

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

CIVIL CASE NO. 32 OF 2019

(c/f District Court of Babati at Babati, Civil Appeal No. 16 of 2019, Original, Civil Case No. 8 of 2018)

SEVERIN JOHN APPELLANT

VERSUS

SADIKIEL BARIYE RESPONDENT

JUDGMENT

25/08/2020 & 24/11/2020

GWAE, J

This judgment emanates from the concurrent decisions of the court of first instance and 1st appellate court. Both the lower courts named in the title of this appeal above entered their verdicts relying on the appellant's admission of the plaintiff's claim now respondent in the tune of Tshs. 300,000/= being the remaining sum of money out of Tshs. 500,000/= orally agreed by the parties as a purchase price of 2 herds of cattle.

The records of both Magugu primary court (trial court) and that Babati District Court (1st appellate court) depict that on the 16th May 2019 the appellant admitted the respondent's claim and that on that day the respondent tabled his

bills of costs which were eventually determined to Tshs. 44,000/= . The trial court further ordered that the cows which were given to the appellant in consideration of Tshs.500, 000/= should be attached in order to be publicly auctioned so that the respondent would be given his Tshs.344, 000/= decreed by the trial court and upheld by the District Court.

Aggrieved by the decisions of the two courts below, the appellant has advanced a total of five grounds which to my considered amount to two grounds namely;

1. That, both the trial court and the 1st appellate court erred in law and facts for not considering that, the appellant deserves compensation to a certain extent since he was taking care of the respondent's 2 cows
2. That, the courts below erred in law and fact for failing to hold that it was the respondent who failed to repay him Tshs.200,000/=being the amount of money which he borrowed from him 9appellant)

This appeal was orally disposed of by the parties, the appellant appeared in person, unrepresented whereas the respondent was duly represented by **Mr. Lundu**, the learned advocate who also appeared before the 1st appellate court representing him.

In support of his appeal, the appellant urged this court to re-evaluate evidence so adduced before the trial court as their oral agreement was to the effect that he would pay Tshs. 300,000/= March 2019 and maintained that he

failed to pay Tshs. 300,000/= in favour of the respondent to date. Responding to the appellant's oral submission, Mr. Lundu argued that the appellant was contractually bound to repay Tshs.300,000/=by 10/12/2018 as alleged by the respondent and equally admitted by the appellant before the lower courts.

I am of the increased view that once the court pronounces judgment over admitted facts then the court will surely pass a decree as was the case in this particular matter. In the present appeal, the appellant is found wishing to raise new facts requiring new evidence while he clearly admitted the respondent's claim of Tshs. 300, 000/=. The appellant's assertion that the respondent gave him two cows a lien for the loan of Tshs. 200,000/= is not founded by any piece of evidence. The invention of new facts or and evidence would pertain with special reasons which ought to have been given before the 1st appellate court. The Court of Appeal of Tanzania in approving the decision of the Court of Eastern African Appeal in the case **Tarmohamed and another v. Lakhant & Co** (3) (1958) EA through an appeal before it in **Ismail Rashid vs. Mariam Msati**, Civil Appeal No. 75 of 2015 (unreported) (CA) had these to say;

"To justify reception of fresh evidence or new trial, three conditions must be met, **first**, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial, **second**, that the evidence must be such that, if given would probably have an important influence on the result of the

case although it needs to be decisive and **third**, the evidence must be such as presumably that it must be believed or in other words it must be apparently credible”

In our instant case, the appellant is urging this court to objectively assess the evidence which is not available except his own clear admission to the respondent’s claims. Therefore, conditions necessary for either ordering re-taking of fresh evidence or ordering re-trial are non-existent. Furthermore, in order the appellant’s contention to be maintainable the appellant’s admission would have been a simple admission on facts pleaded and not on the respondent’s main claim. Thus, there is no arguable point for determination as the same was not in controversy before the courts below, therefore could be determined.

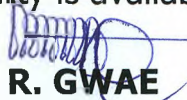
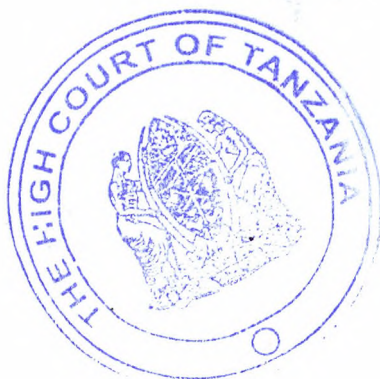
In the upshot, the appellant’s appeal is found to be far from merit, the same is accordingly dismissed with costs. The concurrent decisions of the lower courts are therefore upheld.

It is so ordered



M. R. GWAE
JUDGE
24/11/2020

Court: Remedy for any aggrieved party is available and fully explained



M. R. GWAE
JUDGE
24/11/2020