

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY

AT TABORA

DC. CIVIL APPEAL NO. 6 OF 2021

*Originating from Igunga District Court Civil Appeal No. 4 of 2020 and  
Igunga Urban Primary Court Civil Case No. 34 of 2020)*

**NAAMAN BUNDALA .....APPELLANT**

**VERSUS**

**MAKELESIA NTEBA .....RESPONDENT**

**JUDGMENT**

*Date: 22/6/2022 & 19/8/2022*

**BAHATI SALEMA, J.:**

The respondent herein **Makelesia Nteba**, sued her father-in-law, **Naaman Bundala**, the appellant in this case, for the return of ten herds of cattle as a gift given during the formation of the marriage of the daughter of the appellant, Nyanzala Naaman for whom the dowry was paid, and who had divorced the respondent.

The respondent contracted a customary marriage with the daughter of the appellant and was required to pay ten herds of cattle in respect of that marriage in 2000. However, after years of such a marriage, their marriage went into misunderstanding and the daughter of the

appellant refused to proceed with their marriage as she was tired. The respondent petitioned for a decree of divorce which emanated from the Matrimonial Cause No. 23/2020.

The respondent before the trial court testified that he had lived with his wife for 5 years and that she had deserted him for more than 3 years and 7 months and also is praying for the payment back agreement for 10 herds of cattle from the appellant.

It is from the record, that the appellant admitted receiving 10 herds of cattle as dowry from the respondent. However, he said that they agreed to 20 herds of cattle and the respondent never paid until he found there was a divorce decree.

The trial court, having heard the parties, ruled for the respondent to be paid back 10 herds of cattle according to the law of persons and also the appellant as his father-in-law agreed to pay back the 10 herds of cattle in the settlement before going to court.

Aggrieved by the decision of the trial court, the appellant appealed to the District Court of Igunga by filing five grounds of appeal, which were replied to by the respondent. At the hearing of the appeal, both parties adopted their grounds of appeal and reply thereto, and asked the court to base its judgment on those grounds and reply thereto to decide the appeal. Having considered all the materials before it, the appellate District Court, dismissed the appeal with costs

on the ground that the appellant agreed to pay back the dowry he received and his grounds had no merit.

Dissatisfied with the decision of the District Court, the appellant filed two grounds of appeal as follows;

- i. *That, the Hon. Magistrate erred in law and facts by upholding the decision of the Primary court while the judgment was tainted with illegality.*
- ii. *That, Hon. Magistrate erred in law and fact by holding the appellate to pay back 10 herds of cattle as a gift given during the formation of marriage.*

At the hearing, the parties being laypeople could not argue usefully on the appeal but narrated the story.

Having heard from both camps the issue before this court is whether the grounds are meritorious.

In the course of disposing of this second appeal, I shall first consider the court records and judgment of the first appellate tribunal. The question to be addressed at this juncture is whether this court, being a second appellate court, can and should re-evaluate the evidence on record. Being a second appeal duty of this court was explained well by the Court of Appeal in ***Amratlal D. M. t/a Zanzibar Silk Stores v A. H. Jariwara t/a Zanzibar Hotel [1980] TLR 31, CAT,***

***D.P.P. v J. M. Kawawa [1981] TLR 143, Musa Mwaikunda v R, Criminal Appeal No. 174 of 2006 (unreported)*** as hereunder;

*"On a second appeal, this Court will not interfere unless it is shown that there has been a misapprehension of the evidence, a miscarriage of justice or a violation of a principle of law or practice".*

As to the first ground of appeal, the appellant contended that the decision of the trial court was tainted with illegality.

Having perused through the records of the court, there is no iota of evidence to support Naaman Bundala's complaints that the respondent was supposed to pay the bride price of 20 herds of cattle as testified by the respondents. Instead, he paid only 10 herds of cattle. As noted from the record, the respondent paid 10 herds of cattle and after living with the appellant's daughter for a short time, she left her matrimonial house. She refused to proceed with the marriage as she was tired of the marriage. They went to the village hamlet for reconciliation but failed to do so.

Having traversed the records, I have noted that the respondent did not breach the contract except for the daughter of Naaman by deserting him for about 3 years. Hence, I find his argument has no merit.

