

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CONSOLIDATED PC. CIVIL APPEAL NO. 97 OF 2018 AND PC. CIVIL
APPEAL NO. 98/2018

(Originating from Msoga Primary Court in Civil Case No. 35 of 2017 whose judgment was delivered on 29th November 2017 & Civil Appeal no. 01 of 2018 before the District Court of Bagamoyo Coast Region whose decision was issued on 17th October, 2018)

KAMILIONI STETI.....APPELLANT

VERSUS

MOHAMED SALUM & OTHERS.....RESPONDENTS

JUDGMENT

Date of Last Order: 31/07/2019

Date of Judgment: 18/10/2019

MLYAMBINA, J.

The appellant herein is the farmer owning of a herd of cows in Msoga area Bagamoyo District. The respondents are farmers owning each a piece of land cultivating various crops. The centre of dispute was that, the appellant's cows destroyed the respondent's farms on 6th October, 2017. Before the Msoga Primary Court the respondents were alleged to suffer loss as follows:

1. Mohamed Salum (Tshs 340,000/=)
2. Imani Bakari (Tshs 446,000/=)
3. Edward Zahaki (Tshs. 339,600/=)
4. Rajabu Mazibwa (Tshs 400,6000/=)

5. Jumanne Sadiki (Tshs 489,600/=)

6. Asha Abedi (Tshs 489,600/=

7. Hadija Rajabu (Tshs 250,000/=)

The afore claims were far below the valuation report made by the valuer one Zaibe D/O Ayubu Kijazi. According to Zaibe Ayub, the farmers (respondents) suffered loss as follows:

1. Abdallah Maswaba (Tshs. 449,392.71/=)

2. Mwajuma Hassan (Tshs. 285,400/=)

3. Jumanne Sadiki (Tshs 627,500/=)

4. Asha Matua (Tshs 708. 500/=)

5. Imani Bakari Juma (Tshs 898,800/=)

6. Mohamed Salum (Tshs 803, 600/=)

7. Ally Zahaki (Tshs 898,800/=)

After the trial, the Primary Court of Msoga awarded the respondents a total sum of 500,000/= compensation out of the claimed total of TZS 2, 724,000/=. On appeal to the District Court, the Trial Court decision was quashed and set aside. The District Court ordered the appellant herein to pay the whole claimed sum of 2, 724,000/= of which was even less than the real value of the destroyed crops that stood at TZS 6, 158,000/=. Both parties were aggrieved with the decision of the District Court.

Kamilioni state lodged PC. Civil Appeal No. 97 of 2018 against Mohamed Salum and others with three grounds of appeal namely:

1. ***That,*** the Trial Court erred in law because its decision is against equity and good conscience as the same is tainted with injustice and illegality.
2. ***That,*** the Trial Court erred in law and fact for failure to observe the primary trial court relied its decision on incurable irregularities in proceedings and judgment accordingly.
3. ***That,*** the Trial Court erred in law and fact by basing in his decision on evidence adduced by respondents which was weak and contradictory while disregarding the appellant's strong evidence.

At the same time, Mohamed Salum and others lodged a cross appeal against Kamilioni Steti against the decision of the District Court delivered on 17th October, 2018 with four grounds namely:

1. ***That,*** the Appellate Court erred in law and facts for awarding the sum which is less than the sum which was shown in the valuation report.
2. ***That,*** the Appellate Court awarded a small sum of money compared to the loss suffered by the appellants.

3. ***That,*** the Appellate Court erred in law and fact for not considering that the primary court was biased in its proceedings.
4. ***That,*** both Lower Courts judgments are problematic and incapable of support.

Having consolidated the two appeals, learned counsel Dominicus Nkwera argued for and on behalf of the appellant. Mohamed Salum replied thereof.

As regards the first ground of appeal, counsel Dominicus Nkwera argued that Appeal No. 1 of 2018 before the District Court was filed out of time.

According to Dominicus Nkwera, the decision of the Primary Court was issued on 29/11/2017. The appeal before the District Court was filed in 2018. By counting, the days expired on 29/12/2017. In reply, the respondent told the Court that he applied to file appeal out of time successfully.

Having gone through the records, I noted the appeal before the District Court was filed on 05/01/2018. The records do not show when the proceedings of the Primary Court were ready for collection and there is nothing in record to show that the respondent obtained leave of the Court to file appeal out of time.

