

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN SUB - REGISTRY OF MWANZA
AT MWANZA

PC CIVIL APPEAL NO 56 OF 2021

*(Arising from the Civil Appeal No 03 of 2021 from District Court of Chato at Chato
and Originating from Chato Primary Court on Civil Case No 15 of 2021)*

SIMON LUDIGIJA.....APPELLANT

Versus

BALTAZAL TWAHA RESPONDENT

JUDGMENT

22nd March, 2022

Kahyoza, J.:

Baltazal Twaha sued **Simon Ludihija** for returned of three herd of cattle before the primary court. **Baltazal Twaha** won a day. Aggrieved, **Simon Ludihija** appealed to the district court where he lost the appeal. Still dissatisfied, **Simon Ludihija** appealed to this Court raising three grounds of complaint paraphrased as follows-

1. the first appellate court erred to upheld the decision of trial court, which failed to analyze the evidence;
2. the first appellate court erred to hold that the appellant forcefully seized three cattle while the parties mutually agreed;
3. the first appellate court upheld the decision of the trial court, which was based on fabricated evidence.

The background of this matter is not complicated; it is that, **Baltazal Twaha** and **Simon Ludihija** were fathers of married couple. **Baltazal**

Twaha was a father of woman and **Simon Ludihija** a father of man. The parties' children celebrated a traditional marriage. **Simon Ludihija** paid dowry for his son as tradition demands to **Baltazal Twaha**. It is on evidence that conflict ensued between **Simon Ludihija** and his daughter in law. **Simon Ludihija** demanded sexual satisfaction from his daughter in law who turned down the request. Elders met to find a solution for the dispute between **Simon Ludihija** and his daughter in law, unfortunately, they were unable to settle to the satisfaction of the **Simon Ludihija**. For fear of the dispute to escalate, **Simon Ludihija** resolved to return his daughter-in-law to **Baltazal Twaha**, her father. **Simon Ludihija** took from **Baltazal Twaha** three herds of cattle he paid as dowry for his son.

Simon Ludihija, the appellant enjoyed the services of Mr. Frank advocate and the respondent appeared unrepresented. Mr. Frank abandoned the second and third grounds of appeal and prosecuted only the first ground of appeal.

It is undeniable fact **Simon Ludihija** took from **Baltazal Twaha** three herds of cattle he paid as dowry for his son. The only dispute is whether **Baltazal Twaha** returned to **Simon Ludihija** three herds of cattle paid as dowry or **Simon Ludihija** seized them. The evidence on record shows that **Simon Ludihija** returned his daughter in law without consulting his son or without prior information to **Baltazal Twaha**. The evidence is that he took his daughter in law on the motorcycle back to her parents. As he did not find **Baltazal Twaha** at his homestead, he rang him. On **Baltazal Twaha's** arrival, **Simon Ludihija** notified him (**Baltazal Twaha**) that he had returned his daughter and demanded his dowry.

Baltazal Twaha's evidence was that **Simon Ludihija** seized three herd of cattle when they were returning from pastures. While **Simon Ludihija's** evidence is that they convened a meeting, and resolved that dowry be returned and **Baltazal Twaha** allowed to collect gifts given to the couple during the marriage ceremony. **Simon Ludihija** testified that he returned his daughter in law because he was possessed. **Simon Ludihija's** daughter in law and narrated how she was returned to her father, **Baltazal Twaha**. **Simon Ludihija** cross examined his daughter in law but did not ask her any question relation to her being possessed by demons. Dw3 Masalu deposed that they returned **Simon Ludihija's** daughter in law as she told them that she wanted to return home. Dw3 Masalu added that **Simon Ludihija's** daughter in law was not sick nor did they consult her husband before returning her to **Baltazal Twaha**. I find it vital to reproduce apart of their evidence as follows-

Dw1 **Simon Ludihija** deposed that-

"baada ya kufungisha ndoa alikuja mwenga akawa anaugua majini na nikamwita baba yake alikuja na nikamwambia chukua mtoto wako mimi majini siwezi kuyatibu na akasema atakuwa analeta dawa na mwenga wangu akawa yupo ndani hafanyi kazi yeyote na tutakaa hivyo."

