

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB-REGISTRY**

**AT DODOMA**

**PC CIVIL APPEAL NO. 28 OF 2022**

*(Arising from Civil Appeal No. 14 of 2022 in the District Court of Singida Originating from Civil Case No. 15 of 2022 of Singida Urban Primary Court)*

**CONSTANTINO NKUNGU KIMU.....APPELLANT**

**VERSUS**

**RAMADHAN OMARY MKOKO.....RESPONDENT**

**JUDGMENT**

*25<sup>th</sup> September & 10<sup>th</sup> October, 2023*

**HASSAN, J.**

The respondent unsuccessfully sued the appellant in Singida Urban Primary Court for an order that the appellant to return or pay him one (1) cow worth Tshs 980,000/= which was put in custody of the appellant. Pained by the trial court's decision, the respondent successfully appealed to the District Court of Singida which quashed the decision of the trial court and ordered the appellant to return or pay the cow in dispute to the respondent hence the appeal in the court.

The appellant's petition of appeal is made of three grounds of appeal, thus;

- 1. That, the trial court erred in law and fact to order the appellant to pay or return a cow or its money worth 980,000/= without any proof of justification of that amount.*
- 2. That, the District Court erred in law and in fact to enter judgment in favour of the respondent without considering that respondent fails to discharge his burden when proving the fact.*
- 3. That, the district court erred in law and in fact to enter judgment in favour of respondent without considering water tight evidence by appellant and his witnesses.*

When the appeal came for hearing, both parties appeared in person. Parties herein prayed to proceed by way of written submissions. The Parties complied to the order of preference in filing their written submissions except for the rejoinder which was filed on the 11<sup>th</sup> day of September, 2023 instead of the 10<sup>th</sup> day of September, 2023 as per the court's scheduling order, therefore the same is 1 day out of time. Thus, it will be disregarded by the court.

The appellant submitted in support of the appeal that, the court erred in law in deciding in favour of the respondent while the respondent

failed to prove his claim in the trial court since the respondent is the one who gave the appellant the cow in dispute as wages for keeping the respondent's cattle.

On the 2<sup>nd</sup> ground of appeal, the appellant submitted that, the first appellate court wrongly decided in favour of the respondent without considering the fact that the respondent did not prove his case as the law so requires.

On the 3<sup>rd</sup> ground of appeal, the appellant submitted that, the 1<sup>st</sup> appellate court erred in law in deciding in favour of the respondent without considering the heavy evidence by the appellant. That, the respondent kept his 3 cattle at the appellant's house and when they reproduced, the respondent awarded him one cow in dispute, that, the evidence was supported by his witnesses too.

On his part, the respondent submitted against the appeal that, the 1<sup>st</sup> appellate court considered his evidence that is why it quashed the decision of the trial primary court. That, it is true he did put his cow in the custody of the appellant but the appellant decided to sell the respondent's cow without his consent and that is why the appellant admitted that fact at the Msisi village office and promised to pay back the money. The appellant prayed the court to dismiss the appeal.

That is what was submitted by the parties in support of and against the appeal in the court.

In the trial court, the respondent alleged to have kept his cattle in custody of the appellant for him to help in the upkeep, the fact not disputed by the appellant too. That, sometime in 2021 the appellant sold one cow left in appellant's custody without informing the respondent hence their dispute. On his part the appellant alleged to have been given the said cow in dispute by the respondent himself as his wage for keeping the respondent's cattle.

The respondent brought two witnesses one from the village government, Mohamed Ramadhan (SM2) a militia man who supported his story that, the dispute was taken to the village government prior to have been brought to the trial court, and the appellant admitted at the village government office to have sold the cow in dispute without the respondent's consent. The respondent even tendered a letter of the appellant admitting to the claim and promising to pay back the money (exhibit RO1). On his part, the appellant did not object to the tendering of the document nor did he even have any question against the said document hence admitted the claim. He only alleged to have sold the cow as it was given to him by the respondent as a wage for keeping up his

cattle. The appellant did not contradict the respondent's version of evidence.

Burden of proof in civil cases originating from primary court is guided by The Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations, GN No. 22 of 1965 specifically Rule 6 which requires the courts to have a look on the weight of the parties' evidence in proof of their case. The standard of proof in civil cases was also elaborated in **Paulina Samson Ndawanya v. Theresia Thomas Madaha, Civil Appeal No. 45 of 2017** (unreported), thus;

*"It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved."*

Also See **The Attorney General Vs Eligi Edward Massawe and Others, Civil Appeal No. 86 of 2002, Anthony M. Masinga Vs Penina (Mama Mgesi) and Lucia (Mama Anna), Civil Appeal No. 118 of 2014** (both unreported).

That said, it is my firm position that as rightly decided by the 1<sup>st</sup> appellate court, the respondent proved his case on the balance of probabilities as the required standard of proof in civil cases.

The appeal is hereby dismissed with costs for want of merit.

Ordered accordingly.

**DATED** at **DODOMA** this 10<sup>th</sup> day of October, 2023.



A handwritten signature in blue ink, appearing to read "S. H. Hassan", is written over the seal and extends to the right.

**S. H. HASSAN**

**JUDGE**