As such, it follows true that the appeal before the District Court was filed out of the 30 days required under **Section 20 (3) of the Magistrates Courts Act Cap 11 (R.E 2002)**. (see the cited case of **Said Matika v. Awesa Said Matika** PC. Civil Appeal No. 2 of 2016.

On the second ground of appeal, counsel Dominicus Nkwera submitted that the assessors before Msoga Primary Court were not given opportunity to give their opinion and the Court did not state on whether it agreed with their opinion.

In reply, Mohamed Salum on behalf of the respondents refuted the allegation. In his view, Assessors were given opportunity and the Court agreed with them in its decision.

I do understand that under **Section 7 (1) and (2) of the Magistrates Courts Act** (supra), the decision of the primary Court is reached by majority of votes. The decision shows it was made by the Court. The Court in that aspect, in my view, means the Trial Magistrate and the Assessors forming the quorum. The cited decision of **Chadiel Mduma v. Denis Mushi**, Civil Appeal No. 41 of 2013 CAT (Unreported) is distinguishable to the facts of this case. Whereas, in this case the decision was reached by majority of votes of the Magistrate and Assessors, in Chadiel

Mduma case, the Assessors are not decision makers they are advisors.

On the third ground of appeal, counsel Adronicus Nkwera submitted that there is no proof that the one (Jasson) who said was sent by the appellant on his behalf and that there is no proof that the cows belonged to the appellant.

As replied by the Respondent, the findings of the District Court at page 4 of its decision answers the third ground of appeal to the effect that there was a proof that the cows belonged to the Appellant and that Jasson was sent by the Appellant himself. Page 4 of the District Court partly reads:

".....the Court is satisfied that, the herds of cattle that trespassed into the appellant's farms belongs to the respondent. The reason behind is that, the respondent sent his relative one Jasson to collect his cattle on his behalf And second, if that was not the fact, the respondent would have denied sending Jasson at the Trial Court. The respondent's silence on that argument was a clear indication that, he was the person who sent Jasson to collect his cattle from Kitongoji Chairman"

In the light of the above District Court findings, I agree that the respondents proved their case as required in the case of **Hemed Said v. Mohamed Mbilu** (1984) TLR 113.

On the appeal No 98/2018 grounds, counsel Adronicus Nkwera argued that there was no proof in writing to establish that Mohamed Salum was given power of attorney to represent others in Appeal No. 1 of the year 2018 before the Bagamoyo District Court.

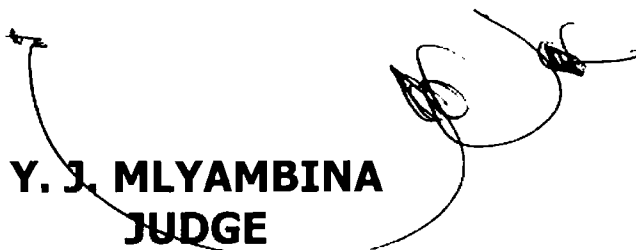
Through disputed by the respondent, the entire records do neither reveal presence of Special Power of Attorney or any signed document giving powers of representation of the other respondents by Mohamed Salum.

It was the further submission of counsel Dominicus Nkwera that the appeal which originates from Primary Court has to be filed before the High Court through the District Court as per **Section 25 (3) of the Magistrate Courts Act**. That, Appeal No. 98/2018 does not show if it was filed before the District Court.

I have perused exchequer receipt no. 20746128 dated 16th November, 2018; it clearly shows that PC. Appeal No. 98/2018 was lodged through the Resident Magistrates Court of Bagamoyo.


On proof whether there was valuation of the destruction caused by cows, I noted from the District Court records that there was such proof brought as an additional evidence before the District Court.

In the premises of the foregoing and taking into consideration that there is no document in record proving that the respondent is standing on behalf of other 6 respondents, I partly uphold both Appeals No. 97/2018 and 98/2018, the decisions and proceedings of both lower Courts are nullified and set aside. The matter be tried *denovo* before the competent Court. Costs be shared.



Y. J. MLYAMBINA
JUDGE
18/10/2019

Judgement pronounced and dated this 18th October, 2019 in the presence of Dominicus Nkwera Advocate for the Appellant and the Respondent one Mohamed Salum.



Y. J. MLYAMBINA
JUDGE
18/10/2019