IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

PC. CIVIL APPEAL NO. 14 OF 2020

(Arising from Urambo District Court Civil Appeal No. 3 of 2020 and Original Civil Case No. 58 of 2019 Urban Primary Court)

KAZALA MDAKI .....APPELLANT

VERSUS

1. KASHINJE LUBINZA ..... 1ST RESPONDENT

2. LUBINZA SHOTO .....2ND RESPONDENT

JUDGMENT

01st & 4th December 2020

BAHATI, J:

This is a second appeal where the appellant **KAZALA MDAKI** being aggrieved by both decisions of Urambo Urban Primary Court in Civil case No. 58/2029 decided by Hon. M. Muhandukila and decision of District Court of Urambo in Civil Appeal Case No. 03/2020 decided by Hon. B. I. Mwakisu.

Before venturing into the determination of this appeal, it is prudent that the brief background of the events that led to the current appeal is narrated. In 2018 at Usoke Primary Court, the appellant Kazala S/O Mdaki sued the first respondent through Criminal Case No 82/2018 whereby the 1st respondent was convicted of the offence of wounding contrary to section 288 of the Penal Code, Cap.16 and was ordered to pay additional compensation of TZS 200,000/= on top of the previous TZS 200,000/= paid on humanitarian reasons by the second respondent who was the guardian of the 1st respondent. The appellant was not satisfied with the order of the trial court and appealed to the District court whereby the Hon. A.E Chilongola upheld the decision of the trial court. The appellant instead of appealing to the High court, decided to rush to Urambo Urban Court and filed a civil suit claiming a total of TZS 1,700,000/= on the grounds of injuries sustained due to the wounds alleged to have been caused by the first respondent and loss occasioned due to his failure to engage in production activities. His suit was dismissed for want of proof and the court having noticed that the appellant herein has for several occasions instituted cases against the respondent dismissed the case.

The trial court ruled in favor of the respondents, whereby the appellant being dissatisfied lodged this appeal on both judgments and orders advancing the following grounds;

i. *That, trial court magistrate erred in law and fact in his decision to consider that, the criminal case final decision is the bar to institute civil case in tortious liability.*

ii. *That, the district court erred in law and fact in its decision to upheld (sic) the decision of the primary court to remove the second respondent who was sued as the owner of the cows which was (sic) the main source of dispute.*

iii. *That, the trial court magistrate erred in law and in fact to deal with the issue of the second respondent only without considering the first respondent who was the main part of the dispute, and even if the second respondent was removed as part of the proceeding still the first respondent had a duty to pay the appellant for the loss and injury suffered.*

iv. *That, the trial court magistrate erred in law and failed to consider the damage and other loss suffered by the appellant at the time he was injured by the first respondent and require (sic) to prove the issue of whether he involved in tobacco activities which was not the issue proving the said case, though the appellant was rejected by the magistrate to tendered (sic) an exhibit which proves that he was the member of tobacco agriculture.*

v. *That, the trial court magistrate erred in law and in fact to require the appellant to prove the issue which has already been proved*

by the court decision in criminal case No. 82 of 2011, which shows that the appellant has suffered damage.

vi. *That, the trial court magistrate erred in law and fact for failure to collect and analyses evidence properly which led to a wrong decision.*

When the appeal was called on for hearing, the appellant appeared in person, while the 1st respondent did not appear as he fled since the event and the 2nd respondent appeared in person, unrepresented.

Being a layperson, the appellant prayed to this court to adopt the petition of appeal to form part of his submission.

The respondent also had no much to say he submitted that the trial court did not err; he was indeed involved.

Having carefully considered the submission of both parties and records from the proceedings, the main issue to be determined by this court is whether the grounds have merit.

In respect to the first ground of appeal on whether the trial court magistrate erred in law and fact in his decision to consider that, the criminal case final decision is a bar to institute civil case in tortious liability.

