IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF MUSOMA

AT MUSOMA

PC CIVIL APPEAL NO 31 OF 2021

(*Arising from Civil Case No 06 of 2021 in the District Court of Musoma, Originating from Civil Case No 06 of 2021 of Bukwaya Primary Court)*

NEZIA THOBIAS .....APPELLANT

VERSUS

JAMES ERASI ..... RESPONDENT

JUDGMENT

11th & 29th August, 2022

F. H. MAHIMBALI, J.

The appellant in this case successfully sued the respondent at the trial court on a claim of crop destruction in his farm caused by the respondent's cattle. That the respondent's cattle on 15th April, 2021 grazed into the appellant's farm. The total destruction caused a damage of 1,425,480/=.

It was claimed by the appellant at the trial court that on the 15th April 2021, at his farm the respondent's cattle were caught grazing into the appellant's farm and caused a damage of food crops worth 1,425,480/= the property of the appellant. The matter was then reported at the local chairperson who tried to summon the respondent

for settlement but in vain. The evidence of the claimant (appellant) was supported by the evidence of SM2. Furthermore, the testimony of SM3 is to the effect that the destroyed crops by the said cattle after valuation is worthy 1,425,480/=.

Upon hearing of the case, the trial court was convinced by the evidence of the appellant and granted the payment of 1,425,480/= as actual damages occasioned by the said grazing.

The respondent was dissatisfied by the trial court's findings and successfully appealed to the District Court of Musoma where it was ruled that there was no proof that the said cattle belonged to the respondent and that there was such a destruction as alleged. It is this overturn decision of the first appellate court (District Court) which has aggrieved the appellant and thus this appeal in which it is propped on two grounds of appeal, namely:

1. *That, the Honorable Magistrate grossly erred in law and fact to find that there was no evidence as to how the appellant identified the respondent's herds of cattle while there is evidence that the incidence occurred on broad day light whereby it was easy to make identification more so the respondent did not dispute the fact that the said herds of cattle belong to him moreover the same were received by*

one Richard Zephaniah a shepherd who made it strait that the said cattle are the herd of cattle of the respondent

2. *That, the court erred law to use the standard of proof which is set in criminal cases of proof beyond reasonable doubt when it deployed the use of the Criminal case of* ***Bushiri Amir vs Republic*** *(1992) T.L,R, 56 while this case at hand is purely a civil case whose standard of proof is on balance of probabilities.*

During the hearing of the appeal, both parties appeared in person. The appellant then relied on her filed grounds of appeal as part of her submission and had nothing to add.

The respondent on the other hand, resisted the appeal by praying that the judgment of the first appellate court be maintained as it ruled the truth. This is because there was no any evidence at the trial court that his herds of cattle grazed into the appellant's crop farm. As there was no evidence, the first appellate court did justice. He also prayed that his written reply to the grounds of appeal be adopted by the Court and rule accordingly.

I have critically digested the trial court's records and that of the first appellate court. The vital question is whether the appeal is merited. This being the second appeal, it was expected there to be more issues

of law. However, in this appeal there is none but only contest on evidence.

I agree with the trial court that for there to be proof of the claims at the trial court (Primary Court), the claimant must establish all the facts necessary to establish the claim unless the other party (that is the defendant) admits the claim (see **Rule 1 (2) of the Magistrates' Courts (Rules of Evidence in Primary Courts GNos. 22 of 1964 and 66 of 1972**). This is in alliance with spirit of sections 110-112 of the Evidence Act, that a party who wishes to obtain judgment of the court, is duty bound to establish the existence of those facts. In the case of **Hemed said vs Mohamed Mbilu** (1984) TLR 113, it was held that there can hardly be equal evidence to both parties in civil case but only a party with heavier evidence is the one that must win. The issue now is whether the respondent as claimant established his claims at the trial court. He was charged to establish whether his crops were destroyed by cattle and that it was the respondent's cattle that grazed the appellant's crops.

In the present matter, the appellant claimed that the respondent's herds of cattle grazed into her farm. This was specifically stated by SM1 – the farm owner. SM1 in her testimony said they raised alarm and people gathered and then the matter was reported to the local leader

who then summoned the respondent. This evidence is corroborated by minor (SM2). SM3 testified that the destroyed crops are worth 1,425,480/= as per his valuation. In proof of the said claims, SM3 testified that the said destruction of crops is worth 1,425,480/=. It was expected that those who attended the call/alarm had appeared before the trial court and testified what they actually saw at the field. None of them went to the trial court and testified on the claims put by the appellant. On balance of probability, there is no strong believable evidence by the appellant that the respondent's herds of cattle grazed her farm (crops).

That said, the appeal fails. The decision of the first appellate court is hereby confirmed as rightly allowed the respondent's appeal before it. However, as per circumstances of this case, each party shall bear its own costs.

DATED at MUSOMA this 29th day of August, 2022.

F. H. Mahimbali

Judge

Court: Judgment delivered this 29th day of August, 2022 in the presence of both parties and Mr. Gidion Mugoa, RMA.

F. H. Mahimbali

Judge