

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

PC. CIVIL APPEAL NO. 11 OF 2019

[From the decision of District Court of Tabora in Civil Appeal No. 2 of 2019 and Original Civil Case No. 43 of 2018 of Kigwa Primary Court]

THOMAS ELIAS APPELLANT

VERSUS

NESTORY LUGONDA..... RESPONDENT

JUDGMENT

Date of Last Order: 18/06/2021

Date of Delivery: 20/07/2021

AMOUR S. KHAMIS, J.

On 10/12/2018 Nestory Lugonda, the respondent herein, filed Civil Case No. 43/2018 at Kigwa Primary Court against the appellant, Thomas Elias claiming a total of Tshs: 4,543,625/= as compensation for damages resulting from cattle's trespass on his maize farm and rice seedling bed.

Upon hearing, the trial Court was not convinced as to how four buckets of rice seeds and 400sqm of maize field

could yield crops worth Tshs. 4,543,625/- as alleged by Nestory Lugunda.

The trial Court further disregarded the claim because Thomas Elias was not involved in the preparation of a valuation report.

Dissatisfied with trial Court's decision, Nestory Lugunda appealed to the District Court of Tabora where upon the appellate magistrate overturned the decision and ordered Thomas Elias to pay Nestory Lugunda a compensation totalling Tshs: 4,000,000/=.

Thomas Elias was not satisfied with the District Court's decision and thus appealed to this Court listing three grounds of appeal, namely: -

- 1. That, the honourable Magistrate erred in law and facts for ordering the appellant to pay the respondent sum of Tshs: 4,000/= being a compensation for damaging ¼ acre of maize and paddy seed beds while there was no evidence of valuation from agriculture officer.*
- 2. That, the Hon. Magistrate erred in law and fact to decide in favour of the appellant while there is no evidence in record to support the same.*

3. That, the Hon. Magistrate erred in law and fact to consider that there was a deed of compromise between the parties while the record from Kigwa Primary Court does not support the same.

When the appeal was called up for hearing, Thomas Elias was represented by Ms. Flavia Francis, learned advocate, whereas Nestory Lugonda appeared in person. With leave of this Court, parties argued the appeal by way of written submissions.

In support of the appeal, Ms. Flavia Francis contended that, the trial Court was correct to decide in favour of Thomas Elias since there was no evidence from an agricultural officer on destruction of the crops.

As to the second ground of appeal, Ms. Flavia Francis contended that, the District Court erred in law because there was no proof from the respondent to decide in his favour.

As to the issue of compromise, the learned counsel asserted that the District Court went beyond what was in record of evidence.

On the other hand, Nestory Lugonda contended that the District Court was correct basing on a water tight

evidence from eye witnesses. He contended that as Thomas Elias admitted that 10 cattle destroyed his (Nestory Lugonda) crops, he was barred from controverting his former statement.

As to the valuation report from an agriculture officer, Nestory Lugonda asserted that an agricultural expert valued the destruction to the tune of Tshs: 4,543,625/= and that on mercy of the District Court Magistrate, the sum was reduced to Tshs. 4,000,000/- (Four Million) only.

On the second ground of appeal, Nestory Lugonda contended that the ground lacked merit as oral evidence from the respondent who witnessed destruction and identified the appellant's cattle was sufficient to prove the claim in Court.

On the last ground of appeal, Nestory Lugonda contended that by conduct, Thomas Elias accepted liability for destruction of the crops because when was contacted over the phone, he promised to settle the claim upon return from a journey.

The main issue for consideration and determination is whether this appeal has merits. I intend to address the

grounds of appeal in consolidation as their conclusions are undoubtedly similar.

As said earlier, the District Court overturned the decision of the trial Court and ordered Thomas Elias to pay to Nestory Lugonda a total of Tshs: 4,000,000/=.

The decision was based on a reason that there was sufficient proof from two eye witnesses who were present when a herd of cattle belonging to Thomas Elias destroyed Nestory Lugonda's property.

In overturning decision of the trial Court, the learned appellate magistrate had this to say: -

“... regardless of absence of damage valuation from agricultural officers. I well know that, regardless of its smallness a paddy seedbed's value is higher because the said seeds could be transplanted to bigger farms which could yield a lot of crops and hence bring high income to the owner”

Records show that the trial Court disregarded a valuation report presented to it by Nestory Lugonda since there was no evidence to match the destroyed crops with an estimated value reported by the agricultural officer. In

my view, the trial magistrate position was right as indeed records show that no evidence backed up a claim by Nestory Lugonda on the value of the crops destroyed.

As to a reasoning by the appellate magistrate, I do not see any justification for equating the value of paddy seedlings with that of fully grown up crops. In fact, the assumption arrived at by the appellate magistrate was totally wrong and without a base.

The Court of Appeal of Tanzania in ***Rock Beach Hotel vs Tanzania Revenue Authority Civil Case No. 52 of 2002*** and ***Trade Union Congress of Tanzania [TUCTA] vs Engineering Systems Consultants Ltd & 2 Others, Civil Appeal No. 51 of 2016 (both unreported)*** emphasized that: -

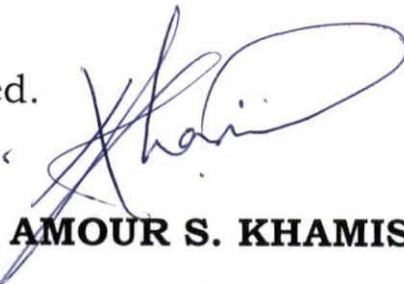
“... the law is settled that; general damages are awarded by the trial court after consternation and deliberation on the evidence on record able to justify the award”

In the present matter, after the trial Court ignored the valuation report, there was piece of evidence left on the record to substantiate the award of general damages to the respondent.

Moreover, as rightly submitted by the learned counsel for the appellant, there was no settlement deed worth a name ever entered between the present parties as to prove Thomas Elias's acceptance of liability for the crops destruction.

On that note, I find merits on the three grounds of appeal listed by the appellant. Consequently, Judgment and Decree of the District Court is hereby set aside and decision of the trial Court is restored. I make no order as to costs.

It is so ordered.

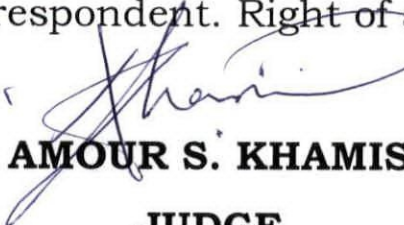
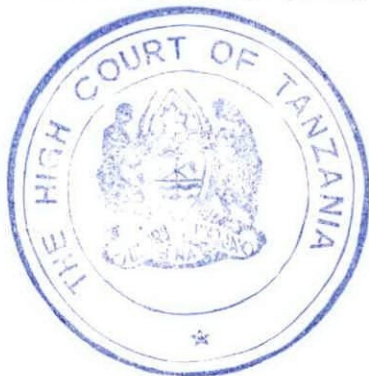


AMOUR S. KHAMIS

JUDGE

19/07/2021

Judgment delivered in the Open Court in presence of Ms. Flavia Francis, learned advocate for the appellant and in absence of the respondent. Right of appeal explained.



AMOUR S. KHAMIS

JUDGE

19/07/2021