

**IN THE HIGH COURT OF TANZANIA**

**AT SONGEA**

**(PC) CIVIL APPEAL NO. 8 OF 2021**

*(Originating from Songea District Court Civil Appeal No. 07/2021 Civil Case*

*No. 100/2021 at Songea Urban Primary Court)*

**CECILIA KOMBA ..... APPELLANT**

**VERSUS**

**SAGUNDA MAYANDA ..... RESPONDENT**

**JUDGMENT**

Date of Last Order: 08/02/2022

Date of Judgment: 10/03/2022

**BEFORE: S. C. Moshi, J**

This is a second appeal. The appellant, Cecilia Komba sued the respondent, Saguda Manyanda before Songea Urban court for T.shs. 1,380,000/= being estimated compensation for appellant's farm destruction which was caused by respondent's cattle. The trial primary court entered judgment and decree in favour of the appellant. The respondent was not satisfied with the decision, hence he appealed to the district court where

the primary court's decision was reversed by setting aside the compensation order and ordering a retrial of the case. The appellate district court's decision was based on the reasoning that the trial urban court violated the procedures for admission of documentary exhibit.

The appellant was aggrieved by the decision; hence he preferred the present appeal on two grounds as quoted hereunder: -

- 1. That, the appellate court erred in law and in fact to hold that the trial court relied on exhibit CK-1 (Nakala ya Tathmini) in violation of the law. It is further stated that the documentary evidence namely Nakala ya Tathmini was received properly as per rule 8 of the Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations G.N. No. 22 of 1964-66 Of 1972. Hence the trial court was correct to admit the evidence and it actually admitted in evidence and then its content was availed to the trial court. There was no irregularity as a result the citation of the case of Robinson Mwanjisi and 3 others V. Republic was a misdirection and therefore irrelevant because the document was cleared and it was actually admitted as exhibit so there is no problem with that as the law was complied with. The documentary evidence as a matter of law must speak by itself so the other statements are to*

*corroborate it as a matter of fact which was well done and the respondent did not object the same.*

*2. That, the trial court erred in law and in fact to hold that this matter should be tried afresh without assigning the reasons for the same.*

The appeal was heard by way of written submission, and *ex parte* because the respondent defaulted appearance despite the fact that he was duly served. The appellant appeared in person.

Briefly the argument relating to the first ground of appeal challenges the appellate's district court's decision on admission of documentary exhibit (Nakala yaTathmini). The appellant argued that, it was a misdirection for the court to hold that the exhibit was neither backed up nor cleared for admission as the respondent did not object, he was afforded a chance to object.

He submitted further that, the procedure before the first appellate district court and those of the primary court do differ, in this regard he cited the case of **Haruna Chakupewa vs. Patrick Christopher Ntalukundo**, PC. Civil Appeal No. 10 of 2021, High Court at Kigoma where the court held among other things that, the primary court has its own set of laws, rules and regulations and that the **Evidence Act** is not applicable

in the primary court as the Primary court use the **Magistrates' Courts (rules of Evidence in Primary court) Regulations GN** No. 22 Of 1964 and 66 of 1972. He said that, the 1<sup>st</sup> appellate court misunderstood rule 8 (2) and 11(1) and (2) of the rules of Evidence in Primary Courts, to his view oral evidence to connect with the documentary exhibit was given out.

He also said that, the document must speak for itself, it cannot be superseded by an oral account, he referred to regulation 14 of GN No. 22 Of 1964 and 66 of 1972, and to the case of **Haruna Chakupewa** (Supra).

On the second ground of appeal he submitted inter alia that, the appellate court erred when it ordered a retrial without assigning reasons. He said that, the court held that the Exhibit CK was improperly admitted but nothing was done, that it was not expunged from the record instead the first appellate court went on to say that such improper admission was similar to non-admission of the exhibit which is a mistake.

He again pointed out that the court erred when it decided that the claimant had failed to prove the claim which connotes that the matter was decided on merit while it ordered a retrial. He argued that a matter cannot be decided on merit and be ordered to go for a retrial.

He finally prayed that the appeal be allowed and the decision of the trial court be confirmed.

The main issue is whether the appeal has merits.

I have decided not to determine the merits of the appeal due to the procedural irregularities as I will show herein.

Starting with the first ground, the record of evidence shows that the plaintiff who is now the appellant gave oral testimony as well as documentary evidence (taarifa yaTathmin) it was referred to as CK1. It is evident that the exhibit was received as part of evidence, and the respondent did not raise any objection, see Page 10 of the trial court's typed proceedings. I would like to reiterate what was pointed out in the case of **Haruna s/o Chakupewa (Supra)** that, the appellate district court in dealing with appeals from primary court was supposed to take into account laws and rules relating to primary court's procedure.

Indeed, the appellate district court magistrate erred in law, even if she were of the view that the exhibit was wrongly accepted, the remedy was to expunge it from the record of evidence, but she did not do so. After

expunging the illegally admitted exhibit, again she was duty bound to analyse the remaining evidence if it was sufficient to prove the claim.

Similarly, the second ground of appeal has merits for the reason that, having decided that the plaintiff did not prove her case, means that, the court had an opportunity to evaluate it, hence it could not again at a later stage order a retrial, in fact as complained by the appellant, the reasons for a retrial were not revealed.

That said and done, I find that the appeal has merits, I allow it by quashing the appellate district Court's decision, and the appellate district court's proceedings are also quashed due to the irregularities which were committed by the appellate District Court Magistrate. I order that the appeal before the District Court to be heard denovo by a different Magistrate with competent jurisdiction.

Right of appeal explained.



  
**S. C. MOSHI**

**JUDGE**

**10/03/2022.**