

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE SUB-REGISTRY OF MWANZA)

AT MWANZA

PC. CIVIL APPEAL NO. 42 OF 2022

*(Originating from Ukerewe District Court, Civil Appeal No. 1 of 2022 Originating from Ilangala
Primary Court Civil Case No. 53 of 2021)*

RWAGASOLE NZENGO.....APPELLANT

VERSUS

THOMAS SELESTINRESPONDENT

JUDGMENT

14th July & 27th Sept.2022

DYANSOBERA, J.:

This appeal filed by the appellant herein is against the judgment and decree of Ukerewe District Court delivered on 17th day of February, 2022 dismissing his appeal with costs. In his petition of appeal, the appellant has filed a total of three grounds of appeal as follows:

1. That both trial and District Court erred in law and fact for holding in favour of the respondent while the appellant's evidence was watertight. The appellant further state that the deceased was not a member of the communal group and was neither entitled to consoling services nor any contribution.
2. That both trial and District Court erred in law and fact for holding in favour of the respondent by misinterpreting and misconstruing

the word 'worker' (mfanyakazi) as according to article 24, 28, 19D of the group constitution as the deceased was not a worker, he had already retired.

3. That both trial and District Court erred in law and fact on awarding Tshs. 1, 200, 000/= to the respondent without justifiable reasons. Appellant further states that the amount was not actually special damages; it was not pleaded and proved.

With these grounds, the appellant prays his appeal to be allowed and the decisions of both trial court and district court be quashed, costs of the appeal and any other relief (s) as this Honourable Court may deem fit to grant.

The respondent challenged the appeal by filing a reply to the petition of appeal.

Briefly, the facts leading to this appeal are the following. Roman Celestin (the deceased) was the elder brother of the present respondent Thomas Selestin. At the time of death, the deceased was a retired civil servant. When he was attacked by illness, he was rushed to the Hospital for diagnosis. After his health worsened, the deceased was transferred to Bugando Hospital for further treatment. However, 25th October, 2021 the deceased kicked the bucket. The respondent transported the body back to his (respondent's) home whereby on 27th October, 2021, the

respondent buried him thereat. Despite the respondent being a member of the group known as Oluguyo, he was not given any services by the said group during the funeral. He complained to the office of the Village Executive and the chairman was called and inquired why the group had not contributed during the funeral. The response was that the respondent was not eligible for the contribution according to the rules of the said group. The respondent insisted that he was entitled to the contribution and referred to rule 24 which stipulated: -

'Mfanyakazi akifia huko ndugu yake akachukua na kuja kuzika, tunazika, tunamaliza kuzika tunasaidia, isipokuwa akifiwa na mtoto au mke wake, tunazika lakini hatusaidii chochote.

As the respondent was not paid, the Village Executive Officer, in writing, referred the respondent to court. Before the Primary Court, the respondent was claiming the following items, namely, the flour worth Tshs. 337, 000/=, side dish (mboga) of Tshs. 208, 000/=, spices (78,000/=), firewood (180,000/=), logs for fire (300,000/=), water (180,000/=), barrels for keeping water (50,000/=) cooking saucepans (150,000/=), chairs (200,000/=), plates (100,000/=), bowls for washing hands (25,000/=), big buckets to be used at the time of the meal

(10,000/=), cups (5,000/=), trowels (30,000/=), , canvass (60,000/=) and light solar (10,000/=).

In establishing his entitlement to the claimed services, the respondent relied on 'rule' 24 above.

Opposing the claims, Anselm Mtobesya (SU 1) informed the trial court that the respondent was not entitled to those funeral services partly because, the deceased was no longer a civil servant as he had already retired and partly because, under 'rule' 28 of the said Rules, the respondent was not eligible for the contribution.

In its judgment dated 8th December, 2021, the trial primary court awarded the respondent Tshs. 1, 200,000/= only together with Tshs. 13, 000 as filing fees.

The appellant's first appeal to the District Court in Civil Appel No. 1 of 2022 was dismissed with costs.

Before me, Mr. Geoffrey Kalaka, learned Advocate represented the appellant whereas the respondent stood on his own.

Having considered the records of the lower court and the grounds of appeal together with the submissions of both sides, the questions for determination are one, whether the claims by the respondent were

justiciable in a court of law. In other words, whether the Constitution and rules upon which the respondent pegged his claims had a force of law. Two, if so, whether the respondent had proved his case on balance of probabilities.


With regard to the first issue, there is no dispute that the Constitution and the rules upon which the respondent relied on in his claims were internal arrangement by a group known as Oluguyo which were neither registered nor backed by any law, rules or by laws. An ordinary definition of a claim is a set of operative facts creating a right enforceable in a court of law. In other words, a claim is a legal demand. To establish a claim, the claimant or plaintiff must have a cause of action against the defendant. As the facts and pleadings indicate, the respondent failed to establish a legal demand which could entail a cause of action against the appellant.

Second, assuming that the claims had a force of law, I am far from being convinced that the respondent had proved them to the required standard, that is on preponderance of probability. The respondent, at the trial, mere asserted that he was entitled those items of the indicated value without proving how he was entitled to them and how he arrived at the price of each item.

Apart from the fact that the respondent was not entitled to those claims in accordance with the said Constitution and rules, the respondent, as rightly argued by the appellant in his three-grounds petition of appeal, the respondent had failed to lead evidence to prove them and therefore, the award of Tshs. 1,200, 000/= given to the respondent had no legal justification.

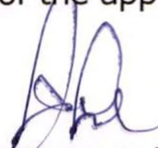
For the reasons stated, I find this appeal having legal merit. Accordingly, I allow the appeal, quash and set aside the judgments and decrees of both the trial and district courts.

No order as to costs is made.



W.P. Dyansobera
Judge
27.9.2022

This judgment is delivered at Mwanza under my hand and the seal of this Court on this 27th day of September, 2022 in the presence of the respondent but in the absence of the appellant.



W.P. Dyansobera
Judge