Dw3 Masalu replied during cross examination by **Baltazal Twaha** that-

"Tulimrudisha kwa sababu alidai kuwa yeye binti anataka kurudi nyumbani....Mwanamke ndiye aliye toa maamuzi ya kurudi kwao"

Dw3 Masalu replied to questions asked by the court, thus-

"Nikweli mtu akishaoa anakuwa na mamlaka kwa mke wake. Hatukupata kibali kwa mume wake.Binti alikuwa hana shida yoyote ya kiafya. Wanandoa hawajaachana"

I totally agree with the trial court and the first appellate court for not trusting **Simon Ludihija** and whole his evidence. **Simon Ludihija's** evidence contradicted with the evidence of witness Dw3 Masalu rendering their testimony useless.

The trial court found that dowry, customary gift paid by boy to her parents in law. He added that it is the duty of the boy to pay dowry to her parents in law though he may be assisted by his parents or relatives. He also added that dowry may be returned after marriage is broken. He found the marriage between **Simon Ludihija's** daughter in law and his son had not broken. I also concur with the trial court that given the evidence on record marriage between **Simon Ludihija's** daughter in law and his son had not broken. Hence, there was no reason for **Simon Ludihija** to claim for return of dowry. Even if, marriage had broken it was **Simon Ludihija's** son who was under customary law entitled to claim for return of dowry. The First Schedule to the Declaration of Local Customary Law Order G.N. No. 279 of 1963 provides that-

"6. Maulipaji 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."

Given the above evidence and the contents of the judgment 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 blame them. I dismiss the first ground of appeal.

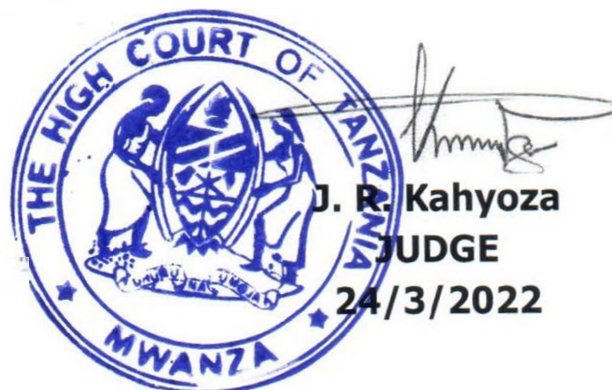
As to the second ground of appeal that **Simon Ludihija** did not seize cattle paid as dowry but **Baltazal Twaha** returned them. I will, not dwell on this ground of appeal. It is clear that **Simon Ludihija** was doing everything forcefully. He had no room even to consult his son whether he was no longer interested with his wife or not. He returned his daughter in law when the marriage between his son and his daughter in law had not broken beyond repair. He had no reason to demand return of dowry. **Simon Ludihija** lied on oath. He deposed that returned his daughter in law because demons possessed her. **Simon Ludihija's** witness deposed that **Simon Ludihija's** daughter in law was healthy. Not only that but also it was Simon Ludihija's son who paid dowry who had a right to demand return of dowry because marriage had broken. In end, like the two courts below I find that the **Simon Ludihija** without justification or consent from **Baltazal Twaha** seized herds of cattle.

I considered **Simon Ludihija's** third complaint that first appellate court upheld the decision of the trial court, which was based on fabricated evidence. I have already shown above that **Simon Ludihija's** evidence was unreliable, as it was fabricated and contradictory. Both courts were justified not rely on **Simon Ludihija's** evidence in favour of **Baltazal Twaha's** evidence. I dismiss the third ground of appeal as I have no reason to interfere with the concurrent findings of the two courts below.

It is trite law that the second appellate court *where there are concurrent findings of facts by two courts, the second appeal court should not disturb them unless it is clearly shown that there has been a misapprehension of evidencing a miscarriage of justice or violation of some principle of law or procedure.* See the case of **Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores Vs. A.H Jariwalla tla Zanzibar Hotel** [1980] T.L.R 31. There is no iota of evidence to support **Simon Ludihija's** complaints and invite me to interfere with the findings of the district and the primary courts.

In the end, I uphold the decision of the District court and the trial court. I order **Simon Ludihija** to return immediately three herd of cattle to **Baltazal Twaha**. Consequently, I dismiss the appeal in its entire for want of merit with costs.

I so order.



Court: Judgment delivered in the presence of the respondent and in the absence of the appellant and his advocate, who was aware that this appeal is coming for judgment today. B/C Ms. Jackline (RMA) Present.

A handwritten signature in blue ink, identical to the one in the stamp above, is positioned above the printed name and title of the judge.

J. R. Kahyoza
JUDGE
24/3/2022