

**THE UNITED REPUBLIC OF TANZANIA**

**IN THE HIGH COURT OF TANZANIA**  
**AT SUMBAWANGA**

DC CIVIL APPEAL NO.1/2005.

*(Original Civil Case No. 8/2003 of Sumbawanga D/Court)*

**JOHN BOSCO SENGU ..... APPELLANT**  
**VS**  
**LAMECK DOTTO ..... RESPONDENT**

**JUDGMENT**

**(Dated 2/08/2006**  
**And**  
**18/10/2006)**

Before: B. M. Mmilla, J.

This appeal has been preferred by John Bosco Sengu who was sued in Sumbawanga Resident Magistrate's Court Civil Case No. 12 of 2003 by the respondent one Lameck s/o Dotto who sought to recover from him a sum of shs.272, 000/= being the value of 136 pieces of timber which were alleged to have been fraudulently taken away by him, interest at the rate of 35 per cent and costs of the suit. The trial court gave judgment in favour of the respondent. The appellant was aggrieved, hence the present appeal.

The back-ground facts of the case as narrated by the respondent were briefly as follows. In November 2002, the respondent went to Kabwe Forest to look for timber for

business. He was lucky to have purchased 136 pieces of timber from certain undisclosed persons whom he found in the said forest. He left the cargo there and went away to look for transport. It was not clear in whose custody the cargo was. On returning to the forest he discovered that his lot was missing. Upon investigation, he discovered that the said timber was fraudulently taken away by the appellant. He contacted the appellant who is alleged to have admitted that he had taken the said timber and pleaded with him to accept his offer to settle the matter amicably. The respondent told the trial court that he accepted the offer. There were some correspondences between them in which the appellant was alleged to have made promises to square the matter. Two documents were annexed to the plaint; annexure "A" being the letter which was written by the appellant to his young brother directing him to hand over the timber to the plaintiff and annexure "B" being the document which was authored by the appellant on 3.11.2002 in which he bound himself to pay for the timber he had taken soon after that date. Those promises were not fulfilled. It was then that the respondent instituted the said civil suit from which stems this appeal.

On his part however, the appellant denied the claim. He contended that he collected 108 pieces of timber at Kabwe Forest from persons he had contracted to make timber for him. He narrated that he refuted the respondent's allegations

that he ever took his timber. He added that the respondent referred the matter to the police as a result of which he was arrested. He was interrogated by one policeman known as Aniceth whom he alleged pressured him into making a statement in which he admitted to have taken the respondent's cargo of timber.

At the end of the trial, the lower court found it proven on a balance of probability that the appellant appropriated the respondent's timber. It thus entered judgment in respondent's favour.

The memorandum of appeal purports to raise eight (8) grounds all of which centre on only one broad issue on whether the trial court properly found that there was evidence to establish that the appellant appropriated the respondent's cargo of timber.

The trial court's judgment is to a large extent founded on the documents I have mentioned above. As aforesaid, they include annextures 'A' and 'B', as well as another document alleged to be annexure 'C'. As already explained, annexure 'A' is a letter which was written by the appellant to his young brother directing him to hand over the timber to the plaintiff, while annexure "B" is a document which was authored by the appellant in which he bound himself to pay for the

timber he had taken soon after 3.11.2002 when he wrote the said document. On the other hand, the so called annexure "C" purports to be a letter in which he confirmed his commitment to pay. The trial court believed that those documents were freely made by the appellant, therefore that he could not be heard to say that the respondent was inventing the story against him.

While I hold the view that annexure 'A' and 'B' were rightly relied upon as evidence because they formed part of the plaint, the document purported to be annexure 'C' was erroneously relied upon because it was neither an annexure nor an exhibit in court. In all fairness, this document is required to be expunged as I accordingly do. That leaves only annexures 'A' and 'B' for consideration.

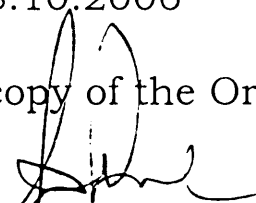
The appellant admitted that he made annexures 'A' and 'B'. However, he disputed the truthfulness of the contents of those documents, alleging that he was forced into making the admission by Aniceth, the police officer who interrogated him. It is clear from those two documents that the appellant admitted the respondent's claim and was binding himself to square the matter. The trial court however, considered the appellant's contention but rejected it on account that it was not substantiated, therefore that it was an after-thought

which was calculated to deprive the respondent of his claim.  
I share its views.

In my opinion, the trial court rightly rejected the appellant's attempt to dispute the truthfulness of the contents of annextures 'A' and 'B' for the reason it assigned. There was nothing to show that he was ever forced into admitting the claim. Apart from the fact that those documents were made on different dates, there was nothing to suggest that they were made in the presence of and under the supervision of the said Aniceth. In view of that, what the appellant alleges is indeed an afterthought. In the circumstances, these documents were properly relied upon, therefore that the trial court justifiably found that the respondent had proved his case on a balance of probability that the appellant had fraudulently taken away his cargo of timber. In the circumstances, I find that the appeal lacks merits and is hereby dismissed with costs.

B.M.Mmilla  
Judge  
18.10.2006

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

  
**District Registrar  
High Court (T)  
SUMBAWANGA**

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