

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

(PC) CIVIL APPEAL NO. 03 OF 2021

*(Originating from the District Court of Kondoa in Civil Appeal
No. 8 of 2018 which arose from Masange Primary Court in
Civil Case No. 3 of 2018)*

CHRISTINA DAMAS.....1ST APPELLANT

PARTIS MARTIN.....2ND APPELLANT

VERSUS

FERDNAND GUTA.....RESPONDENT

JUDGMENT

Date of Last Order: 25/02/2022

Date of Judgment: 09/03/2022

A. Mambi, J.

This Judgment emanates from an appeal filed by the appellants challenging the decision of the Kondoa District Court in Civil Appeal No. 8 of 2018. The records indicate that the District Court made the decision in favour of the respondent.

The background facts reveals that, the respondent sued the appellants before Masange Primary Court (*the trial Court*) claiming Tsh 1,047,300/= as a compensation for trespass and destruction of crops by their cattle into his farm on 12/02/2018. The trial Court found in favour of the appellants reasoning that the respondent failed to prove the involvement of the appellants in grazing the livestock on the fateful day.

The respondent was dissatisfied and appealed before the Kondo District Court whereby the decision of the trial court was reversed. The District Court ordered the appellants to pay the respondent the amount Tsh. 500,000/=.

Aggrieved by the decision of the District Court, the appellants appealed before this Court challenging the District Court decision basing on five grounds of appeal that are summarized as follows:

- 1. That the District Court erred in law and fact in finding that the appellants were necessary parties without ensuring that there was a proper party or not.*
- 2. That the District Court failed to evaluate evidence before the trial Court.*

During hearing, both parties appeared in person. While the appellants prayed to adopt and rely with their grounds of appeal, the respondent also prayed to rely in his reply.

I have carefully gone through the grounds of appeal, submissions of both parties, and the records from the District Court and trial. In this regard, the main issues for determination before this Court are, first, whether the District Court was right in holding that the appellant were necessary parties to the suit before the trial court hence liable for the destruction of the respondent's farm/crops by the livestock, and second, whether the District Court properly assessed the evidence of both parties.

Before I address, the first issue, I wish to consult some readings on the definition of the "the term necessary party". **Black's Law Dictionary**, 8th Edition defines "the term necessary party" to mean;

"a party who, being closely connected to a law suit should be included in the case if feasible, but whose absence will not require dismissal of the proceedings"

A necessary party is one whose presence is indispensable to the constitution of the suit, against whom the relief is sought and without whom no effective order can be passed. In other words, in absence of a necessary party no decree can be passed. His (the necessary party) presence, however enables the court or Tribunal to adjudicate more "effectually and completely". See also ***Shahasa Mard vs Sadahiv ILR (1918) 43 Bom 575 at p 581*** and ***Kasturi v Iyyamperumal (2005) AIR 2005 at P.738***. Two tests have been

laid down for determining the question whether a particular party is a necessary party to a proceeding or not as follows

- (i) There must be a right to some relief against such party in respect of the matter involved in the proceeding in question; and
- (ii) It should not be possible to pass an effective decree in absence of such a party.(See also **C.K.Takwani on Civil Procedure at page 162-163**)

It is also common ground that, over the years, courts have made a distinction between necessary and non-necessary parties. The Court of Appeal in **Tang Gas Distributors Limited vs Mohamed Salim said & 2 Others**, Civil Application for Revision No. 68 of 2011 (unreported) when considering circumstances upon which a necessary party ought to be added in a suit stated that:-

“.....an intervener, otherwise commonly referred to as a **NECESSARY IPARTY**, would be added in a suit under this rule.....even though there is no distinct cause of action against him, where:-

- (a).....
- (b) **his proprietary rights are directly affected by the proceedings and to avoid a multiplicity of suits, his joinder is necessary so as to have him bound by the decision of the court in the suit.**

Similarly, the Court of Appeal in **Abdullatiff Mohamed Hamis vs. Mehboob Yusuf Osman and Another**, Civil Revision No. 6 of 2017(unreported), observed that:-

“The determination as to who is a necessary party to a suit would vary from a case to case depending upon the facts and circumstances of each particular case. Among the relevant factors for such determination include the

particulars of the non-joined party, the nature of relief claimed as well as whether or not, in the absence of the party, an executable decree may be passed.

