

IN THE HIGH COURT OF TANZANIA
AT MBEYA

ORIGINAL JURISDICTION

(Mbeya Registry)

(PC) CIVIL APPEAL NO. 6 OF 2002

(From Original Civil Case No. 12 of 2001 of

Busale Primary Court, Kyela District Court

Civil Appeal No. 12 of 2001

FRANCIS MWAKYANYIKA APPELLANT

Versus

JOB MWAKYUSA RESPONDENT

JUDGEMENT

MREMA, J

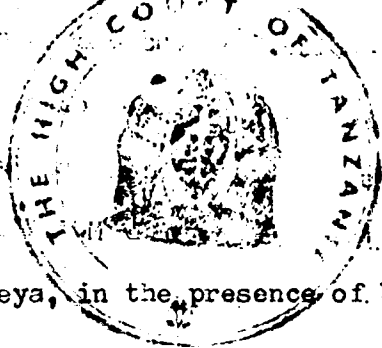
This is a simple appeal preferred by the Appellant FRANCIS MWAKANYIKA. He was the Defendant in the Primary Court of Busale whereat the Respondent JOB MWAKYUSA sued him for the recovery of one cow which the Respondent had paid to the Appellant's father as a betrothal price in respect of betrothed agreement between the Respondent and the Appellant's sister to marry. Also paid together with the cow to the Appellant's father was Shs.7,000/=. As it turned out the marriage did not take place on the assertion by the Appellant that the Respondent failed to pay to the Appellant's father another cow and a bull as full bride-price. It was also asserted at the Primary Court that the cow that was paid to and received by the Appellant's father died after two (2) months. Then the Appellant's father MWAWI SALEHE MWAMBUSI summoned their betrothed witness DAUD MWASYEBULE and his brother GODWIN MWANGAFIKE to witness the handing over of the carcass (the dead cow).

But the Respondent throughout from the primary court to this court has been denying to have been handed over the alleged carcass, only admitting that he was paid back the T.Shs.7,000/=. Both the courts below were satisfied that there was no iota of evidence confirming the alleged handing over and receipt of the dead cow by JOB MWAKYUSA.

At the hearing of this appeal it is the appellant's case that the Primary Court refused him to call the two witnesses DAUD MWASYEBULE and GODWIN MWANGAFIKE. I think this statement of the appellant is an after-thought as he is trying to convince this court to call additional evidence in his endeavour to concoct false evidence with a view to bolstering his evidence at the trial court. Even if the cow was dead the Respondent could not be held responsible for its death because the cow was in the custody of the Appellant's father for more than two months after it was received and accepted by the Appellant's father. Furthermore, the Appellant did not produce ^{veterinary} evidence to satisfy the primary court that the said cow really died. Under those circumstances I am in full agreement with the two courts below that the Respondent's case at the trial court was more probably true than the Appellant's case. On that premise I find this appeal frivolous and vexatious and in that regard I dismiss it in its entirety, with costs.

The two judgements of the lower court, which are concurrent, are hereby upheld. In the result the Appellant is still indebted to the Respondent to pay back one head of cattle (cow), being the betrothal price, due to the Appellant's sister breached the agreement to marry the Respondent.

Accordingly it is so pronounced.



At Mbeya, in the presence of both parties.

A. C. MREMA

JUDGE

30.10.2002

A. C. MREMA

JUDGE

30.10.2002