

RUTA MOSEL
versus
ANGELA MANDISHONA

HIGH COURT OF ZIMBABWE
MAKONI J
HARARE, 21 May 2013 and 12 June 2013

Civil Appeal

The appellant in person
The respondent in person

MAKONI J: The appellant filed a claim in the court *a quo*, against the respondent whereby she was claiming payment of the sum of US\$1 149-00 being the balance in respect of goods advanced to and received by the respondent on credit. The claim was contested on the basis that the respondent owed the appellant much less as she had paid some of the money and returned some of the goods. The respondent conceded to owing the appellant US\$380-00. After a full trial, the magistrate made an order that the respondent pays the applicant the amount the respondent admitted owing and absolution from the instance in respect of the balance of the amount claimed in the summons i.e. the appellant then filed the present proceedings.

The appellant's main grounds of appeal can be summarised as follows:

- (i) That the magistrate erred in granting a lesser amount from that claimed in the summons;
- (ii) That the magistrate erred in not believing the evidence of the plaintiff and its witness; and
- (iii) That the court erred by not making an order for costs against the respondent. She then prayed that the judgment of the court *a quo* be set aside and be substituted with an order that judgment in the sum of US\$1 149-00 be granted in favour of the plaintiff with costs.

From a perusal of the record, it is common cause that the appellant and the respondent entered into some arrangement whereby the applicant supplied some goods for resale to the respondent. The respondent sold some of the goods and paid the applicant. The appellant says she was paid US\$399-00. The respondent says she paid US\$308-00. I will revert to this later in the judgment. The respondent returned some goods back to the appellant. She puts the value of the goods at US\$72-50 whilst the appellant puts it at US\$70-50. The difference is insignificant.

The issue that had to be determined by the court *a quo* was whether the respondent was liable to pay the sum claimed by the applicant.

The court *a quo* made a finding that the list of items presented by the appellant in court was prepared by her boyfriend in the absence of both the appellant and the respondent. It then made a finding that the plaintiff had failed to convince the court that indeed the items on her list reflected the correct information regarding goods received by the respondent.

I have read the evidence of the appellant's boyfriend, one Abrah Maheri. I have not found anywhere where he stated that he recorded the items handed over to the respondent in the absence of the appellant and the respondent. Instead his evidence was very clear and straight forward that he would record the goods that the respondent collected. He also recorded the payments that the respondent made. According to his record, the respondent paid US\$399-00. This evidence was not challenged by the respondent. He should actually be given credit in that he told the court the truth regarding the amount that the respondent had paid. If he was dishonest he would have agreed with the lesser amount of US\$308-00 that the respondent mentioned.

The magistrate therefore erred in making a finding that the appellant's boyfriend recorded the items in the absence of both the appellant and the respondent. This is not supported by the evidence on record.

In any event the respondent does not dispute receiving the items on the appellant's list. Under cross examination, she could not explain the difference of items on her list and that of the applicant.

Furthermore when the parties were called to Hatfield and Harare Central Police Stations, the respondent gave two different figures of what she claimed she owed the appellant. These two figures also differ from the figure of US\$308-00 that she told the court.

Going by the evidence on record, the probabilities favour the evidence of the appellant.

In view of the above, the magistrate clearly erred by disbelieving the appellant's evidence. The appeal must therefore succeed.

In view of the above the judgment of the court *a quo* is set aside and substituted with the following:

“The respondent is ordered to pay the plaintiff the sum of US\$1 149-00 and costs of suit.”

It is so ordered.

UCHENA J: agrees