As rightly submitted by the appellant that the appellate court erred to dismiss the case for being instituted in another civil court. The law is

clear on filing civil cases, for criminal cases, the alleged crimes may have also afflicted victims in a manner that also warrants civil suits being filed, which will allow victims to claim damages for their injuries and losses. While civil cases may involve matters which arose in criminal actions, civil and criminal trials are completely separate. Therefore, a criminal case does not bar the institution of a civil case. Hence, the appellant is correct to have filed his application through a civil case. Basing on that this appeal has merit to stand.

As to the second ground of appeal that the district court erred in law and fact in its decision to uphold the decision of the primary court to remove the second respondent who was sued as the owner of the cows which was the main source of dispute. I should state at the outset that, the main objective of the civil suit was to claim compensation from the appellant who had been found guilty of wounding the appellant in the subject criminal case. After revisiting the judgment I noted that the parties are plaintiff and 1st respondent only. That is, the second respondent was not a party to the case. The 1st respondent in this case being an adult his father or guardian cannot be involved. It should be noted that the claimed compensation is a result of the alleged ill-intention of the 1st respondent so he is supposed to carry his burden. Therefore, the 2nd respondent was rightly excluded from this case.

On the 3rd ground of appeal, the trial court considered both the 1st and 2nd respondent and came with the findings that the plaintiff had not proved on the balance of probabilities his claim of TZS 1,500,000/=. Also in the 1st appellate court noted that the plaintiff failed to prove the subject claims. This court supports the reasons adduced by the appellate court.

Regarding the 4th ground of appeal about failure to consider the damage and other loss, the appellant did not tender exhibit to prove that he was a member of tobacco agriculture. As stated clearly in the Primary Court judgment, there was no proof on the part of the plaintiff on the claim of TZS 1,5000,000/= being compensation for his failure to produce tobacco in that year.

In his evidence, he submitted that and I quote ;

> *" Mimi ni mkulima wa tumbaku , nimekodi ekari moja ya tumbaku navuna wastani wa kg 500@3000 ndipo inakuja Tsh. 1,500,000/="*

Swali:Je una uthibithisho wowote wa nakala yoyote juu ya kilimo chako?

Jibu: Nina kalamazoo nyumbani"

In determining the issue at hand, the court finds that mere words without any proof are tainted with a lot of unjustifiable conclusions

because the plaintiff failed to allocate the actual market value and that there was no other corroboration in support of this aspect. This evidence is based on assumptions.

It is clearly stated in the case of **Edom Godfrey Mringo v R [1981] TLR 140** that, "Failure to give a correct assessment of the value of property to the satisfaction of the court is fatal. "

Since there is no enough evidence which establishes that the plaintiff suffered a loss of TZS 1,700,000/=, this quantum was not proved on a balance of probabilities what the plaintiff exactly suffered in terms of damages under this aspect.

The 5th and 6th grounds which I will combine for coherence.

It is trite law that where there are concurrent findings of facts by two lower courts, the second appellate court should not disturb the findings, unless, it is clearly shown that there has been a misapprehension evidencing a miscarriage of justice or violation of some principle of law or procedure. (See **Amratlal Damodar Malteser and Another t/a Zanzibar Silk Stores Vs. A.H JariwallaTLA Zanzibar Hotel** [1980] T.L.R 31.) In the instant case, both courts found that the appellant claimed amount of TZS 1,700,000/= was not proved on the balance of probabilities. I have examined the evidence on record and formed an opinion that there is no ground to fault findings of the two lower courts on the reason that there is no evidence proved.

Basing on the foregoing findings, I find and hold that the appeal has no merit. Consequently, it is hereby dismissed with costs.

Order accordingly.

A. A. BAHATI

JUDGE

4/12/2020

Judgment delivered under my hand and seal of the court in the chamber, this 4th day December, 2020 in the presence of both parties.

A. A. BAHATI

JUDGE

4/12/2020

Right of appeal is explained.

A. A. BAHATI

JUDGE

4/12/2020