"ORIGINAL"

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TANGA DISTRICT REGISTRY
AT TANGA

PC CIVIL APPEAL NO. 2 OF 2022

(Arising from civil case No.14/2021 Korogwe District Court at Korogwe, originating from the decision of Mombo primary Court in Civil Case No.17/2021)

NGULA RAHALEI .....APPELLANT

VERSUS

PHILIPO WABU.....RESPONDENT

JUDGMENT

Date of Judgment- 28/07/2022.

L. MANSOOR, J

The appellant was the defendant in Civil Case No.17 of 2021 at Mombo Primary Court and the respondent was the plaintiff.

The respondent sued the appellant claiming to be paid a total sum of Tshs.3,168,000 being compensation for the damaged maize stalks (mabua ya mahindi).

In a nut shell, it was alleged by the plaintiff that on 23/8/2021 at morning hours he found a herd of cows

belonging to the appellant grazing the maize stalks he had purchased at Tshs. 860,000 from one Hassan Hamza as hay for his cows.

An agricultural field officer (SMII) prepared a valuation report amounting to a loss of Tshs.3,168,000/ and the same was admitted as Exhibit AI.

Defending his case, the appellant testified that his cows were never apprehended and he never witnessed them grazing the purported maize stalks.

The trial magistrate having examined the evidence he found that the respondent had proved his case on the balance of probabilities hence awarded a compensation of Tshs.1,075,000.

The appellant being aggrieved, unsuccessful appealed in the District Court of Korogwe. The decision and order of the trial court was upheld with costs, hence this present appeal.

The appellant has levelled two grounds of appeal of which am indebted to reproduce hereunder;

1. That the trial court erred in law and facts when failed to take into consideration the concrete and direct evidence of parties and their witnesses that there was no destruction of crops rather mere use of bundle of maize bushes having crops been harvested which marks the plaintiff's case were totally neither established nor proved.
2. That the trial appellate court erred both in law and facts when failed to re-evaluate well the evidence on record and factual findings there from that resulted into miscarriage of justice.

The appellant therefore beseeches this Court to allow the appeal with costs. The appeal was argued by oral submissions. The appellant was represented by Ms. Graciana Assenga and the respondent by Mathias Nkingwa, all learned advocates.

At the hearing of the appeal MS Grecian combined the the two grounds of appeal and submitted on them as one ground. She averred that the appellate magistrate never comprehended the issue at trial. She avers that at page 8 of the judgment the appellate court said, it was the appellant's cows that destroyed the maize while the issue at the trial court was not destruction of maize but rather maize stalks (mabua ya mahindi). She therefore prays this court to quash and set a side the judgment of the first appellate court.

In response, Mr. Mathias beseeched the court to uphold the decision of the first appellate court. He argued that the respondent proved his claim at the trial court. He also averred that the appellate magistrate at page 8 of the judgment clearly stated that what was destroyed was the maize stalks (mabua ya mahindi). He thus prays this court to dismiss the appeal with costs.

In rejoinder the learned counsel insisted that the decision of the first appellate court is contradictory. Sometimes the appellate magistrate said maize and sometimes mabua ya mahindi. She averred that maize is not the same as mabua ya mahindi.

Having examined the records of the lower courts along with the grounds of appeal and the oral submissions I only find three pertinent issues to determine;

1. Whether the first appellate court judgment is contradictory.
2. Whether the claim was proved.
3. What relief(s) are parties entitled.

With no doubts it is true that appellate magistrates several times stated maize and mabua ya mahindi. This can be seen at page 1, 7 and 8 of the judgment. It is the contention by the appellants counsel that the appellate magistrate never

comprehended what was actual at issue. With due respect may I say that the learned counsel for the appellant is wrong. The magistrate was very mindful. He had all the records of the trial court. The facts that he sometimes stated maize instead of maize stalks does not render the judgment being contradictory. The mistake was probably and in deed due to short of the proper English term of "mabua ya mahindi"

It should be noted that, throughout his judgment, the appellate magistrate elaborated clearly what he meant by stating maize or mabua ya mahindi. Severally he stated what was destroyed was mabua ya mahindi and not the maize crops. For instance, at page 7 of the judgment the appellate magistrate said.

> ***'According to the trial court record and the evidence adduced by the respondent and his witnesses there is no dispute that the appellant's***

cows destroyed the respondent's maize "mabua ya mahindi"

It is my finding that the use of ***"mabua ya mahindi"*** intended to make an elaboration that an ordinary person can comprehend and never whatsoever prejudiced the appellant.

Regarding the second issue, though not argued by the learned counsel for appellant, it is a cardinal principle that the standard required to prove a civil claim is on balance of probabilities. Meaning that the person whose evidence is heavier than that of the other is the one who must win. See the case of **Hemedi Said V. Mohamed Mbilu [1984] TLR 113.**

With due respect I concur with the finding of the two lower courts. There is ample evidence that the maize stalks were consumed by the cows belonging to the appellant. The respondent was the eye witness. He found the cows grazing maize stalk he had purchased as feeds for his cows. They

were under care of the appellant's children. The matter was reported to the village executive and SMII (Katibu wa ulinzi Kijiji) went to the scene of crime. He similarly identified all the care-taker of the cows (wachungaji) as children of the appellant as they all live in the village. Acting upon the order of the village Executive Officer, SMII prepared an evaluation report. His report indicated that there was destruction amounting to a loss of Tshs.3,168,000. The appellant only defended that he can't be liable as his cows were not apprehended and he never even witnessed them damaging the maize stalks.

By taking the evidence of the two parties, it is vivid that the evidence of the respondent is heavier than that of the appellant. The appellant's claim was baseless. By the testimony of SMII, the Village Executive Officer intended to detain cows but he was informed that they had already left. There was also no necessity for appellant to be called to witness the act. The identification of his children was enough to draw an inference that the cows belonged to him. They all

hail and live in the same village therefore the appellant's cows were well identified.

As to the tune of compensation, it is settled law that specific damages must be specifically pleaded and proved. In **Masolele General Agencies Vs. African Inland Church Tanzania [1994] TLR 192** the Court of Appeal of Tanzania held:

> *"Once a claim for specific item is made, that claim must be strictly proved, else there would be no difference between specific claim and general one"*

In the instant appeal, the respondent, before the trial Court, pleaded and prayed for the payment of Tshs.3,168,000 being loss incurred. Both the trial court and the District Court granted the prayer at Tshs.1,075,000. I also refrain from interfering with the said award.

Having reasoned above, I find the appeal being meritless. I subsequently dismiss the appeal and uphold the decision and orders of the lower courts with costs.

DATED and DELIVERED at TANGA this 28TH day of JULY 2022

L. MANSOOR

JUDGE

28th JULY 2022