

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL APPEAL NO. 199 OF 2022

*(Arising from the decision of the District Magistrates Court of Kibaha at Kibaha in
Civil Case No. 03 of 2022 dated 10th November 2022 delivered by Hon. Ng'welo F. R,
RM)*

JUMA ALLY KIWAVI APPELLANT

VERSUS

SAMAIL KHAMIS 1ST RESPONDENT

KHAMIS HILAH I 2ND RESPONDENT

JUDGMENT

9th & 29th September 2023

MWANGA, J.

In the District Court of Kibaha at Kibaha, the appellant, **JUMA ALLY KIWAVI**, filed a Civil Case No. 03 of 2022 against the two respondents named above, claiming general damages to Tshs. 58,000,000/= specific damages to the tune of Tshs. 2,378,850/=, the interest rate of 12%, and costs of the suit.

The case was heard exparte. Upon full trial, the court was satisfied that the appellant failed to prove his case to the required standard. Therefore, the suit was dismissed in its entirety.

In his reasoning, the trial magistrate indicated that there was no proof of destruction of properties as claimed by the appellant because no evidence was produced and exhibits tendered to sustain his claims.

Believing the trial court was wrong, the appellant appealed to this court on the following grounds;

1. The trial District Magistrate erred in law and fact in dismissing the case against the appellant on the technicalities while the appellant was not legally represented.
2. That the trial District court magistrate erred in law and failed to give weight to the evidence of the judgment in Criminal Case No. 10 of 2021 between the Republic and the first respondent in the District Court of Kibaha.
3. The trial magistrate erred in law and fact by holding that the appellant failed to prove his claim against the respondents.
4. The trial magistrate erred in law and fact, in holding that the value of the damaged properties was not ascertained.

The facts can be stated. The appellant is a peasant and resident of Mperamumbi Village, Kwala Ward, within the Kibaha District in the Coastal Region. He is dealing with crop cultivation. In 2017, while at home, he saw the first respondent entering the cattle on his farm. When he reached there, he saw the 1st respondent jumping the farm's fence. He then took the cattle out of the farm. He decided to look after the 1st respondent unsuccessfully. However, he took the cattle to the 1st respondent because he knew him. When he reached the 1st respondent's home, he met the wife of "Mzee Hamisi" and his father-in-law and told them about the destruction of crops at his farm. He was told the incident should be communicated to the respondents.

He then returned where he found his two houses were burning and everything had been destroyed. The motorcycle was among the destroyed properties.

As a result of the above, he reported the incident to the police at the Kwale police post. He was told to look for an Extension officer to assess and evaluate the destructions.

Later, the 1st respondent was arrested, charged, and convicted of the charges. PW2 (SM2) told the trial court that he saw the cattle caretaker

of the 1st respondent burning the two huts/houses of the appellant, which had the motorcycle inside, and then he ran away.

In dismissing the claims of the appellant subject of this appeal, the trial court observed the following;

"Hata hivyo, mdai hata shahidi wake katika ushahidi wao mbali ya kuthibitisha, hawajaeleza au hata kutaja tu kiasi cha fidia anayodai na kiwango cha uharibifu kilichofanyika."

The unofficial translation of the above quotation is that the appellant failed to prove his case as he failed to mention the amount of the compensation claimed and the extent of destruction made. The trial court added further that;

"pamoja na kwamba wadaiwa hawakuweza kufika mahakamani kutokea kwa upande wao, mdai alikuwa na jukumu la kuthibitisha madai yake kwa kutoa ushahidi wote na vielelezo vinavyoonyesha kiwango cha uharibifu uliofanywa na wadaiwa."

In the same vein, the trial court observed above that, though the case was heard *ex parte*, the appellant still had a duty to prove his case and tender exhibits relating to the destruction made by the respondents.

Annihilating the trial court decision, Mr. Iman Madega, learned counsel for the appellant, contended that the trial magistrate ought to have known that most unrepresented litigants are stressed and worried, operate in an alien environment, and that in trying to grasp concept of law and procedure may be ignorant as they may experience fear, ignorance, frustrations, and disadvantaged. Therefore, the trial magistrate was expected to assist the appellant, who lacked legal knowledge. According to him, since the trial magistrate knew the existence of the criminal case judgment, he was supposed to assist the appellant rather than bar him from exercising his legal rights.

I have considered the submission made by the counsel for the appellant, the material on record, and the court's decision below. Since both grounds are related, the same shall be accorded the same reasoning as I shall do.

Admittedly, the appellant ended up showing his claims in the plaint. He attached the Criminal court judgment in Criminal Case No. 10 of 2021 as exhibit P1 and its attachment. Both witnesses, PW1 and PW2, had

never proved the claims during the hearing. The appellant never mentioned the type of crops destroyed, their value, and other losses suffered.

Given the above, the appellant's case falls short of some legal requirements. As rightly pointed out by the trial court, Section 110 (1) of the Evidence Act, Cap 6 R. E 2022 requires that: -

"Whoever desires any court to give judgment as to legal liability dependent on the existence of facts which he asserts **must prove that those facts exist.**

The abovementioned provision does not separate or create a distinction between the cases where the plaintiff or appellant, so to speak, appears to defend his case in person or is represented by the advocates.

It is also pertinent to mention that, in the case of **Abdul Karim Haji Vs. Raymond Nchimbi Alois and Another**, Civil Appeal No. 99 of 2004 (CAT-unreported), when applying the provision of Section 110 of the Evidence Act, it was stated that:

"...it is an elementary principle that he who alleges is the one responsible to prove his allegations."

Because of the above, the argument that the court ought to assist the appellant as a litigant who appeared in person and did

not have legal knowledge, in my view, does not seem to be of any substance. The appellant knows his case and not the trial court's magistrate.

After all, there is a fundamental principle of jurisprudence: ignorance of the law, which everyone is bound to know, excuses no one (*Ignorantia Juris quod quisque scire tenetur neminem excusat*).

The court, in the case of **Ngao Godwin Losero Vs. Julius Mwarabu**, Civil Application No. 10 of 2015 TZCA 302 (Unreported), when the issues of negligence on procedures arose, it had this to say;

*When all is said with respect to the guiding principles, **I will right away reject the explanation of ignorance of the legal procedures given by the applicant to account for the delay. As has been held times out of number, ignorance of the law has never featured as a good cause for an extension of time. ...To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask***

to be appraised, for otherwise, they will have nothing to offer as an excuse for sloppiness.

In the case of **Wambele Mtumwa Shahame vs Mohamed Hamis**, Civil Reference No. 8 of 2016(unreported), the court held that;

"It is a trite law that ignorance of law is not an excuse and, hence, cannot stand as a good cause for delay. This position was stated in the case of Hadija Adamu Vs Godbles Tumba, Civil Application No.14 of 2013, where this court held that; "As regards the applicant's apparent ignorance of the law and its attendant rules of procedure, I wish to briefly observe that such ignorance has never been accepted as sufficient reason or good cause for an extension of time." (emphasis is mine).

Because of the above decision and the case's facts and circumstances, I think the trial court's findings and conclusion were correct. Therefore, the appeal is dismissed.

It is so ordered.



H. R. Mwanga

Judge

29/09/2023

COURT: Judgement delivered in the presence of Advocate Imani Madega, the learned counsel for the appellant, and the absence of the respondents.



H. R. Mwanga

Judge

29/09/2023