

**IN THE HIGH COURT OF TANZANIA
(MUSOMA DISTRICT REGISTRY)**

AT MUSOMA

PC. CIVIL APPEAL NO. 62 OF 2019

*(Originating from the decision of the District Court of Bunda at
Bunda in Civil Appeal No. 14 of 2019)*

GEORGE MBUSHIAPPELLANT

VERSUS

MNIKO MAGESARESPONDENT

JUDGEMENT

Date of Last Order: 18/03/2020

Date of Judgment: 20/04/2020

KISANYA, J.

This second appeal traces its genesis from Civil Case No. 111 of 2019 of the Bunda Urban Primary Court at Bunda. Before the said court, the appellant herein, claimed for compensation of TZS 1,398,000 for damages caused to his crops by the respondent's herd of cows. The trial court decided in favour of the respondent. The appellant's appeal to the District Court of Bunda at Bunda was dismissed for want of merit. Thus, the first appellate court confirmed the trial court's decision.

Still aggrieved, the appellant has knocked at the doors of this Court. He has preferred the petition of appeal on the following grounds, in verbatim:

1. ***THAT***, lower court erred in law and in fact for failing to hold that the appellant proved his claim against the Respondent on the balance of probabilities.
2. ***THAT***, appellate District court erred both in law and in fact in deciding the case in favour of the Respondent on the ground that heads of cattle that destroyed appellant's watermelon were not identified while in fact that issue was proved by both PW2 Anastazia and PW3 Sylvester.
3. ***THAT***, appellate District court erred both in law and in fact in deciding the case in favour of the Respondent on the ground that it was not established that the Respondent was among the person who on that day were grazing cattle at appellant's shamba while in fact that issue was proved by both PW2 Anastazia and PW3 Sylvester who found the Respondent's removing the heads of cattle in dispute from the site.
4. ***THAT***, the lower courts in deciding the case in favour of the Respondent failed to note and appreciate that it was not disputed during trial that the appellants damaged watermelon were valued at Tshs 1,398,00 as per valuation report from an are Agricultural officer.

The brief facts leading to this appeal is to the effect that: On 3/6/2019, the appellant's wife one, Anastazia Athuman (PW2) found

the respondent's herd of cows on their farm. The watermelons and onions thereon had been destroyed by the said cattle. Therefore, PW2 detained the cattle. However, the respondent managed to take the said cattle from PW2. On the next day (4/6/2019), the appellant called the agricultural officer to evaluate the destroyed crops. It was noted that one acre of watermelons and half acre of onions were destroyed by the appellant's herd of cows. The agricultural officer prepared a valuation report which was appended to the claim filed in the trial court.

In his defence, the appellant contended that there was no evidence to prove that the respondent's crops were destroyed by his herd of cows. Also, his evidence was to the effect that, he was not at the locus in quo on the material date.

At the hearing of this appeal, both parties appeared in person, legally unrepresented. When the appellant was called upon to submit or explain on the grounds of appeal, he prayed to adopt the petition of appeal. Upon being probed by the Court, the appellant conceded that, he did not testify on the value of the destroyed crops and that, the agricultural officer was not called to testify. However, he contended that the valuation report was tendered at the time of instituting the suit. The appellant submitted further, the respondent and his herd of cows were identified by PW2 and PW3. He therefore prayed the Court to allow the appeal.

In reply, the respondent argued that the claim was not proved on the balance of probabilities as the agricultural officer was not called to testify on the value of destroyed crops. The respondent submitted further that, the valuation report was not tendered in evidence. He also contended that, the herd of cows alleged to have destroyed the appellant's crops were not proved to be his. Therefore, he urged me to dismiss the appeal for want of merit.

