IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

PC. CIVIL APPEAL NO. 12 OF 2020

(Arising from Land Appeal No. 1 of 2018 and Original Civil Case No. 48/2016 of Tabora Urban Primary Court)

ABDALLAH S/O BAKARI..... APPELLANT

VERSUS

MIKIDADI S/O RAMADHANI.....RESPONDENT

JUDGMENT

Date of Last Order: 23/9/2022

Date of Delivery: 13/12/2022

AMOUR S. KHAMIS, J:

Abdallah Bakari was the appellant in Civil Appeal No. 01 of 2018 of the District Court of Tabora wherein he challenged decision of the Tabora Urban Court in Civil Case No. 48/2016.

In its judgement of 6/03/2020, the appellate magistrate upheld the trial court's stance and thus dismissed the appeal.

Aggrieved, Abdallah Bakari filed this appeal by way of Petition of Appeal containing six grounds, namely:

Abdallah Bakari raised six grounds of appeal, namely;

1. That the 1st appellate District Court totally erred on point of law in holding that the trial Primary Court was wrong in entertaining the suit as Civil Case No.

48/2016 after an order of "trial de novo" was entered by the District Court, Notwithstanding that the same had not been conclusively heard and determined to finality.

2. That the 1st appellate District Court grossly erred on point of law and facts in holding that the claim by the Respondent hereto was corroborated by the only Witness, PW2, one JUMANNE SELEMANI who gave hearsay evidence.

3. That the 1st appellate District Court erred on point of law in falling to detect and appreciate that the trial Primary Court occasioned on error on the face of the record to the effect that four years elapsed without the Appellant instituting the claim of money which is the subject of the counter claim.

4. That the trial Primary Court grossly erred on point of law in holding that failure to pronounce judgement by the trial Primary Court was not fatal, he having held that the trial Court not pronounce the judgement and orders in respect of the counter claim.

5. That in totality the 1st appellate District Court grossly erred in evaluating the testimonies and interpreting the governing law and rules.

6. That the appellant does not wish to be presented at the hearing of the appeal. Hence the written arguments in

support of the appeal annexed herewith marked "WAS" the appellant pray that the with.

After being served with the Petition of Appeal, Mikidadi Ramadhani, the respondent herein filed a Reply to the Petition of Appeal, thus:

1. That the contents of paragraph 1 of the Appellant's petition of Appeal are strongly disputed. The respondent further state that the Primary Court did nothing wrong to entertain Civil Case No. 48 of 2016 since it entertained the same as the fresh Civil Case and nothing was wrong with that approach.

2. That, the contents of paragraph 2 are strongly disputed. The Respondent further state that it was right for the 1st appellant court to uphold that the Respondent claim was collaborated by the witness of PW2 are Jumanne Selemani.

3. That the Respondent further state that the testimony of one Jumanne Selemani was not the hearsay since he witnessed the incidence and on top of that not every hearsay incidence is worthless.

4. That, the contents of paragraph 3 are strongly disputed. The Respondent further state that his action against the Appellant was not time barred.

5. That the contents of paragraph 4 & 5 are strongly disputed.

Before me, both parties were unrepresented. When called upon to submit in support of their respective cases, they adopted contents of the Petition of Appeal and Reply to the Petition of Appeal, respectively.

Upon examination of the records and the parties' rival arguments before this Court, I noticed that the appellant attacked the appellate court's judgement on factual matters.

This is the second appeal. The duty of this Court in second appeal was well stated in ***MAKURU JUMANNE & ANOTHER V REPUBLIC, CRIMINAL APEAL NO. 117 OF 2005*** (Unreported) wherein the Court of Appeal held that:

> *"It is a settled principle of law that a first appellate Court can make fresh assessment of factual issues raised during trial and or before the first appellate Court. The well settled principle of law on the subject is that the appellate Court would interfere with factual issues only in extreme of cases such as (but not restricted to) glaring errors on the fall of record mix up to the evidence leading to injustice being occasioned ejusdam generis."*

In ***RV HASSAN BIN SAID (1942) EACA 62***, it was held that:

> *" On second appeal, the Court of Appeal is precluded from questioning the finding of the fact of the trial Court provided that there was evidence to support those findings though it may think possible or even probable, that it would not have itself come to the same conclusion. It can only interfere*

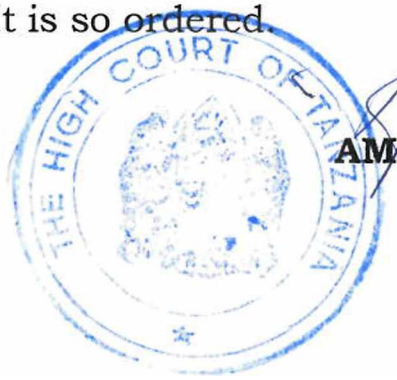
where it considers that there was no evidence to support the findings of the fact, this being a question of law".

In the present case, the first appellate magistrate exhaustively analysed the evidence on record and satisfied that the trial court's findings were in accordance to the evidence on record.

Having read the impugned judgement, the trial Court's records and parties' arguments, I am not persuaded that there is any glaring errors or misapprehension of evidence on the face of the records.

For the aforestated reasons, I find no merits in this appeal which is hereby dismissed with no order for costs.

It is so ordered.



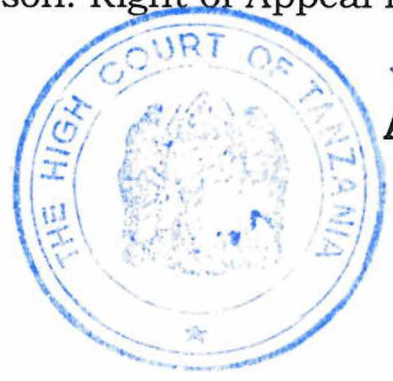
AMOUR S. KHAMIS

JUDGE

13/12/2022

ORDER

Judgement delivered in presence of both parties who appear in person. Right of Appeal is explained.



AMOUR S. KHAMIS

JUDGE

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