

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

(PC) CIVIL APPEAL NO. 40 OF 2020

(Arising from civil appeal No. 9 of 2020 of the Bukoba District Court and originating from civil case No. 377 of 2019 of the Urban Primary Court of Bukoba)

ELIEZA M. TIBESIGWA.....APPELLANT

VERSUS

HILALION MUKULASI MALISEL.....RESPONDENT

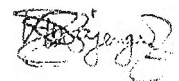
JUDGMENT

28th July & 29th July 2021

Kilekamajenga, J.

The appellant appeared before this Court challenging the decision of the District Court. The matter originates from the decision of the Primary Court in civil case No. 377 of 2019. In this case, the appellant was claiming a cow that he gave the respondent for keeping. It is alleged that, the cow had a value of Tshs. 1,500,000/=. In approaching this Court, the appellant advanced two grounds of appeal which I take the discretion not to reproduce them in this brief judgment because they are haphazardly framed. When the case came for hearing, the appellant and respondent appeared in person and without legal representation. As they were lay persons, their submission were just brief.

In the oral submission, the appellant informed the Court that, he gave one cow to the respondent. They signed an agreement to that effect. The respondent



stayed with the cow for one year. Later, the appellant visited the respondent's home but did not find the cow, hence he sued the respondent at the Primary Court.

On the other hand, the respondent agreed to have received the cow from the appellant and they signed the agreement. Later, the cow became weak; he informed a veterinarian about the health of the cow who advised the respondent that the cow could not be suitable for human consumption if administered with medication. The respondent informed the appellant about the condition of the cow and advice from the veterinarian. The appellant allowed the respondent to slaughter the cow. On the next day, the appellant went to the respondent's home and they looked for customers for the meat. Later, the appellant got two people to sell part of the meat. Also, the appellant took the rest of the meat to his home. However, the two persons who agreed to sell the meat did not present the whole money to the appellant. The appellant later decided to claim the money from the respondent and that is the time when the strife arose.

When rejoining, the appellant alleged that one of his witnesses was a close friend of the respondent.

In determining this appeal, the major issue is whether the appellant proved his case on the balance of probability. It is an established principle of the law that a civil case must be proved on the balance of probability. See **Section 3 (2) (b) of the Evidence Act, Cap. 6 RE 2019**. The principle of law further demands that a person with heavier evidence than his/her adversary must win the case. This stance of the law was stated in the case of **Hemedi Saidi v. Mohamedi Mbilu [1984] TLR 113** thus:

"According to the law both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win."

In the case at hand, the appellant's case was supported with the evidence of one more witness called Macdonald Mutekyahwa (SM2) who was 50 years old. He was the neighbour of the parties. He actually witnessed the signing of the agreement concerning the handing over of the cow. This witness confirmed that the cow was unhealthy and the appellant was informed about this condition. SM2 was present when the cow was slaughtered and the appellant arrived at the home of the respondent; he took the meat and went away. On the other hand, the respondent only relied on his own oral sworn testimony.

Now, based on the scale of the balance of probability, there is no evidence to prove the appellant's allegations. Even the witness who was expected to support

the appellant's allegation gave evidence in support of the respondent's case. Measured on the standard required in civil cases, the appellant failed to prove the case. Therefore, this appeal is devoid of merit. I hereby dismiss it with costs. It is so ordered.

DATED at BUKOBA this 29th day of July, 2021.




Ntemi N. Kilekamajenga.
JUDGE
29/07/2021

Court:

Judgment delivered this 29th July 2021 in the presence of the appellant and respondent all present in person. Right of appeal explained.




Ntemi N. Kilekamajenga.
JUDGE
29/07/2021

