

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

AT SUMBAWANGA

CIVIL CASE NO. 2 OF 2020

MOSES MSOKWA PLAINTIFF

VERSUS

WATER BOARD FOR LAKE RUKWA BASIN 1st DEFENDANT

THE ATTORNEY GENERAL 2nd DEFENDANT

JUDGMENT

Date: 06 & 30/05/2022

NKWABI, J.:

The plaintiff, Moses Msokwa, is suing the defendants namely the Water Board for Lake Rukwa Water Basin and the Attorney General. He is seeking for judgment and decree against the defendants in the following terms:

- a) Order be issued against the Defendants for payment of T.shs 100,500,000/= as per paragraph 04 of the plaint. That is an order for compensation of a total of T.shs 100,500,000/= arising out of first Defendant's through its three officers namely Edsonsweet Deusdedit, Uswege Paliki and Mateo Edson illegal act of destroying by mowing a total of 201,000 pieces of sugar-canes owned by the plaintiff, such destruction involved 2680 stems of sugar-canes in which one stem contained 75 pieces of sugar-canes valuing at T.shs 500/= each.

- b) That the Defendants to pay the plaintiff the costs of and incidental to the suit.
- c) Any other relief(s) that this Honourable Court may deem fit and just to grant.

In his plaint, the plaintiff acknowledges that on 11th day of March, 2017 a meeting was conducted between officers of the Board of Lake Rukwa Water Basin and people who conduct agricultural activities along the edges of Lwiche river and it was ordered people should not conduct agricultural activities along the edges of Lwiche River after the harvest of their already growing crops. However, according to the plaintiff, on 7th day of November, 2017 his Excellency the President of the United Republic of Tanzania pronounced that no authority should prevent people from carrying on agricultural activities along the edges of rivers.

Despite such pronouncement, on 12th July 2018 the Basin officers destroyed 2680 stems of sugar canes. He was also prosecuted in the Primary Court of Sumbawanga urban in which he was acquitted. The plaintiff, claims that

despite demand notices that landed at the Defendants, the defendants would not pay him compensation, as such he filed this suit claiming for the reliefs.

The defendants, in their joint written statement of defence stated that education was spread to people prohibiting them from carrying out agricultural activities within 60 metres from the river banks for protection of water sources. The plaintiff cannot be allowed to benefit from his unlawful activities. The defendants urge that they never received any orders from the President since newspapers are not official gazettes. They demanded the plaintiff to prove his allegations.

In his rejoinder, the plaintiff insists that His Excellence's pronouncement is valid and stands unrevoked to date. He urged his suit is merited and should be decided in his favour with costs.

Prior to the commencement of the hearing parties agreed and this court framed the following issues:

1. Whether the plaintiff had legal justification to conduct agricultural activities by planting sugar canes around the edge of river Lwiche.
2. Whether the 1st defendant's officers destroyed the plaintiff's sugar canes, if the answer is in the affirmative, then
3. Whether the defendants had legal justification to destroy the sugar canes.
4. What reliefs are parties entitled to.

To prove his suit, the plaintiff was able to bring five witnesses including himself. In its attempt to resist the suit, the defence called four witnesses. The plaintiff acknowledged the meetings conducted by the defendants' officials concerning preservation of the environment. They stopped cultivating along river banks, but they resumed agricultural activities after His Excellency the President allowed them to proceed with such agricultural activities. In his case, the plaintiff was supported by PW2 Aroone, PW3 Ambokile, PW4 Gerlad, and PW5 Anold. He also tendered four exhibits namely Mwananchi and Mtanzania newspapers (Exhibit P1), Judgment of the Primary Court in Criminal Case No. 563/2018 (exhibit P2, Nipashe newspaper (exhibit P3) and Demand Notices (exhibit P4).

Then, it was the defence of the defendants that the defendants' acts were in accordance with the law and what was written in the newspapers were not the law as were merely newspapers quotes which do not qualify to be law and to be implemented. As such the acts of the plaintiff to cultivate along river Lwiche within the 60 metres from the river bank is unlawful. They stated they were implementing the provisions of the law, thus Section 57 (1) and (2) of the Environmental Management Act, No. 20 of 2004 which provides:

57.-(1) Subject to subsection (2), no human activities of a permanent nature or which may, by their nature, likely to compromise or adversely affect conservation and, or the protection of ocean or natural take shorelines, river bank, water dam or reservoir, shall be Prohibition of human activities in certain areas conducted within sixty metres.

(2) The Minister may make guidelines for the conduct of human activities within the areas referred to under subsection (1).

In my view, this is a very simple case. It revolves on whether the acts of the officers of the 1st defendant in cutting down the sugar canes that were cultivated within 60 metres from the river bank were unlawful based on exhibit P1. I am afraid, the acts of the officers of the 1st defendant in cutting

down the sugar canes were not unlawful. They were perfectly in the purview of the provisions of the law, the above section I have quoted. While I am of profound respect to the newspapers and news channels because they assist a lot in giving information and education to the public, they fall short of being the laws or by-laws as clearly testified by defendants' witnesses.

It is unfortunate that the plaintiff heavily placed reliance on what was written on the newspapers. That is unacceptable in law. Further, the plaintiff fell short of bringing any guidelines if any issued by the Minister, guidelines for the conduct of human activities within the areas referred to under subsection 2 of section 57 of the Environmental Management Act. I accept the evidence of the defence that the acts of the plaintiff in cultivating at the edges of river Lwiche is unlawful. They cannot be supported in law. I am fortified in my decision by **Karangirangi v, Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 (CAT) and the case of **Barka Saidi Salumu v. Mohamedi Saidi. [1970] HCD No. 95** Hamlyn, J. where he held:

"... the woman on appeal contended that it was the duty of the court to call corroboratory evidence. This clearly is not so, and the litigant should produce what evidence there is to establish

her case. It is only rarely that a court will, of its own motion, in cases such as this seek to clarify an issue by requiring an additional witness."

To that end, the first issue which is whether the plaintiff had legal justification to conduct agricultural activities by planting sugar canes around the edge of river Lwiche has to be answered in the negative.

As witnesses on the defence side admitted cutting down the sugar canes, and this court has answered the first issue in the negative, that, automatically answers the 3rd issue in the affirmative, that is whether the defendants had legal justification to destroy the sugar canes. The officers of the 1st defendant had legal justification to cut down the sugar canes.

In fine, the suit is lacking in merits, it is dismissed with costs.

It is so ordered.

DATED at **SUMBAWANGA** this 30th day of May, 2022.




J. F. NKWABI

JUDGE