

IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISC. CIVIL APPEAL NUMBER 6 OF 2001

(From the decision of the District Court
of Mbozi District at Vwawa in Misc. Civil
Application No.9 of 2000 - Org. Mlowo
Primary Court Civil Case Number 46 of 2000)

DAUD MWASIPOSYA:::::::::::::::::::::::::APPELLANT

VERSUS

MICHAEL LWENJE:::::::::::::::::::::::::RESPONDENT

JUDGMENT

MACKANJA, J.

Michael Lwenje brought a suit before the Mlowo Primary Court, Mbozi, District, for recovery of a parcel of land from Daudi Mwasiposya. When the case was called for orders on 25th May, 2000, and the claim having read out, the trial court composed the following record:-

"Daawa limesomwa na kuelezwa anajibu anasema:
Mdaiwa - Mimi nakubaliana nilinunua shamba kwa
Japhet. Lakini kwa sasa amekwisha mrudishia
fedha yangu alimlipa ng'ombe badala ya fedha ya
ng'ombe mbili kambako.

AMRI:- Kwa sababu mdaiwa amekubaliana kuwa shamba
hilo alikwisharudishiwa fedha basi ili kutoa
utata Mahakama itafika sehemu ya tukio kuhakikisha
mpaka na kuchorwa ramani..."

The case was then adjourned to 6th June, 2000 and to 12th June, 2000. No progress was recorded on these two dates. It was on the 17th June, 2000, that the plaintiff made a brief sworn account of his claim, after which the defendant was called upon

to cross-examine the plaintiff. He did not do so, instead he made the following statement:-

"Mimi sina swali lolote shamba nimeliacha kabisa kwa sasa ni mali ya mdai."

Whereupon judgment on admission was entered in favour of the plaintiff.

The defendant did not appeal. Instead the defendant took out a chamber summons by which he instituted a chamber application before the Mbozi District Court sitting at Vwawa in which he sought revision of the trial court's proceedings revised. It is supported by the affidavit of the applicant.

My perusal of the affidavit that supports the application leaves no doubt that that application was fatally defective of for it does not conform to the requirements Order XIX rule 3 (1) of the Civil Procedure Code. Whereas that rule provides that affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove. The affidavit in the case under consideration contains legal arguments, prayers and opinions. I will demonstrate what I mean. It is averred in paragraph two that there were a lot of incurable irregularities in the suit which resulted in an unjust and wrongful decision. That is a submission as well as an argument. It is averred in paragraphs three and four that the trial court erred both in law and in fact in respect of matters mentioned thereunder. It is averred in paragraph five that the trial court misdirected by relying upon the evidence of Japhet Mwambo. The opening part of paragraph six is an averment and a submission that there are contradictions on the record that resulted in an unjust judgment. It is wound up with a prayer to the following words "... and the applicant prays your Honourable Court to quash out the whole proceedings of the trial Court with costs " (quoted verbatim).

No one will say that the applicant's affidavit contains facts which the applicant will be able to prove of his own

knowledge. In fact the said affidavit is couched in language that one can see in a memorandum of appeal. It is in that context that I observe that the the affidavit under review does not conform to statutory requirements. In that circumstance the application on which this appeal is founded was an incompetent one and ought to have been struck out. In the result, suo motu, I invoke my revisional power by which I hereby quash the said application together with all orders that spring from it. By necessary implication the instant appeal has likewise been visited with incompetence. It would fail as a result. Accordingly, the appeal is dismissed with costs.



sgd: J.M. MACKANJA
JUDGE
23.9.2002

Mr. Mwakolo, Adv. For Appellant

Respondent: In Person.

Certified true copy of the original.


DISTRICT REGISTRAR
MBEYA