The Court of Appeal in **Juliana Francis Mkwabi Vs Laurent Chimwaga**, Civil Appeal No. 531 of 2020(unreported), also addressed the issue of whether the Dodoma Municipal Council was a necessary party in the circumstances of the case. The Court found that the Council was not a necessary party who ought to have been joined in the proceedings, because;

“in the circumstances of the case subject of this appeal, Dodoma Municipal Council was not an indispensable party to the constitution of a suit and in whose absence no effective decree or order could be passed.”

In the case at hand, there is ample evidence from the respondent's side in the trial Court, that the appellants' cattle were found grazing in the respondent's farm, and the herdsman who was grazing the appellant's cattle ran away. In my view since the appellants' cattle were found grazing the crops of the respondent, then the respondent had the right to jointly sue them as the necessary parties. This is so because, in the circumstances of the case subject of this appeal, the appellants being the owner of the cattle in question, were indispensable parties to the constitution of a suit and in whose absence no effective decree or order could be passed. Having been guided by the above authorities, I answer all the issues in affirmative.

In my view the District court rightly considered the submission by both parties in line with the evidence from the primary court. Coming to the amount of compensation awarded by the District Court, the questions is; was the district right in awarding the amount of 500,000/?. My perusal did not indicate as to how the

District Court arrived into such huge amount. There is no doubt that the respondent suffered some damages from the destruction of his crop but in my view the damages or compensation could be lesser than the amount awarded by the District Court. In our case, given the fact that this was the first time for the appellant to cause damage to the crops and the act was not done purposefully, the court ~~was~~ ought to consider lesser amount of compensation. It is also my well-considered opinion that the amount of the compensation awarded is higher as compared to the loss suffered by the respondent. I therefore think that an award of tshs. **300,000/=** (three hundred thousands) will be more justifiable as compared to 500,000 that was awarded by the District Court Magistrate. I also wish to refer the case of ***BERNADETA PAUL v REPUBLIC 1992 TLR 97 (CA)***. The Court in this case observed that:

*“An appellate court should not interfere with the discretion exercised by a trial judge as to sentence except in such cases where it appears that in assessing sentence the judge has **acted upon some wrong principle or has imposed a sentence which is either patently inadequate or manifestly excessive**”.*

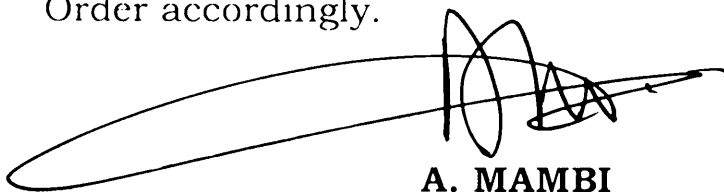
In our case in hand it is clear from the record that the Magistrate acted upon some wrong principles and awarded compensation which is manifestly excessive which warrants interference of this court inevitable. In view of the above findings, it can ~~be~~ confidently ~~be~~ concluded that, failure to properly consider the proper compensation that seems to be excessive without justification warrant this court to reverse the order of compensation made the by District court. In the circumstances I am satisfied that the District court failed to use its discretion power to award lesser

amount for the appellants taking into account the economic situation at the village level.

Thus considering the circumstances, I consider substituting the amount of compensation that is 500,000/ ordered by the District court with the amount of 300, 000/-. In this regard, the appellants shall pay the respondent tshs.**300,000/=** by three installment (that is tshs.**100,000/=** in each installment) within three months from the date of getting the copy of this judgment. The appellants are at liberty to pay the whole amount at once or in three installment within three months.

In this regard I have no reason to fault the decision made by the District Court rather than upholding it, save for the amount of compensation that I have substituted. I therefore find the appeal non-meritorious hence dismissed. Each party to bear its own costs.

Order accordingly.

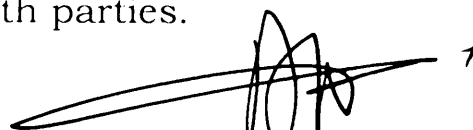


A. MAMBI

JUDGE

09/03/2022

Judgment delivered in Chambers this 9th day of March, 2022 in presence of both parties.



A. MAMBI

JUDGE

09/03/2022

Right of Appeal to the Court of Appeal fully explained.



A handwritten signature in black ink, appearing to be "A. Mambi", written over a horizontal line.

A. MAMBI

JUDGE

09/03/2022