

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 36 OF 1992

A.A. MPOMBE MPILI APPLICANT

versus

BANGILI KIPENGELE RESPONDENT

J U D G M E N T

Chuwa, J.

Chua, J.

The appellant Ally Mpombe sued the respondent Bangili Kipengele for a piece of land in Mwarusembe Primary Court Kisarawe District vide civil case No. 11/84. He was not successful. He appealed to the District Court Kisarawe in civil appeal No. 7/84. He succeeded. When he wanted to execute the decree he was advised to file a separate suit so that he could recover the costs he had incurred in prosecuting his case and appeal. Hence he filed civil case No. 24/84 in the Primary Court and was awarded shs.24,230/-. The respondent did not pay the amount immediately. As a result in 1987 his house was attached and sold to recover the money that was due to the appellant. The appellant was not satisfied. He applied in the District Court to be paid 30,404/-shs. being interest on the amount he was awarded at the rate of 20% per annum plus cost of travelling to Kisarawe while he was trying to execute the decree. The District Court dismissed the claim and the appellant filed the present appeal.

In dismissing the application of the appellant the learned District Magistrate stated: "Hivyo kwa madai hayo ya malimbikizo ya kutolipwa deni mahakama hii haikubaliani nayo kwa sababu kukubaliana na madai ya aina hiyo ni kuradua kutoa uamuzi tena katika shauri la madai Na. 24/86 lililokwisha tangu mwaka 1987.

Juu ya gharama za safari kwenda Kisarawe mahakama ya Mwanzo Mwarusembe na kwa Katibu Kata mwomba rufaa hakuonyesha uhakika wa kufanya safari hizo. Hakuonyesha hata tiketi za nauli alizolipa kwa safari hizo".

The issue that was for determination was whether interest was payable on the decretal sum and if so at what rate. Under Order XX rule 21 (1) of the Civil Procedure Code District Court has power to impose interest on decretal sums in cases where it exercises original jurisdiction subject to the rule that such interest should be within 7% and 12%.

Regarding transport costs in the absence of tickets or receipts the court should ask itself whether the decree holder had to make the trips he claimed. It should be noted that rural Tanzania it is not surprising that transporters may not be issuing tickets as it is the case with their counterparts in cities. The claim of the appellant, therefore, ought to have been entertained.

Both interest and transport costs were not claimed in the Primary Court. There was therefore no basis for bringing up the matter in the District Court by way of appeal. The procedure adopted was defective and the claimant was not given an opportunity to adduce evidence. The appeal for that reason fails and the appellant should pursue his rights by filing a civil suit in the District Court subject to the law of limitation.

CHUA

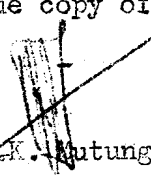
JUDGE
28/9/95

Judgment read out in court in the absence of the parties.
Judgment to be typed and a certified copy be forwarded to the Mwarusembe Primary Court where the parties should be summoned so that the judgment may be read over to them.

CHUA

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28/9/95

I certify that this is a true copy of the original.


F. K. Mutungi
DEPUTY REGISTRAR
19/6/2000