IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

PC CIVIL APPEAL NO 43 OF 2022

(Arising the decision of civil Appeal no 41 of 2021 at Musoma District Court, original Civil Case no 45 of 2021 at kukirango Primary Court)

EVA WARATI ..... APPELLANT

VERSUS

AMOS KYANGWE ..... 1ST RESPONDENT

RICHARD MKOJI ..... 2ND RESPONDENT

JUDGMENT

7th & 27th Feb, 2023
F. H. Mahimbali, J:.

This is the second appeal after the appellant had lost both at the trial court and the first appellate court (Musoma District Court). According to the case records, it is the appellant who had first instituted the claims at the trial court claiming for an amount of 500,000/= an amount equivalent to 49 logs and 19 pieces of woods which were alleged to be taken by the respondents from the appellant. For want of establishment, her claims were disallowed by the both lower courts. She is now tossing her third bite before this Court after being aggrieved by the findings of the two lower courts on the following grounds:

1. *That, the trial and appellate court erred in law and fact for deciding the case basing on cooked and contradictory evidences, SU3 stated that he saw me with my two sons collecting 49 logs 19 pieces of wood while the same was testified to be damaged for staying long time. A copy of judgment hereby is attached and marked as Annexure A-1 to form part of this appeal.*

2. *That, the appellate court erred in law and fact for deciding case without considering the appellant's evidence and exhibit AC tendered at the trial court.*

3. *That, the appellate tribunal erred in law to hold that the witnesses were village officials while in fact there were not.*

4. *That, the trial court and first appellate court in law and facts to decide that the appellant took her property without any evidence as the said logs and pieces of woods were under custody of a village leader.*

5. *That, the trial court and the first appellate court erred in law and facts to hold that the appellant did not prove her case while the case was proved to the required standard.*

During the hearing of the appeal, both parties appeared in person i.e unrepresented. On her part, the appellant prayed that her grounds of appeal be adopted to form part of her appeal and that her appeal be allowed with costs. She had no more to add.

The respondent on the other hand, who also was unrepresented, appeared in person and disputed the appeal. He generally disputed the appeal saying that the appeal be dismissed as being baseless as there

was no any proof before the trial court. Therefore, the first appellate court rightly ignored the appeal for being bankrupt of any merit. He then invited this court to equally dismiss the appeal with costs and that the decisions of the two lower courts be upheld.

In a full digest of the all grounds of appeal, they can all be boiled into one main ground appeal for the consideration of this court whether there was sufficient evidence that established the appellant's claims at the trial court for this appeal to have merit.

To arrive at that conclusion, it is important to know what was the claims at the trial court and the evidence adduced. I say so, because there is no any point of law involved for the consideration of the said appeal. At the trial court, the appellant alleged to have possessed a total of 49 logs and 19 pieces of timber from one tree she had cut down which in total worth 500,000/=. Unfortunately, the said items were unlawfully seized/taken by the respondents; the claims the respondents disputed.

As a matter of law, he/she who alleges must prove. According to the facts of the case, it is undisputed that the appellant had logs numbering 49 and 19 pieces of timber. It is also undisputed that the said items/ goods were temporally seized by the respondents for want of

ownership following the dispute on ownership between the appellant and Mzee Mayugu on ownership of the said property/tree. After hearing both parties, the trial court was satisfied as per basis of the testimony of SU3, the appellant's goods were all taken by her. This position is also shared by the first appellate court.

In my strict analysis of the said evidence of SM1 and SM2 on one hand, and that of SU3, it is undisputed that the appellant's goods were taken by her. However, the dispute is on the quantum of logs and timber taken by the appellant. I say so basing on the evidence of the appellant herself when being cross examined by the 2nd respondent as featuring at page 10 of the trial court's typed proceedings that there were only 20 logs and 19 pieces of timber. Otherwise, there was supposed to be clear evidence that what had been seized is not what was taken by her upon the finalization of the dispute on ownership. Otherwise, there is neither evidence exhibiting the seized goods were 49 logs and 19 pieces of timber nor corresponding documents exhibiting the return of some and not full.

With this doubt, I join hands with the concurrent findings of the two lower courts that the appellant's claims are base less for want of establishment in the required legal standard. It is a cardinal principle in civil trials that the party with legal burden also bears the evidential

burden and the standard in each case is on the balance of probabilities (See **Anthony M. Massanga Vs. Penina and Another**, Civil Appeal No. 118 of 2014). For a party in civil cases to win a case, he/she must have greater and weightier evidence than the other (See also Regulation 6 of the Magistrates Courts – Rules of Evidence in Primary Courts, Regulations).

In a careful scanning of the evidence in record, it is clear that the appellant's case is weaker in evidential material than that of the respondents. Since it is hard in civil adjudication to have a neutral decision, then it is important that the one claiming such a legal right to have dully discharged his/her responsibility for him/her to be declared successful in his claims.

In this current appeal, I find it as unnecessary legal battle between the parties especially for the appellant keeping on claiming in the absence of clear claims. Be it noted that, a court of law gives decision basing only on the available material evidence brought in record. One should not come to court for tossing; as doing that is equal to betting which is not the business in judicial litigation but only those with genuine claims and in possession of sensible and tangible evidence capable of declaring him with the desirable right.

That said, the appeal is dismissed for want of merits. However, in the circumstances of this case, parties shall bear their own costs.

It is so ordered.

DATED at MUSOMA this 27th day of February, 2023.

F.H. Mahimbali

Judge

Court: Ruling delivered this 27th day of February, 2023 in the presence of the appellant and second respondent and Mr. Kelvin Rutalemwa, RMA.

F. H. Mahimbali

JUDGE