

IN THE HIGH COURT THE UNITED REPUBLIC OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

CIVIL APPEAL NO. 7 OF 2022

(Arising from Civil Case No. 5 of 2022 of Ukerewe District Court before L.A. Nyahega, RM delivered on 30th September, 2019)

SOSPETER IZUMBA.....APPELLANT

VERSUS

ROZA ROKI.....1ST RESPONDENT

MAGENDA MPURUKO.....2ND RESPONDENT

KAROBI BISE.....3RD RESPONDENT

RULING

21st June, 2022

DYANSOBERA, J.:

This appeal takes exception to the judgment and decree made by the trial District Court of Ukerewe delivered on 29th day of December, 2021 dismissing the appellant's claims against the respondents.

According to the memorandum of appeal filed by the appellant on 1st day of February, 2022, the following grounds have been advanced:

1. That the learned trial magistrate grossly erred in law and fact for his failure to properly evaluate the evidence given by the prosecution/plaintiff's side which was strongly wate-tight. Hence decided the case in favor of the defendants.
2. That, the learned trial Magistrate grossly erred in law to hold that the plaintiff did not prove his claims to the standard of a balance of Probability hence, dismissed the case with costs. Whereas the evidence of Pw1, Pw2, Pw3, Pw4 all proved that the defendants conducted an illegal search in the

plaintiff's house without any justification thus interfering with the plaintiff's right of privacy.

3. That, the learned trial Magistrate erred in law and fact to decide the case in favor of the defendants basing on the weak evidence of Exhibition DL-1.
4. That, the learned trial Magistrate erred in law and fact to dismiss the plaintiff's claims basing a mere denial by the defendants which did not specifically deal with each allegations as laid down by the plaintiff.
5. That, the learned trial Magistrate erred in law and fact to arbitrary exercised his discretionary power to award the Defendants with costs, without regards the circumstances of the case.

With these grounds, the appellant prayed the appeal to be allowed with costs and his prayers of the plaintiffs in the plaint be enhanced and the judgment and decree of the trial court be set aside.

On 21st day of June, 2022, when this appeal came for hearing, Mr. Stephen Kaijage, learned Advocate stood for the appellant whereas Mr. Anold Katunzi, learned Counsel, represented the respondent.

Mr. Anold Katunzi rose up and informed this court that though the grounds of appeal touch on the evidence of the trial court, there are pit falls in the proceedings. He contended that for the best interests, the matter should be heard afresh.

On his part, Mr. Kaijage conceded to his learned fellow brother's concerns including the jurisdiction and the failure to hear some other parties.

Taking into account all that, he prayed for leave to withdraw the appeal with leave to refile so that the parties resort to proper avenue.

Having considered the submissions of the parties and after going through the trial courts' records, I am satisfied that the concerns by the learned parties are legally justifiable.

I, accordingly, grant the prayer by learned Counsel for the ~~applicant~~ ^{appellant} to withdraw this appeal with leave to refile. This appeal is marked with drawn as prayed.

No order as to costs is made.

Order accordingly.



W.P. Dyansobera

Judge

21.6. 2022

This ruling is delivered under my hand and the seal of this Court on this 21st day of June, 2022 in the presence of Mr. Stephen M. Kaijage, learned Advocate for the appellant and Mr. Anold Katunzi, learned Counsel for the respondents.



W.P. Dyansobera

Judge