

IN THE HIGH COURT OF TANZANIA

AT MBEYA

(PC) CIVIL APPEAL NO. 70 OF 2001

(From the decision of Civil Appeal No. 17 of 2001  
of the District Court of Mbozi at Vwawa -  
Original Civil Case No.6 of 2001 of Vwawa Urban  
Primary Court)

JUMA WILSON ..... APPELLANT

Versus

SERIKO HERODI ..... RESPONDENT

JUDGEMENT

MREMA, J.

This is a second appeal. The Appellant JUMA WILSON successfully sued the Respondent SERIKO HERODI in the Primary Court of Vwawa, Mbozi District, claiming for compensation of two thousand five hundred (2,500) coffee seedling allegedly stolen by the Respondent Seriko Herodi. The primary court unanimously gave judgement to the Appellant holding that the Respondent had his hand in stealthily uprooting 2,500 coffee seedlings from the Appellant's coffee bed nursery and replanted them on his coffee field. The Respondent was then ordered to refund the said seedlings to the Appellant. He was also condemned to pay costs of the suit. This holding enraged the Respondent who appealed from that decision and order to the District Court.

The learned appellate Resident Magistrate Mr. Dyansobera analysed the entire evidence on record and he came to the conclusion to the effect that the Appellant's evidence was too much insufficient to sustain the findings and decree of that trial primary court and in the result he quashed the judgement and decree of the court of first instance. The Respondent was awarded costs of that appeal in the district court and in the court below. The Appellant was dissatisfied by that finding and order, hence the present appeal.

Four grounds of appeal are the subject matter of consideration and decision, but since they all revolve around the evidence on record I have

proposed to tackle them generally in the light of the evidence as per the primary court record. Both the parties were present at the hearing of this appeal. Since they are laymen I undertook to ask them questions in order to put everything open and transparent for the sake of justice.

The Appellate admitted before this court that although he first complained to the police about the alleged theft no action was taken by the police. The same thing happens to the primary court where he referred the matter upon advice by the police. There, according to the Appellant, the Primary Court Magistrate registered a Civil Case and not criminal charge against the Respondent. In my considered view the police or the court refrained from embarking on a criminal charge most probably because there was no evidence available.

I have also read the evidence of Sadock Mwalembe (PW2), Maneno Wilson (PW3), Mwawa Kanandi (PW4), Gabriel Andason Mwamengo (PW5), Smith Saweye (PW6) and Watison Ngode (PW7). From their evidence I am satisfied that there is no tangible material piece of evidence that shows or tends to show that the person who stealthily uprooted the Appellant's coffee seedlings was the Respondent. The Appellant's testimony was based on speculation as opposed to direct or strong circumstantial evidence. The fact that the Respondent was found to have similar seedlings at his farm that was not a conclusive proof that it was him responsible for the theft of the Appellant's coffee seedlings.

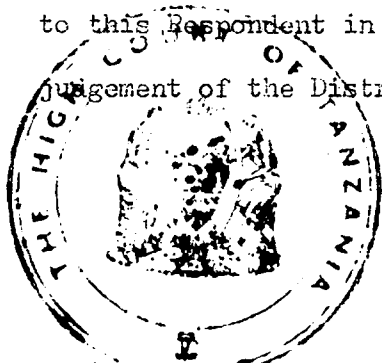
At the hearing of this appeal it has been admitted unequivocally by the Appellant that there is no iota of evidence that shows that the Respondent was seen uprooting the said coffee seedlings from the Appellant's farm and then he was seen re-planting them in his farm or field. It's also the Appellant's admission here that there is no witness who testified to the effect that he saw the Respondent uprooting them from his own farm with a view to destroying evidence. Further that even the alleged uprooted seedlings

from the Respondent's farm were never seized anywhere to form part of exhibits in court.

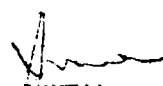
As for the Respondent, it is his contention that it was not possible for him to destroy two hundred and fifty coffee seedlings. After all, he argued; the coffee plants on his farm were grown in 1998 and therefore they could no longer be on the status of being called "coffee seedlings" in 2001 when the Appellant hatched out this case. That in 2001 when this case started his shamba had 600 coffee plants which in that year they started to produce coffee .. flowers (to develop to coffee .. berries).

With respect I agree with the Learned Resident Magistrate Mr. Dyansobera that the evidence is wanting as to when the Appellant's coffee .. seedlings were stolen, whether in 1998 or in 2001. Although in this court the Appellant claims that he reported the theft to the police, this was never stated at the trial court. It is an afterthought and like the <sup>appellate</sup> Magistrate I do not believe him.


In sum, I adopt the four reasons relied upon by the appellate Magistrate to quash the primary court's judgement and decree. That judgement, no doubt, is against the weight of evidence on record as it does not prove the allegations on the reasonable balance of probabilities. The evidence is purely speculative which in the eyes of the Law is not materially tangible evidence. In that light, I am satisfied and I have no doubt, that the Appellant's appeal is frivolous and vexatious, so it cannot be sustained even a second of time. And for that reason it's hereby dismissed with costs to this Respondent in this court and in both the courts below. In short the judgement of the District Court is upheld.



Delivered in the presence of both the parties, at Mbeya, this 11/09/2003.  
Right of Appeal explained.

  
A.C. MREMA  
JUDGE.

11/09/2003.

  
A.C. MREMA  
JUDGE.  
11/09/2003.