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

PC CIVIL APPEAL NO. 02 OF 2017

(Arising from Kishapu District Court in Civil Appeal No. 21 of 2016; Original Civil Case No. 01 of 2016 Uchunga Primary Court)

PAGI CHILULI...APPELLANT

VERSUS

NGESELA SAMBO...RESPONDENT

Date of Last Order: 04.10.2018
Date of Judgment: 07.12.2018

JUDGMENT

V.L. MAKANI, J

This is a second appeal by PAGI CHILULI. He is appealing against the decision of Kishapu District Court in Civil Appeal No. 21 of 2016 (R.A. Oguda, RM). This appeal originated from Uchunga Primary Court in Civil Case No. 01 of 2016.

The brief facts of this case are that the appellant is claiming compensation of TZS 1,000,000/= from the respondent. The appellant alleges that the appellant leased a plot of land for TZS 300,000/=. But in the course of cultivating the said land the respondent sued him for invading his plot of land and the court ordered a fine of TZS 300,000/= and in default six months imprisonment. The appellant paid the fine but he appealed to the District court and he succeeded. So he is claiming compensation because he used a lot of time in court hence he did not use his time to cultivate his farm and that he leased the plot of land for TZS 300,000/= and also paid a fine to the court.

The Primary Court Uchunga (**trial court**) found the claims by the appellant without merit and dismissed them. The District Court upheld the decision of the trial court. The appellant being dissatisfied has filed this appeal with four grounds. I have gone through the grounds of appeal and they can be summarised in one ground as follows:

1. *That the district court magistrate erred in law and in fact to deny the applicant of the compensation the well and legally deserves, because the appellant succeeded in the first orginal case tried by the same District Court.*

At the hearing of the appeal the parties appeared in person. They did not have anything useful to submit. The appellant said the District Court was wrong to refuse him the compensation of TZS 1,000,000/= and he prayed his appeal to be allowed. On the other hand, the respondent said the District Court was correct in its decision considering that at the trial court the appellant did not have any exhibits. He prayed the appeal to be dismissed.

The main issue for determination is whether the appellant is entitled to the compensation of TZS 1,000,000/= he is claiming.

I have examined the records of the two courts below carefully. I have also considered the grounds of appeal and submissions made before me. The District Court concurred with the trial court on its findings and decision. It concurred that the appellant was not entitled to the compensation that he claimed. This court being a second appellate court is not expected to disturb the concurrent findings unless there is a misdirection or none direction on the evidence and the relevant law (see **The DPP v. Jafari Mfaume [1981] TLR 149**). Looking at the judgment of the District Court there was a serious irregularity in that the judgment as it does not comply with the law.

Section 3 of the Civil Procedure Code CAP 33 RE 2002 (the **CPC**) defines what is a judgment and Order XX Rule 4 of the CPC provides the contents of the judgment. In other words, the definition in section 3 has been elaborated in Order XX Rule 4 of the CPC. The said Order XX Rule 4 of the CPC states:

> *"A judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision".*

See also the case of **Tanga Cement Company Limited Vs. Christopherson Company Limited, Civil Appeal No. 77 Of 2002 (CAT-Arusha)(**unreported).

The judgment by the District Magistrate gives a very brief statement of the case, and there are no points of determination and no reasons for the decision. The judgment is therefore not in conformity with the provisions of he law quoted above and so it cannot be termed a judgment in the real sense of the law. In exercising the revision powers of this court as contained in section 44 of the Magistrates Court Act CAP 11 RE 2002 the judgment of the District Court is declared invalid and is hereby quashed and set aside.

Considering the circumstances of this case, I shall further exercise the revision powers of this court and evaluate the evidence of the trial court since the first appellate failed to do so. This will enable this court to arrive at a just decision.

The record of the trial court is very clear that the appellant leased a plot of land from the mother of Christina Mshamhindi who was SM2. The name of the mother was not given. SM2 said they paid TZS 300,000/= and she was the one who was given the money by the appellant and took it to her mother who was by then very sick and she later died. She said they could not return the money to the appellant because they no longer had the said money as they had already used it.

It is apparent from that the appellant was the one who leased the plot of land for cultivation and so he was supposed to know whether or not that piece of land actually belonged to SM2's mother. The principle of *"buyer beware"* (**caveat emptor**) can also apply in this instance. The principle assumes that buyers will inspect and otherwise ensure that they are confident with the integrity of the product or land before completing a transaction. In this case, the appellant ought to have enquired if the land belonged to SM2's mother and if there were any existing disputes over the property, boundaries, right of way, and the like. It was therefore the duty of the appellant before proceeding with the leasing and payment of money to SM2 to satisfy himself that what he was leasing belonged to SM2's mother. If the appellant had gone into to trouble to know what he was leasing he would have known that the plot of land belonged to the respondent and he would have desisted from leasing the said plot of land.

The appellant claims that that the plot of land did not belong to the respondent but he had no proof to support this allegation. The respondent had a decision of the Ward Tribunal Uchunga (Exhibit P2) to substantiate that the land belonged to him. The record is very clear that, though there was a court case the appellant was still able to continue with cultivation of (*alizeti*) so there was no loss on the part of the appellant. He continued with cultivation as he was not under restraint and he said he cultivated about 5 acres and there was no evidence that he was not allowed to continue with cultivation. In essence therefore the appellant did not incur any loss.

The appellant claims that he won the criminal appeal at the District Court and this justified him to be paid the compensation. Indeed that is the position, but the decision of the District Court in Criminal Appeal No. 8 of 2016 acquitted him from the offence of criminal trespass but did not give an order that the fine paid by the appellant be returned to him. And in actually fact the fine was for criminal trespass and was not compensation for the amount he had paid out to SM2 and her mother.

For the reasons that I have endeavoured to give, I find the appeal to have no merit and it is hereby dismissed with costs. The decision of Uchunga Primary Court in Civil Case No. 01 of 2016 is hereby upheld.

It is ordered accordingly.

V.L. MAKANI
JUDGE
07/12/2018