Having gone through the evidence on record, petition of appeal, reply to petition of appeal and submissions by the parties, the issue for determination is whether the appellant's claim was proved on the balance of probabilities. Regulation 1(2) of the Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations, 1963 requires the claimant to prove all the facts necessary to establish the claim. Further, regulation 6 of the Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations provides the standard of proof is on the balance of probabilities. The said regulation reads:

*"In civil cases, the court is not required to be satisfied beyond reasonable doubt that a party is correct before it decides the case in its favour, **but it shall be sufficient if the weight of the evidence of the one party is greater than the weight of the evidence of the other.**" (Emphasize is mine).*

In the case at hand, the trial court and the first appellate court were satisfied that the appellant's claim was not proved on the required standard. It is settled law that, on second appeal, the Court can

interfere with concurrent findings of facts by the trial Court and first appellate Court if it is established that they are wrong or clearly unreasonable or resulted from misapprehension of the substance, nature and quality of the evidence, misdirection or non-direction on the evidence, a violation of some principle of law or procedure or have occasioned a miscarriage of justice.

The appellant in the case at hand claimed for compensation of Tshs 1,398,000 being the damage of crops destroyed by the respondent's herd of cows. In his evidence, the appellant did not testify on the value of destroyed crops. He just stated that the valuation was conducted by the agricultural officer. For easy of reference, his evidence is quoted hereunder:

"..Tarehe 3/6/2019 saa 16.00 sikuwepo, nilirudi nyumbani nilikuta mke wangu amepigwa baada ya kuwa ameswaga ng'ombe zilizoingia shambani mwangu. Waliompiga ni SUI na kijana wake. Balozi akaandika barua twende hospitali. Tarehe 4/6/2019 nilienda kwa Bwana Shamba tukaenda kuona uharibifu. Tulikuta tikiti maji ekari moja na vitungua nusu ekari vimeharibiwa. Niliandikiwa tathmini ya uharibifu huo, nikafungua kesi. Ni hayo tu."

However, as rightly argued by the respondent, the said agricultural officer was not called to prove that the destroyed crops valued at Tshs 1,398,000. This is one of the ground considered by the trial court when it held that:

*... mdai huyo alileta ushahidi wa maandishi kutoka kwa Afisa kilimo kuthibitisha kuwa mazao yake kweli yaliharibiwa **hata hivyo mdai hakuleta afisa huyo wa kilimo kuja kuthibitisha nyaraka hiyo au kuja kuunganisha ushahidi huo wa maandishi katika nyaraka.** (Emphasize is mine).*

Further, regulation 8(1) (b) of the Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations, 1964 provides that facts can be proved by evidence which may be the production of documents by witnesses (documentary evidence). In case where documentary evidence is produced, it can be relied upon if oral evidence to link it with the case is given. This is pursuant to regulation 11(2) of the Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations, 1964 which provides that:

"Where documentary evidence is produced, oral evidence must be given to connect it with the case."

In the present case, the valuation report alleged to have been prepared by the agricultural officer was not tendered by any witness. Although the same was appended to the claim at the time of instituting the case, it was not produced in evidence. Thus, oral evidence was not given to link the said document with the appellant's claim.

From the foregoing, I am in agreement with the concurrent findings by the trial court and first appellate court that, the appellant's claim were not proved on the required standard. This is because the

agricultural officer was not called to testify on the value of destroyed crops. Also, the valuation report was not tendered in evidence. This implies that, the evidence to prove how Tshs. 1,398,000/= claimed by the appellant was arrived to is wanting.

For the aforesaid reason, I hold that this appeal has no merits. It is accordingly struck out with costs. Order accordingly.

DATED at MUSOMA this 20th day of April, 2020.



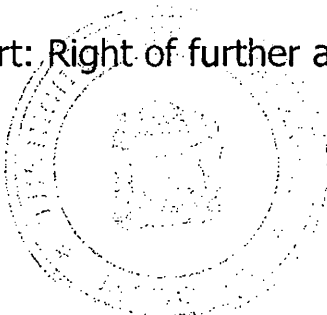
E.S. Kisanya
JUDGE
20/4/2020

Court: Judgement is delivered in Chamber this 20th April, 2020 at 7.30 am, in the absence of the parties with leave of the court due to COVID-19 outbreak. Copy of judgement to be availed to the parties. Initially, parties ordered to appear for judgement today at 9.00 am.



E.S. Kisanya
JUDGE
20/4/2020

Court: Right of further appeal is guaranteed.



E.S. Kisanya
JUDGE
20/4/2020

