

IN THE HIGH COURT OF TANZANIA

AT TABORA

PC. CIVIL APPEAL NO. 27 OF 2011

(Arising from KASULU District Court Civil Appeal No. 30 of 2010 and Original Civil Case No. 134 of 2009 KASULU Primary Court)

FANUEL KASOGOTAAPPELLANT

VERSUS

GIRBERT MYONGARESPONDENT

JUDGMENT

12th Feb & 14th April, 2014

S.M.RUMANYIKA, J

Fanuel Kasogota appeals on the 2nd attempt, now against the judgment and decree of the District court Kasulu (Mr. M. Paul – RM) dated 18/02/2011. Whereby upholding the judgment and decree of the Kasulu primary court in civil case No. 134 of 2010. For recovery by the present respondent, of shs. 719,500/= . Being the loss sustained by the latter, following demolishment by the appellant, of the former's hut. Now under construction. Allegedly the respondent had trespassed onto the village government's land, for which the appellant was the boss chairman then. This actually was its background.

Mainly, the grounds of appeal are two:-

1. Error by the 1st appeal court whereby awarding the respondent the amount claimed without any documentary evidence.
2. Error, and therefore failure by the 1st appeal court to deciding without putting the judgment in the material criminal case into consideration.

Whereby reaching at the decision in consistent with the evidence available.

The appellant appears in person. While the respondent is advocated for by Mr. Musa Kassim learned advocate.

The appellant had at the hearing, nothing material to submit. But urged me just to decide on his petition of appeal.

On his part, Mr. Musa Kassim urged me to abide the legal principle that very seldom than not, save for some peculiar circumstances, which test the appellant had not met, a 2nd appeal court reverse the concurrent findings of the 1st two courts below.

That in civil litigations, the claims were to be proved only on the balance of probabilities. Not beyond reasonable doubts. Of which standards the respondent proved. Supported by the material "fund is", and Dw3. Irrespective of the respondent's failure to prove against the appellant, the criminal charges of malicious damage to property.

That on the issue of the lower court having misapprehended the evidence, it was a blanket complaint. That is it. Without substantiating the

allegations, the respondent was denied sort of opportunity to be heard. Submitted the counsel.

In his rejoinder, the appellant submitted that he was, if anything, to be sued in capacity of chairman. Not as a person.

Responding to this new area of argument, Mr. Musa submitted that the evidence showed that the appellant committed the wrong not blessed by his office. Dw3 (one Sedekia Gega) corroborated the evidence.

Now, the issue is whether the respondent's claims of 719,500/= were proved on the required balance of probabilities. Whereas as a matter of fact, and indeed the findings of two courts below, the respondent did sustain the damage worthy the value; I do not find as argued by Mr. Mussa, any peculiar forces compelling a reverse of the two courts' factual findings.

On the issue of who was responsible for the damage caused by the demolition, at first one would have finger pointed the material village authorities. Whose land the respondent was reported trespassing. But again, the appellants' conducts cannot be said to have been blessed by his office. But purely the personal initiatives. The evidence as said, was quit corroborated by the appellant's own witness (Dw3). Whereby one taking the law into his hands! Unsafe conduct in good governance.

One might have been acquitted in a related criminal charges. Namely, malicious damage to property yes! But as argued by Mr. Musa, the standards of proof in civil cases were only up to the balance of

probabilities. After all, given the conflict of interest that existed between the appellant and respondent then. Which conducts might have been justified only in criminal justice. As it is a trite law that at times, a bonafide claim of right is defence in the charges of malicious damage to property.

In the final analysis, the appeal is dismissed with costs. Decision of the two courts below upheld.

R/A explained.

S.M.RUMANYIKA

JUDGE

17/02/2014

Delivered under my hand and seal of the court in open court this 14/04/2014. In the presence of Mr. Mussa Advocate for Respondent.

S.M.RUMANYIKA

JUDGE

14/04/2014