

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

PC. CIVIL APPEAL NO. 4 OF 2007

*(Arising from Magu District Court Civil Appeal No.70 of 2006
From Original Civil Case No.81 of 2006 Magu Urban Primary Court)*

MAHUSHI REVOCATUS.....APPELLANT

Versus

KONGO BULIMA.....RESPONDENT

JUDGMENT

2/9 & 31/10/2008

SUMARI, J.

This is an appeal by the appellant Mahushi Revocatus appealing against the decision of Magu District Court Civil Appeal No.70 of 2006. The respondent is Kongo Bulima.

In the Magu Urban primary court the appellant (Plaintiff) successfully sued the respondent (defendant) for the compensation of Tshs 318,000/= being the value of the crops allegedly destroyed by the respondent's herd of cattle. The respondent was dissatisfied by the decision therefore successfully appealed to Magu District Court where the appeal was allowed with costs and the judgment of the trial court set aside. Appellant then preferred this appeal against the district court's decision.

At the hearing date both parties were unrepresented and argued their appeal. Appellant had nothing substantive to add or explain on

the grounds of appeal. The respondent in response to the grounds of appeal had this to tell the court. That the case against him is a fabricated one his cattle destroyed nothing and in-fact did not enter the appellant's shamba. That there is no evidence to prove that his cattle were found or arrested at the appellant's shamba. In his view the district court's decision is correct. He prays the same to be upheld.

The appellant's rejoinder was that he himself arrested the respondent's cattle and called witnesses to see the cattle. That there were two herdsman, the respondent's children. Those witnesses called gave evidence to that effect. He even went to the ward agricultural officer who went to witness. He went to the village authority but none was there.

I have carefully scrutinized the evidence in the trial court's record. The evidence available sufficiently established that the respondent's cattle were the ones destroyed the appellant's crops. Having found the said cattle in his shamba, appellant (Pw1) called one Merciana Mchele (Pw2) who was nearby uprooting cassava in the nearby farm. This witness supported the appellant's evidence that he called him to witness and stay there keeping an eye and appellant went to call a village chairman. But Pw1 took long time so Pw2 decided to leave. This Pw2 further supported Pw1's evidence that two sons of the respondent were the herdsman of the said cattle. They (Pw1 & Pw2) even mentioned the names of the said sons as Msha and Elisha. The fact which was not dispute by the respondent, that his two sons

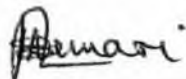
mentioned were the herdsmen. I tend to believe the evidence of these two witnesses, Pw1 and Pw2 whom had nothing to warrant them fabricate this case against the respondent. There was no evidence to suggest any grudges between the two and the respondent either. I am satisfied that the trial court's decision was correctly founded. That the cattle destroyed the appellant's crops were that of the respondent.

As for the loss incurred I also have no doubt that the same is well founded as there is evidence of Pw3 the ward agricultural officer who did the valuation. The evidence of Pw3 is very interesting in that it goes further to prove that the two parties tried to compromise over the compensation but could not succeed because respondent was ready to compensate the appellant with only Tshs. 10,000/=. This fact was also not disputed by the respondent. So if there was such compromise, that implies there was admission. Now if this witness who had no interest to save either has proved that respondent was ready to pay the compensation but failed to come into consensus with the appellant, why should the appellant then complain of the trial court's decision.

All in all as I said the evidence available sufficiently proved the appellant's/ plaintiff's claim and therefore the trial court's decision was wrongly defaulted by the District court in its appellate jurisdiction. Had the district magistrate properly evaluated the evidence on record could not default the trial court's decision. The

district court's decision is therefore defaulted and the trial primary court's decision is hereby restored.

For the reasons stated this appeal is allowed with costs.


A.N.M. Sumari

JUDGE

Delivered in the presence of the parties.

***At Mwanza
31/10/2008***