a declaration that the Appellant is entitled to damages pleaded and costs.

The Respondents argued that the contract was validly entered into for the following reasons: first, the disputed agreement was drawn through a special committee/team of the Government, with full mandate to contract on behalf of the Government. Second, the disputed contract was witnessed by members of the special team and it is not a legal requirement for each party to have their witnesses present at the signing of a contract. Third, on the issue of lack of free will on the part of the Appellant when signing the contract, the Respondents submitted that the Appellant failed to prove his contention of lack of free consent. Fourth, it was argued that since there was a clause in the contract that promised to compensate the Appellant upon the property in dispute being acquired by the President, this was consideration within the confines of the law. Fifth, the fact that the Appellant and the Respondent had concluded an agreement that had not been disputed should lead to a conclusion that the contract is valid. Finally, the Respondents submitted that the judgment clearly shows that the evidence was thoroughly analyzed and the High Court found that the Appellant failed to prove his claims on the balance of probabilities. The Respondents thus urged the Court to find complaints to lack substance, find the appeal unmeritorious, and dismiss it.

Determination of Issues and Decision of the Court

In its judgment, the Court expressly observed that its judgment is guided by three principles of law, namely in civil cases, the burden of proof lies on the person who alleges anything in his favour; the burden of proof envisaged in civil cases is on the balance of probabilities; and under section 10 of the Act, parties are bound by the agreements they freely entered into, the cardinal principle of the law of contract being the sanctity of the contract.

On whether the disputed contract is valid, the Court, guided by section 10 of the Act, observed that free consent of parties competent to contract for a lawful consideration and object are essential components in establishing a valid contract. As a result, the Court held that while it agrees with the trial Judge that the Appellant did sign the contract, taking into account the circumstances obtaining which led to the signing of the contract, the Court remained unconvinced that the act by the Appellant of signing the disputed contract in itself in the absence of any other evidence to prove otherwise established that there was free consent on his part during the process. Further, the Court remained unconvinced that signing the disputed contract meant that the Appellant out of his free will agreed to all the terms in the said contract and that there was consensus ad idem for both signatories on the contents and context of the contract envisaged under sections 10 and 13 of the Act.

The Court arrived at that position having considered the circumstances leading to the Appellant's attendance at the meeting with the Prime Minister in Dodoma. The Court noted that there is evidence that the Appellant, a layperson, was denied the opportunity to have legal counsel in the said meeting; lack of clarity as to why the disputed contract was issued by the Government when it is alleged that at the time of filing the suit subject of the appeal, the issue of ownership and title to the disputed land had already been determined; and Court's preview of the contract showed that it is essentially a one-side-led agreement and the Appellant is the one giving or committing himself and receives nothing in return apart from an affirmation that no legal action to be taken against him on matters related to the sale transaction of the disputed land. The Court concluded that had the trial Judge critically considered the circumstances surrounding the signing of the disputed contract, the High Court Judge would not have reached the finding that there was free consent on the part of the Appellant.

In addressing further the issue of the validity of the contract, the Court also considered whether there was consideration as required by the law. The Court was of the view that the Respondents failed to show that there was consideration in the execution of the contract, hence the Appellant's complaints had substance. Also, the Court remarked that while it is aware that the principle of the sanctity of contract prevails and courts are advised not to temper with concluded agreements but to give effect to the intention of the parties as discerned from the contents therein, upon re-evaluation of the evidence, it was of the view that had the High Court properly evaluated the evidence before it, it would have discovered that the Appellant's intention was not embraced in the signed contract since there was no proof of free consent on his part. Regarding the complaint around the trial court's failure to properly evaluate the evidence, the Court noted that while addressing the other complaints, this concern was duly addressed and determined. As a result, the Appellant's appeal was allowed with costs.

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Copy of the Judgment of the Court can be accessed by [clicking here](#)

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