

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

PC. CIVIL APPEAL NO. 6 OF 2021

KUZENZA LUFUNGILO APPELLANT

VERSUS

ELIKANA MAYUNGA KOMBE RESPONDENT

(Appeal from the Judgment and Decree of the District Court of Mpanda at Mpanda)

(R. M. Mwalusako, RM)

Dated 20th day of September 2021

In

PC Civil Appeal No.11 of 2021

JUDGMENT

Date: 22/06 & 25/07/2022

NKWABI, J.:

The appellant was sued in the trial court for refund of the dowry he had received from respondent. The respondent claimed 15 heads of cattle be refunded to him after he claimed that his wife, Judith Kuzenza (DW2), deserted him. The appellant defended that he received 8 cows from the respondent as dowry and each cow had the value of T.shs 50,000/=. He stated, his daughter returned to his home in 2016 after a conflict with her husband, the respondent and that at that time, she had had two issues with the respondent. The trial Court held that the respondent had proved the

claim of 9 heads of cattle. The trial court determined that each head of cattle was valued at T.shs 500,000/=. The appellant was ordered by the trial court (Theresia A. Masha, RM) to refund 9 heads of cattle or T.shs 4,500,000/= to the respondent and court fee at T.shs 5,000/=.

That aggrieved the appellant in this Court who preferred an appeal in the District Court. The District Court, (before R. M. Mwalusako, RM) partly allowed the appeal to the extent that only three heads of cattle were to be refunded to the respondent. That decision further perplexed the appellant and mounted this appeal in this Court. This time, his grounds of appeal were that:

1. That, the Appellate Court grossly erred in law by not resolving the first and second grounds of appeal raised by the Appellant before it which are first, the civil case was instituted out of time before the primary Court and second, the bride price cannot be refunded while the marriage still subsists and has not been dissolved by the Court.
2. That, the Appellate Court grossly erred in law by imposing wrong doer to the Appellant daughter called Judith Kuzenza deserted the

Respondent without any proof as who was wrong the Respondent or Judith Kuzenza.

3. That, the Appellate Court grossly erred in law by mis-interpreting the customary law as the Appellant and his daughter committed no wrong.

It was the appellant's prayer that the decision of the appellate court be quashed and set aside, costs of this case and any other relief this Court may deem fit and just to grant. The appeal was vigorously resisted by the appellant. He was of the view that the evidence proved that Judith Kuzenza dissented the respondent and the appellate trial was justified in its decree for him to be paid three heads of cattle and court fee.

During the hearing of this appeal both parties appeared in person, unrepresented. In his submission in chief, the Appellant contended that his witnesses were not heard. When he went with his witnesses, the trial court delivered a judgment. He further maintained that their marriage has not been broken down by the court. He added that the respondent gave the dowry to him as a gift.

He further pointed out that according to Sukuma tradition and customs, once a wife gives birth, the dowry is not returnable. The respondent did not pay the dowry to him so that he keeps the same for respondent, the appellant stressed.

As a counter-argument, the Respondent asserted that he paid the dowry at 15 cows. He then stayed with the appellant's daughter for two years and she did not bear any child to him.

He further argued that in their customs, the cows ought to have been refunded to him. He was also of the opinion that the appellant is torturing him because he is an old man. He added that the appellant sent his daughter to be married to another man where the appellant was paid 20 cows as dowry. He prayed that justice done to him.

The respondent too retorted that the trial court did not refuse to record any of appellant's witnesses. He then urged this Court to consider his reply to the appellant's petition of appeal as his submissions. The appellant could not

take his dowry and then send her to be married to another man, the respondent stressed.

Then it was the argument of the Appellant in rejoinder that the respondent ought to have held the other men for adultery. He insisted that the respondent has two children with his daughter. He was of the opinion that if the respondent does not wish to live with his daughter, he has to return her to the appellant. He then prayed for justice.

I have carefully examined the grounds of appeal preferred by the appellant. I have also considered the reply thereto and the submissions of both parties. I have further scanned the whole proceedings in the trial court in this court together with the submissions.

I will consider the complaint by the appellant that the suit was instituted out of time. On this ground. The appellant pressed that the suit was filed out of time. That it was time limited since the cause of action arose in the year 2013 but this suit was instituted in the trial court in the year 2020. As I have said, I have scanned the trial court record and found that there is no where

it is proved that there has been issued a divorce decree. In the situation, the suit cannot be said to have been time barred but it seems to have been lodged prematurely. That is because there is no court which has decreed that indeed, the marriage between the respondent and Judith Kuzenza has irreparably broken down and proceed to issue a decree of divorce.

The next issue for my determination and consideration is whether the decree that the appellant to refund three heads of cattle paid to him by the respondent as dowry is lawful. If any, dowry could be returned in appropriate cases where the marriage has been broken down irreparably and in my view after a divorce decree has been passed by a competent court. Since there is no divorce decree issued by any court of law, the order for the appellant to refund three heads of cattle to the respondent cannot rationally be supported. See for instance **Ibrahim Ahmed v. Halima Guleti, [1968] HCD no. 76.** (PC), Cross, J. stated:

"The District Court erred. The question for a court on appeal is whether the decision below is reasonable and can be rationally supported: if so, the lower court decision should be affirmed. The appeal judge may not in effect try the case

de novo, and decide for the party he thinks should win.


"Surely, when the issue is entirely one of the credibility of witnesses, the weight of evidence is best judged by the court before whom that evidence is given and not by a tribunal which merely reads a transcript of the evidence." Judgment of the primary court restored."

In the final analysis, I hold that the claim for the refund of dowry was prematurely filed in court for there was no decree for divorce in place. As such, I allow the appeal. I quash the judgment and decree of the District Court and set aside the order for refund of the three heads of cattle. The judgment and decree of the trial court are held to be nullity. The respondent has to bear the costs of the appellant.

It is so ordered.

DATED at **SUMBAWANGA** this 25th day of July, 2022




J. F. NKWABI
JUDGE