

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

(APPELLATE JURISDICTION)

(PC) CIVIL APPEAL NO. 16 OF 2020

(Arising from Civil Appeal No 6/2020 of Kasulu District Court, before Hon. C.A. Mushi – SRM, Original Civil Case No. 56/2020 of Kasulu Urban Primary Court, before Hon. H.H. Nyumbamkali – RM)

NICODEM DAMIANO NTIGAHELA APPELLANT

VERSUS

MICHAEL YANGO AND 2 OTHERS RESPONDENT

JUDGMENT

18th Feb. & 16th March, 2021

I.C. MUGETA, J.

The appellant sued the respondent at the Trial Primary Court for payment of Tshs. 28,416,999.98/= being compensation for his confiscated properties. The trial court dismissed the claim for want of proof of confiscation of properties worth that much. An appeal to the District Court was dismissed for the same reason. Undeterred, this is a second appeal on the following grounds of appeal: -

- i. That, the appellate magistrate erred in law and facts in failing to consider the relevant evidence adduced by the appellant.*

- ii. That the appellate magistrate erred in law and fact by failure to consider the evidence on records adduced by the appellant showing appellant's claims how his properties taken (sic) by respondent (sic).*

Here on appeal the appellant complained that the lower court failed to consider his evidence including the charge sheet, a letter from the District Land and Housing Tribunal, and payment receipt authorising him to cut the trees which were worth Tshs. 28,416,999.98/=.

In reply, the first respondent spoke on behalf of others. He said that at the incident time he was the Chairman of Nyantale street, Kasulu District. The second respondent was the Chairman of Nyantale Primary School Committee and the third respondent was the Head Teacher of that Primary School. He submitted that they never confiscated any properties of the respondent.

Briefly, the facts in issue are that the appellant sent his two workers to cut tree in a forest that belongs to the Primary School. The respondents, in discharging their administrative function, caused those workers to be arrested and taken to Police Station. It is out of this incident the appellant claims that the camp used by the workers was set on fire and other properties that were being used by those workers and the trees that they

had harvested were confiscated by the respondents. The two workers did not testify on which tools they were using and how much trees they had harvested. The undisputed evidence from the respondents is that the workers were arrested with two matchets and two axes only which were surrendered to the Police Station.

I have considered the submissions of the parties in relation to the complaints in the two grounds of appeal and I have found that from page 4 – 5 of the District Court judgment, the learned first appellate court magistrate considered the veracity of the exhibits tendered by the appellant including the charge sheet. She held, rightly so, that they never proved the claim. Regarding weight to be attached to the charge sheet she stated specifically that statement of value in a charge sheet is not proof of value of such properties in a civil claim. I agree with the learned magistrate.

On the evidence generally, the first appellate court held;

"... there is no scintilla evidence from appellant of the properties he owned, secondly, there is no even tiny evidence of appellant's properties worth Tshs. 28,419,999.98/= Third there was no single evidence from the appellant that respondents did collect his

properties which worth Tshs. 28,416,999.98/= from his camp ...".

Let us test this finding on the evidence on record to establish its correctness or otherwise. In his testimony on the confiscation the appellant said: -

"... nilienda na kijana wangu na kukuta wadaiwa hawa watatu wapo shambani wakikusanya magogo, kuni na vyombo vyote vilivyokuwepo kambini kisha kuichoma moto kambini."

His witness said the following: -

"... tulifika eneo la tukio na kukuta wadaiwa watatu waliopo Mahakamani wakikusanya vyombo na vitu vyote vilivyokuwepo pale kambini".

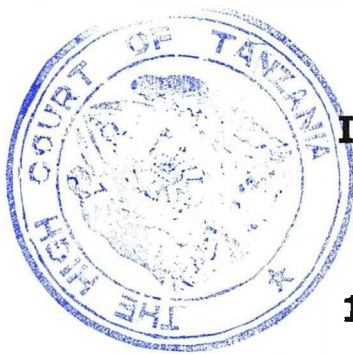
When he filed his claim, the appellant filed too a list of confiscated properties. However, he never tendered that list as exhibit or testified orally on which properties were confiscated. The District Court considered this fact and held:-

"However, that list was never produced before the court, even when appellant was offered his evidence (sic) before the trial court he only stated inter alia "... walikusanya magogo, kuni na vyombo vyote vilivyokuwepo kambini kisha kuchoma moto kambini

...". Appellant did not substantiate what were those utensils (sic) which respondents set fire to and value for each".

It is my view that the first appellate court re-evaluated the evidence properly and rightly confirmed the decision of the trial court. There is no evidence on record that the respondents confiscated any property other than two matchets and two axes which were surrendered to the Police Station. About setting the camp on fire, the testimony of the appellant and his witness is unreliable when considered in light of the evidence given by the respondent in defence. They said they just arrested the workers and handed them to the police. Further, besides the claim that the camp was set on fire there is no evidence that any property of the appellant was consumed by that fire. Failure to cause the workers to testify creates serious doubts on whether they had any properties other than work tools at that area. The two lower courts were entitled to disbelieve the appellant.

In the event, I find that the lower courts properly evaluated the evidence and applied well the law to hold that the claim was not proved on the balance of probabilities. I dismiss the appeal with costs.



I.C. Mugeta

I.C. Mugeta

Judge

16/3/2021

Court: Judgment delivered in chambers in the presence of the both parties.

Sgd: I.C. Mugeta

Judge

16/3/2021