

**IN THE HIGH COURT OF TANZANIA  
AT MWANZA.**

**(PC) CIVIL APPEAL NO. 29 OF 2008**  
*(Originating from the District Court of Magu at Magu in  
Civil Appeal No. 61 of 2007, original Civil Case No. 40  
of 2007 at Ndagaro primary Court)*

**BETWEEN**

**MAKEJA MILIGWABO ..... APPELLANT**

**Versus**

**SAMWEL S/O MAYEGI ..... RESPONDENT**

**J U D G M E N T**

13/8/2009 & 10/12/2009

**NYANGARIKA, J.**

The respondent sued the appellant successful at Ndagalu Primary Court (hereinafter referred to as the trial court) for compensation of his cotton destroyed on his farm.

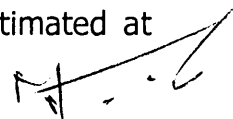
The appellant appealed unsuccessfully to the District Court of Magu at Magu (hereinafter referred to as the First Appellate Court)

It is from the Judgment of the First Appellate court that the appellant had preferred the present appeal to this court.

There is a memorandum of appeal and reply to memorandum of appeal filed in this court by the appellant and respondent, respectively.

During hearing both parties had nothing to say and I will therefore proceed to decide the appeal on its merit.

The Primary Court found for the respondent and estimated the damages at Tshs. 125,000/= basing on the valuation estimated at





Tshs. 239,000/= by a letter which was tendered by the respondent in court as exhibit P.2.

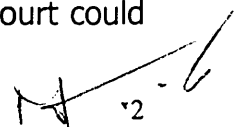
The first appellate court confirmed the findings of the trial court on the reason that the respondent has proved his case albeit on a balance of probability.

However, the estimates of the Divisional Agriculture Officer (**Afisa Ushauri Kilimo na Mifugo Tarafa ya Ndagalu**) who prepared or wrote exhibit P.2 was not called as one of the witnesses in the trial court so that the appellant can exercise his right of cross examining him on his estimates of damages. In my view the appellant was denied such a chance to examine this material witness.

Moreover, the respondent (SM.2) was not a competent witness to tender exhibit P.2 as he was not the one who conducted or prepared or wrote the estimates for the destroyed crops (**see the case of Sarjit Singh v. Sebastian Christom [1988] TLR 24 at p. 27**)

I agree that the appellant was entitled to be given an opportunity to cross examine the witness who gave the estimated loss tendered in court as exhibit P.2 before the trial court would make its findings.

Another flaw in the proceedings of the trial court is that before the exhibit P.1 and P.2 were received by the court, the appellant was supposed to be given an opportunity to say whether he objected or not the admission of the said exhibits in court before the court could decide to admit the said exhibits or not.

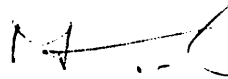




These grounds which I have discussed above are enough to dispose off this appeal and therefore I shall not waste my breath on the other grounds of appellant filed.

For the foregoing reasons, the appeal is allowed with no orders as to costs on the reasons I have given but I direct that the suit shall be heard denovo before another magistrate sitting with different assessors in accordance with the Law.

Order accordingly.



**K.M. Nyangarika**  
**JUDGE**