As to the second ground of appeal that the magistrate erred in law and fact by holding the appellant to pay back 10 herds of cattle given as a gift during the formation of the marriage.

As noted from the court records, I agree with both courts that there is proof on the part of the respondent that the appellant is supposed to restore 10 herds of cattle because on the submission by both parties and the records of the primary court show that the marriage between the appellant's daughter and the respondent was broken irreparably and the decree of divorce thereof was issued. Then the return of the dowry was necessary since dowry was a customary gift paid by the boy to his parents-in-law. The court also added that it is the duty of the boy to pay dowry to his in-laws, though he may be assisted by his parents or relatives. He also added that dowry may be returned after marriage is broken. I also concur with the trial court that, given the evidence on record, the marriage between the respondent and the appellant's daughter was broken irreparably; hence, there was sufficient reason for the appellant to the return of the dowry.

According to the First Schedule to the Declaration of Local Customary Law Order G.N. No. 279 of 1963 which provides that-

*"6. Mlipaji wa mahari ni juu ya bwana arusi mwenyewe ingawaje jamaa zake wanaweza kumsaidia katika kutimiza wajibu wake" "37A. Baba wa binti au mrithi wake anaweza*

*kutakiwa kurudisha mahari wakati ndoa inapovunjika. B. Mtu anayeweza kudaiwa kurudisha mahari ni yule aliyepokea mahari au mrithi wake."*

Also, according to paragraph 41 of the First Schedule to GN 279/1963, thus

*"Kama mahari ikiwa ni mifugo mume anaweza kudai kwamba wanyama walewale aliotoa ndio warudishwe iwapo bado wapo mikononi mwa baba mkwe. Hali kadhalika baba mkwe anaweza kurudisha wanyama walewale aliopokea na mume lazima awapokee hata kama hali yao imekuwa dhaifu."*

Therefore, in the light of the foregoing provision of the law, the parties are guided for or otherwise, this court subscribes to the same.

Also, the trial court noted that;

*"Kama mke ndiye mwenye makosa ya kuvunjika kwa ndoa basi baba atastahili kurejesha mahari yote kwa kuwa inatambulika kama deni muhimu kwa mdaiwa".*

Therefore the court after perusal of the court records noted that the appellant is supposed to pay back the dowry since the marriage was broken and the cause of misunderstanding was caused by his wife. Furthermore, the court noted that through Exhibit H2 the appellant agreed to pay back the 10 herds to the chairman's office. Ever since

there was an agreed settlement, the statement that the respondent did not pay the remaining 10 herds has no basis.

Therefore, this being a second appeal this court rarely interferes with the concurrent findings of facts by the lower courts, save only where there is a misapprehension of the nature and quality of the evidence and other factors occasioning a miscarriage of justice. This was ably emphasized in the case of **Wankuru Mwita vs. Republic**, Criminal Appeal No.219 of 2012 (unreported) where the Court held:-

*"The law is well-settled that on the second appeal, the Court will not readily disturb concurrent findings of facts by the trial Court and the first appellate Court unless it can be shown that they are perverse, demonstrably wrong or unreasonable are a result of a complete misapprehension of the substance, nature, and quality of the evidence; misdirection or non -direction on the evidence; a violation of the principle of law or procedure or have occasioned a miscarriage of justice."*

Given the above evidence and the contents of the judgments of the trial courts and the first appellate court, I find that both courts analyzed the evidence on record and properly applied the law. There is no reason to fault them. In the end, I uphold the decision of the District Court and the trial court. I order the appellant to immediately pay back 10 herds of cattle to the respondent regardless of the size or type of

cattle since it has been long time. Consequently, I dismiss the appeal in its entirety for want of merit with costs.



**A. BAHATI SALEMA**

**JUDGE**

**19/08/2022**

Judgment delivered under my hand and seal of the court in the Chamber, this 19<sup>th</sup> day of August, 2022 in the presence of both parties, via virtual link.



**A. BAHATI SALEMA**

**JUDGE**

**19/08/2022**

Right to appeal is hereby explained.



**A. BAHATI SALEMA**

**JUDGE**

**19/08/2022**