

IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

DC CIVIL APPEAL NO. 8 OF 2019

*(From the Decision of the District Court of Dodoma at Dodoma, Civil
Case No. 19 of 2017)*

WILLIAM MWITA ,..... APPELLANT

VERSUS

DODOMA MUNICIPAL RESPONDENT

JUDGMENT

Date of last order: 05.08.2021

Date of Judgment: 13.08.2021

Dr. A.J. Mambi, J.

In the District Court of Dodoma Mbeya at Dodoma the appellant **WILLIAM MWITA** unsuccessfully sued that respondent for compensation. The appellant claimed that his cattle (cows and goats) were illegally seized by the respondent. It is on the records that the respondent filed a counter-claim against the appellant. The respondent in their counter-claim claimed that the appellant's cattle were arrested grazing at the prohibited area within the municipality of Dodoma. The respondent seized the cattle and ordered the appellant to pay fine of 50,000/ as per section 8 of the

By-law (*Tangazo la Serikali No.165 of 2014*). The respondent claimed the appellant. The appellant left his cattle under the hands of the respondent for some days. The respondent claimed the appellant to pay 20,000/ for each cow and 15,000/ for each goat. The trial court ordered the appellant pay the respondent 560,000/ for keepings 7 heads of cows and 4,305,000/ for keepings 41 heads of goats. This means the appellant was ordered pay the total amount of 4,865,000/=.

Aggrieved by the decision of the District Court, the appellant appealed to this court basing on the following four grounds of appeal:

- 1) **That**, the District Court for Dodoma erred in law and in fact in deciding that, there were 4 cattle and 41 goats without any prove from the Respondent and the witnesses of the Respondent.
- 2) **That**, the District Court of Dodoma misdirected itself in disregarding the evidence of the witness of the Appellant one Abdi Boniface whose evidence was straight forward about the number of the cattle and goats.
- 3) **That**, the District Court for Dodoma misdirected itself in deciding that, the Appellant is not entitled to what so ever whereas his evidence established his claims.
- 4) **That**, the District Court for Dodoma misdirected itself in deciding that, the Appellant to pay Tshs. 560,000 and Tshs. 4,305,000/= to the Respondent without any justification and reasonable reasons.

During hearing the appellant was represent by the learned Counsel Mr. Erick Shari while the respondent was represented by the learned City Solicitor Ms Tibilanga. In his submission for the grounds of appeal, the learned Counsel for the appellant disputed the total number of cattle. He argued that PW3 testified that he arrested 6 cows and not 7 as indicated under the judgment. He argued that there was no proof for the respondent to be paid such huge amount of money that is more than four million shillings.

In response, the respondent through the learned City Solicitor Ms Tibilanga submitted that the appeal is void of merit for the reason that the evidence on the record was tangible and sufficient to prove the guiltiness of the appellant beyond all reasonable doubt. She argued that the appellant is admitting that his cattle were arrested while grazing at prohibited area. She argued the evidence both PW1 and PW3 on the number of cattle are clear as they were the once who arrested the cattle.

I have considerably gone through the records and submissions from both parties and grounds of appeal. I have also heard both parties in their submissions during hearing. There is no doubt that the appellant admitted that his cattle were arrested and seized while grazing at prohibited area. In this regard the respondent proved its case on the balance of probabilities. What is the appellant disputing is the number of cattle and amount of the money ordered to be paid. In other words the appellant s claiming that he ward ordered to pay the excessive and unjustifiable amount of money. Basing on

those facts and evidence, the main issue in considered view is whether the trial court ordered the appellant to pay excessive amount or not.

Having clearly persuaded the trial court Judgment, the court has found that the trial court was correct in its decision but imposed an ordered with an excessive amount of money. Indeed the circumstance of the case warranted the court to use its discretionary powers to order the appellant to pay lesser amount of money. This depend on the nature of offence and circumstances of the case. In our case, given the fact that this was the first offence for the appellant and the fact the appellant admitted, the court was ought to consider lesser amount of money to be paid. See **SALUM SHABANI v REPUBLIC 1985 TLR 71**.

In my considered view, the Trial Magistrate was required to be more lenient to the appellant given the circumstance of this case taking into account the it was his first offence and he surrendered himself by claiming his cattle which under the custody of the respondent. It is true that the Magistrate ordered the appellant to pay the total amount of Tshs. **4, 865,000/=** as per the provision of the Municipal by-laws, but still in my considered view the magistrate ought to have opted for lesser amount. This was underscored by the Court in **BERNADETA PAUL v REPUBLIC 1992 TLR 97** which was also cited by the learned State Attorney, where it was stated that:

“had the learned judge taken into account appellant's plea of guilty to the offence with which she was charged the judge would no doubt have found

that the appellant was entitled to a much more lenient sentence than the sentence of 4 years imposed”.

I also wish to refer the case of **BERNADETA PAUL v REPUBLIC 1992 TLR 97 (CA)** .The Court in this case observed that:

*“An appellate court should not interfere with the discretion exercised by a trial judge as to sentence except in such cases where it appears that in assessing sentence the judge has **acted upon some wrong principle or has imposed a sentence which is either patently inadequate or manifestly excessive**”.*

In our case in hand it is clear from the record that the Trial Magistrate acted upon some wrong principle and imposed a fine or an amount which is manifestly excessive which warrants interference of this court inevitable.

In view of the above findings, it can confidently be concluded that, failure to properly consider the justifiable amount that seems to be excessive without justification warrant this court to reverse the decision of the trial court. In the circumstances I am satisfied that the trial court failed to unjustifiably use its discretion power to impose lesser amount to be paid by the appellant.

Thus considering the circumstances, I consider substituting the amount of **Tshs.4, 865,000/=** ordered by the trial court to be paid by the appellant to the respondent with the total amount of sentence of Tshs. **2, 500,000/=**. The money shall be paid by the appellant to the respondent by three instalment within **three months** from the date of this Judgment. If the appellant wishes to

pay the whole amount of **Tshs. 2,500,000/=** at once within three months from the date of this judgment, he is at liberty to do so.

The court orders that in default of payment of the money, the respondent will be at liberty to take further action unless the parties have agreed otherwise. In the premises, I partly allow this appeal without costs. Order accordingly.



Dr. A.J. MAMBI, J

JUDGE

13/08/2021

Judgment delivered this **13th** day of **August 2021** in presence of both parties.



Dr. A.J. MAMBI, J

JUDGE

13/08/2021

Right of Appeal explained.



Dr. A.J. MAMBI, J

JUDGE

13/08/2021