

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**CIVIL APPEAL NO 13 OF 2022**

*(Originating from Civil Appeal No 17 of 2021 of Bunda District, Originating from the Decision of Bunda Urban Court, in Civil Case No 100 of 2021)*

**NDURU MASUNGA NDURU .....APPLICANT**

**VERSUS**

**JONAS MACHANDI WERIBO ..... RESPONDENT**

**JUDGMENT**

26<sup>TH</sup> & 26<sup>TH</sup> MAY, 2022

**F. H. Mahimbali, J**

The appellant in this matter had filed a suit for a claim of 2,000,000/= before Bunda Primary Court as claim for the refund of the purchase price of the piece of land sold by the respondent to him.

Upon hearing of the case, the trial court dismissed the suit on the basis that the appellant failed to adduce evidence on that assertion. As the available evidence on record was full of discrepancies, it was hard to be relied upon by the Court.

Aggrieved by the decision, the appellant successfully challenged the said decision before the District Court. The District Court in its decision, ruled I quote;

*"I had an opportunity to see trial court record and observed that trial Magistrate instead of hearing evidence about witnesses who saw respondent handing over cash of Tshs 2,000,000/= for sale of eight acres of land, witnesses especially SM2 and SM3 testified about boundaries of land purported to be sold. This was not land dispute thus, evidence about boundaries are facts which could not be considered by Court I agree with appellant's counsel that this was an error committed by trial court which vitiated parties' rights. I allow this appeal and quash trial court proceedings and set aside orders thereto and order trial denovo by another Magistrate. No order as to costs. Ordered Accordingly".*

***Sgd:***

***M. P. Kamuntu, RM***

In essence, the findings of the first appellate court is not support the available proceedings and evidence in record. Neither is it getting supported with from the grounds of appeal preferred by the appellant at the court (District Court). The preferred grounds of appeal at the first appellate court, by the appellant were two namely;

1. That, the trial Primary Court erred in law and fact by delivering the judgment in favour of the respondent by relying on minor discrepancies of the evidence of the appellant's witnesses while the same proved the case on the required standard.

2. That, the trial Primary Court erred in law and fact by failing to critically and properly analyse the watertight evidence adduced by the appellant.

As per these two grounds of appeal and what had been argued before it, the first appellate court erred in law in not determining the appeal on merit. It being the first appellate Court, was duty bound to step into the shoes of the trial court and evaluate the available evidence and make its findings as per law. It failed to do so. I thus, step into its shoes and do it for the legal sake.

In digest to the case's testimony at the trial court, it is undoubted that the trial court reached the proper verdict. All the appellant's witnesses (SM2 and SM3), none testified that he witnessed the sale of land but only giving of 2,000,000/=. As there was no that sale established, equally the claim of that refund as propagated is unfounded. As rightly reasoned by the trial Magistrate, the findings of the trial Court is justified. Since the appellant's witnesses are not reliable and credible, on what they testified, the appellant's claims equally cannot stand.

That said, the finding of the District Court is unfounded and is considered as mere empty words pronounced. I find no any legal basis in it. I thus quash and set it aside.

That said, the current appeal before this court equally fails for want of sound legal grounds. As per the evidence in record, there is nothing can be invited to overturn the trial court's findings. I say so because there was not established any sale agreement of the said land between the respondent and the appellant. This then suggests that the current appeal dies naturally.

On that finding, I dismiss this appeal in its entirety with costs and restore the trial court's judgment and orders.

It is so ordered accordingly.

DATED at MUSOMA this 26<sup>th</sup> day of May, 2022.



  
F. H. Mahimbali

**JUDGE**

**Court:** Judgment delivered this 26<sup>th</sup> day of May, 2022 in the presence of Mr. Emmanuel Paul Mag'arwe, advocate for the appellant, Respondent present in person and Mr. Gidion Mugo, RMA.

  
F. H. Mahimbali

JUDGE

26/05/2022