

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA**

**IN THE DISTRICT REGISTRY
AT MWANZA**

(PC) CIVIL APL. NO. 17 OF 2007

(From the decision of the District Court of Serengeti District
at Mugumu in Civil Appeal No. 32 of 2005. Original Mugumu
Urban Primary Court Civil Case No. 69 of 2004.
Before: G. V. Dudu, Esq. RM)

SARA NYABUCHIGIRA APPELLANT

VERSUS

MOKOHI MWITA RESPONDENT

JUDGMENT

MACKANJA, J.

The appellant Sara Nyabuchigira brought a suit before the Mugumu Urban Primary Court in which she claimed two head of cattle from the respondent Makohi Mwita.

According to the record of proceedings of the Primary Court the suit arises from non contested claim by the plaintiff that she had entrusted two head of cattle to the defendant.

When the claim was read out at the trial court the defendant respondent as follows:-

“Kwa kweli aliweka kwangu ng’ombe wawili kama anavyodai, japokuwa mmoja alikamatwa akiwa kwangu, alikamatwa na Mwenyekiti wa Kitongoji na watu wa jadi”.

This statement was taken by the trial court as an admission of liability. As a result the trial court found for the plaintiff and ordered that she was entitled to the two beasts she had entrusted to the defendant. The defendant was aggrieved. So he appealed before the Mugumu District Court following which the decision of the trial primary court was set aside on the ground that the statement which the defendant made in response to the claim in court did not amount to admission of liability. The trial court went on to hold as follows:-

“After the appellant had stated what took place to the entrusted cows to him that the said leaders went to him and attached one head of cattle then it was

the duty of the court to proceed with the enquiry of the reasons for the attachment so that it could be proper to find out whether appellant be liable in paying back the said cattle to the village leaders. In deed there were triable issue and therefore it could not be taken that the appellant admitted the claim”.

By the reason of the foregoing observations the appeal was allowed with directions that the plea which was wrongly entered be set aside and the case do proceed on merit.

I am at pains to understand what the learned appellate Resident Magistrate meant by saying that the defendant's admission, or plea as he calls it, was wrongly taken. On the contrary what the defendant stated was not an admission with indeed the plaintiff entrusted him with two head of cattle, a matter which raises no controversy at all. If as the defendant would want the world to believe, some people seized one head of cattle from him, it was for the defendant to take legal action to recover the animals. And if no head

of cattle was seized from him why should it be that of the defendant himself.

Be that as it may have been, the respondent before the appellate district Court was aggrieved, hence this appeal. What transpired before this Court, for ease of reference is reproduced below:-

"Appellant:-

(After grounds of appeal have been read out to him). It is true I gave respondent two bulls which were for pulling a plough. No bull was seized from him. That is all.

Respondent:-

This young man entrusted a cow and a calf. He is a son of my brother-in-law. I am married to appellant's aunt. He brought the cow and calf so that his wife could milk her at my home because he does not have a cowshed.

The appellant took a heifer and sold it. The cow calved again. Village authorities seized a bull which had just been weaned because he did not contribute to development activities. There remained the cow. He took the cow and yet another calf and took them to his father-in-law as part of bride wealth for his wife.

Appellant:-

What the appellant states is untrue because I could not be required to contribute to development activities while I live with my parents and five of my elder brothers. What he said now is totally different from what he said before the trial primary court. I have never heard that village authorities can seize cattle without authority from the court. We have a cowshed so I could not entrust him with a cow; I gave him

two bulls because they were destructive”.

I agree entirely with the appellant that what the respondent stated before the High Court was untrue because if there was any seizure of cattle as the way of contributing to development efforts in the village such cattle had to belong to the respondent who lives in that village. Upon foregoing reasons I am satisfied with the statement which was freely made by the respondent before the trial primary court was a true admission of liability.

Upon the reasons stated hereinabove, the appeal is allowed. Consequently the decision of the appellate district court with all orders made therein is set aside. The decision of the trial primary court is upheld. The appellant shall have the costs of this appeal.

Sgd: Josephat M. Mackanja

JUDGE

At Mwanza.

19th October, 2007.

Date : 31/10/2007

Coram : F.W. Mgaya – DR

Applicant – Absent

Respondent – Absent.

B/C : Makole/Bosco

Court:-

Judgment delivered today on the absence of both parties.

Sgd: F. W. Mgaya

DR

31/10/2007

I certify that this is a true copy of the original



DISTRICT REGISTRAR

MWANZA