

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY AT KIGOMA)

(APPELLATE JURISDICTION)

PC. CIVIL APPEAL NO 14 OF 2020

(Arising from Civil Appeal no 4/2020 of Kibondo District Court before S.G. Mcharo - RM, original Civil Case No. 45 of 2020 of the Primary Court of Kibondo Mjini before H.J. Kayandabila)

SPRIAN SEBAHUNGU..... APPELLANT

VERSUS

ELIUD WILLIAM..... RESPONDENT

JUDGMENT

8/2 & 16/2/2021

I.C. MUGETA, J.

This appeal is founded on two grounds. These are: -

- i. That the trial magistrate in (sic) the Appellant (sic) Court erred in law and facts for failure to uphold (sic) a just decision made by Kibondo Mjini Primary Court which was made from cogent evidences adduced by the appellant that clearly managed to prove the case on standard of law that the respondent damaged the car negligently hence liable to pay compensation as ordered by the first trial Court in Civil Case No. 45 of 2020.
- ii. That the trial magistrate in (sic) the Appellant (sic) Court erred in both law and facts for not taking into account that the appellant has locus

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stand (sic) to sue the respondent as he is the owner of the car damaged as indicated in exhibit P1, P2 and P3 tendered before the first trial court.

Briefly, the facts of the case are that the appellant is the owner of a motor vehicle Registration Number T.573 DMS, make PROBOX. This car was hired to the respondent for business use by one Jonathan Nkulege Msogwa. The respondent had to pay Jonathan Tshs. 200,000/= weekly. The contract was entered on 26/01/2020. On 14/2/2020, the car was involved into an accident. The respondent sustained permanent body incapacity while the car was seriously damaged. Consequently, the appellant sued the respondent for Tshs. 2,750,000/= as compensation for repair of the damaged car. The trial court awarded Tshs. 1,500,000/=. On appeal the District Court overturned the decision for one reason. That the appellant had no *locus standi* to sue as he was not privy to the contract between the respondent and Jonathan Nkulege Msogwa. The appellant was aggrieved, hence, this appeal. He is represented by Abdulkheri Ahmad, learned advocate. The respondent is unrepresented.

I shall determine this appeal on the second ground only.

At the first appellate court, the issue of *locus standi* was argued by the parties when dealing with the second ground of appeal. After considering the rival arguments, the learned magistrate held that it was wrong for the appellant to sue a person whom he had no contract with. In this court the same point has been canvassed by the parties too. The advocate for the appellant argued that, as owner of the motor vehicle, the appellant had the right of action against the respondent. He submitted that Jonathan could not sue for damages because he does own the car. In reply the respondent submitted that he had no contract with the appellant because he is not the one who gave him the motor vehicle.

According to the evidence, it is undisputed fact that the owner of the motor vehicle is the appellant. However, since he is not the one who gave it to the respondent, his right of action is against Jonathan Nkulege Msogwa. It can not extend to the respondent. Since the accident was a result of a business contract between the respondent and Jonathan Nkulege, it is the said Jonathan who had a cause of action against the respondent. Alternatively, the appellant ought to have joined the said Jonathan as co-defendant in the suit against the respondent. Unfortunately, Jonathan testified as a mere witness for the appellant.

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In the final analysis, I agree with the first appellate court that the appellant had no cause of action against the respondent. The appeal is dismissed with costs.




I.C. Mugeta

Judge

16/2/2021

Court: Judgment delivered in chambers in presence of the respondent and in the absent of the appellant and Jonathan Nkulege who said he follows up the case on behalf of the appellant.

Sgd: I.C. Mugeta

Judge

16/2/2021