

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

PC CIVIL APPEAL NO. 74 OF 2020

(Arising from the District Court of Sengerema at Sengerema Civil Appeal No. 22 of 2020)

PAULO BULULU APPELLANT

VERSUS

MATABISHO DIGIDIA RESPONDENT

EXPARTE JUDGMENT

8th & 20th April, 2021

RUMANYIKA, J.:

The 2nd appeal is with respect to judgment and decree of shs. 825,000/= dated 02/09/2002 of Sengerema district court (the first appeal court) being compensation for crops in shamba damaged by the alleged respondent's heads of cattle the latter having quashed and set aside it (the decision and order of Sengerema urban primary court (the trial court)).

When the appeal was called on 08/04/2021 by way of audio teleconferencing for hearing, through mobile no. 0785057525 also duly notified, Matabisho Digidia (the respondent) he did not appear for the reason and my order of the same 08/04/2021 the latter's appearance was dispensed with hence the exparte judgment.

Rephrased, the three (3) grounds may boil down only to two points: -

(1) that the 1st appeal court erroneously discounted the Extension officer's assessment report (Exhibit SM 01) therefore improperly evaluated the evidence **(2)** that the 1st appeal court erred in law and fact not holding that the appellant's case was proved on the balance of probabilities.

Having adopted contents of the memorandum of appeal, Paulo Bululu (the appellant) submitted that the first appeal court improperly evaluated the evidence on record namely the Extension officer's assessment report on the heads of cattle having had grazed on the plot and the crops really damaged by the respondent's heads of cattle. I pray that the appeal be allowed with costs. The appellant further submitted.

SM Paulo Bululu is on record having had stated that just as he was notified by his stone throw neighbor and he rushed there onto on 31/05/2020 at about 16.00 hours and really he found heads of cattle graze on his paddy plot, suddenly the respondent drove away the heads of cattle but then he ran wild, furiously denied the liability and he maintained the stance even before the before the local cluster chair. That shortly on his arrival the local extension of officer he urged them to settle but as they

failed to, a week later he made assessment of the damage (copy of the report –Exhibit SM-01). That is all.

SU Matabisho Digidia stated that as on the material date but in the evening times he grazed heads of cattle around at the low land, from nowhere the appellant stormed in and accused him. That on arrival, even the local cluster chair to who the appellant had just reported the case he was equally surprised that unless otherwise between them there had been a hidden agendum then off they went and he suspected they were done only on the next Thursday to be summoned in court for the same claims/case. That is all.

The central issue is whether the appellant's claims were proved on the balance of probabilities. The answer is no. Like the learned trial resident magistrate precisely so in my view discussed and ruled out, with respect to the assessment report (Exhibit SM-01) the respective extension officer did not appear to defend it or through him by way of evidence and cross examination the report being tested. Moreover the alleged specific damages of shs. 825,000/= were just like that pleaded and not specifically pleaded. It is very unfortunate that the reason for the officer's failure to appear in court it was not given leave alone attempts to. Needless to say

about nonappearance in court of the alleged neighboring lady one Angelina Elias Kuboja who might have caught the respondent's heads of cattle if at all graze in the appellant's paddy plot it means therefore the appellant's allegations that responsible for the damage it was only the respondent's heads of cattle they needed corroboration but no cogent and independent evidence corroborated it howsoever. Leave alone an undisputed fact that the assessments were, if at all carried out a week later. It being after thought or really carried out, possibilities of some heads of cattle other than that of the respondent having trespassed and damaged the crops could not be eliminated.

Last but not least as said, not only the respondent was proved owner of the heads of cattle but also the same being forty (40) or of less number, the fact it was but respectfully fabricated by the learned trial resident magistrate because the evidence on record had no such a bearing.

In the final analysis, I shall have no basis upon which to fault the 1st appeal court's learned resident magistrate. The appeal is dismissed with costs. It is so ordered.

Right of appeal explained.

S. M. RUMANYIKA

JUDGE

17/04/2021

The judgment is delivered under my hand and seal of the court in chambers this 20/04/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

20/04/2021