

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(KIGOMA SUB-REGISTRY)**

**AT KIGOMA**

**CIVIL CASE NO. 02 OF 2022**

**EVA DANIEL MTASHA.....PLAINTIFF**

**VERSUS**

**TANZANIA WILDLIFE MANAGEMENT AUTHORITIES.....1<sup>st</sup> DEFENDANT**

**ATTORNEY GENERAL OF UNITED REPUBLIC OF TANZANIA .....2<sup>nd</sup> DEFENDANT**

**JUDGMENT**

3<sup>rd</sup> & 31 October 2023

**Rwizile J**

Malanga is a village within the Kaliua district of the Tabora Region. It is not far away from Moyowosi game reserve. Eva Daniel Mtasha, the plaintiff lives in the same village and owns a herd of cattle. It appeared that one night, 124 of her cattle broke the enclosure and disappeared without her knowledge. Her two sons Richard Mtasha and Mshihiri Mtasha made a follow-up searching of the same. The same could not be found. After getting a permit from the village leaders and the police they went to the game reserve. They however found them there. When driving them home, they were arrested by game officers from the same game reserved and sent to the police station.



They were arraigned at Kibondo District Court, found guilty of unlawful entry and unlawful grazing in a game reserve, and convicted. They were sentenced to pay a fine or suffer an imprisonment term, their cattle were also forfeited. On appeal to this court, their conviction and sentence were set aside.

The court directed 61 cattle forfeited to be returned to the lawful owner. In handling the same to the owner, 15 of the cattle were missing. The plaintiff instituted this action against the defendants for recovery of the missing cattle by compensation in the following claims;

- i. Payment of compensation of TZS 1,000,000.00 for each unreturned cattle. Hence a total of TZS 15,000,000.00 for 15 herds of cattle.
- ii. Payment of interest at bank rate (22%) over the claimed principal sum in paragraph (i) herein above from 8.10.2019 (the date of seizure and retention of the suit cattle) to the day of payment in final.
- iii. Payment of interest at court rate (7%) over the decretal sum from the date of judgment till the date of payment in full
- iv. Costs of this suit and any other relief.



The plaintiff has been under the service of Mr. Kabuguzi, a learned advocate, while the respondents were represented by Mr. Arnold Simeo, a learned State Attorney. To prove her case, the plaintiff, Eva Daniel Mtasha (Pw1) testified and called in one other witness, her son Shiva Mtasha (Pw2). The defence was manned by two witnesses Alex Mbombo (Dw1) and Deogratius Charles (Dw2).

At the hearing, the court was guided by three issues namely;

- i. Whether the first defendant unlawfully retained 15 herds of cattle property of the plaintiff.
- ii. Whether the plaintiff is entitled to compensation of TZS 15,000,000.00
- iii. Whether some of the retained cattle died of illness
- iv. To what reliefs are the parties entitled?

The evidence from both parties is clear to me that the plaintiff owned a herd of cattle. It is not in dispute that some 61 of her cattle were arrested upon having grazed in the Mayowosi game reserve. Another fellow, sons of Pw1 were arrested, arraigned, convicted, and sentenced. In terms of the judgment of this court in (DC) Criminal Appeal No. 64 of 2019 which this court took judicial notice, shows their arrest, conviction, and sentence was illegal.



That is why, it ordered their release and the order of forfeiting the 61 herds of cattle turned down. Neither Dw1 nor Dw2 testified against that judgment. It is clear to me therefore that without any other evidence, it remains a final judgment.

The evidence has clearly shown, 15 cattle were not handled to the plaintiff. There is no explanation other than saying they died at the hands of the defendants. Because the whole set of 61 cattle was in terms of the court judgment held unlawfully, its subset, 15 of them were, held unlawfully too. Without laboring too much, the first issue is determined simply that 15 herds of cattle, were unlawfully held by first defendant.

Having determined the first issue, I have no doubt the second issue will follow suit. But I have to say, compensation, in terms of this case, is not general. It is specifically aiming at compensating the plaintiff for the actual loss of 15 cattle. Her evidence, which was supported by Pw2 simply said, that one cattle an Ankole or Tutsi type with big horns weighed heavy and was worth TZS 1,000,000.00 each. The defence disputed it and made the point that one cattle would be sold at TZS 500,000.00 to 150,000.00 depending on the size and weight.



It is unfortunate that none of the two competing sides brought documentary evidence to prove the assertions. There is therefore a conflict of evidence. The word of the plaintiff against that of the defendant. I think, under such circumstances, I go for the one discharged with the burden of proof. The plaintiff cast with the duty of proving how much her cattle weighed and therefore did not pour enough evidence to prove it could fetch such an attractive and lucrative some. I will, therefore, import my discretion and set the balance that it should be anything between TZS 500,000.00 and TZS 1,000,000.00. To sum it up, I ponder and award the same at TZS.500,000.00 per herd because not all 15 cattle could be of the same weight.

The third issue is about the illness of the cattle. In this case, the defence was cast with the duty to prove the causes of deaths. Dw1      Dw2 endeavored to prove so. It was the evidence of Dw1, a veterinary officer who said, according to the post-mortem done before burying 15 cattle that died in the hands of the first defendant, they died due to various deceases ranging from east coast fever, trypanosomiasis, heartwater, and anaplasmosis.

Dw1 however, did not tender the said report. He only referred to it. It remains his word that they died of such decease.



Having mentioned of a range of diseases, he ought to show which type of disease claimed which number of cattle. Still, as an expert, Dw1 did not tell this court if the alleged diseases are not treatable and what causes them.

They may perhaps be caused by stress from having been kept in conditions that were not normal, or were less fed, or lacked necessary and important nutrients. The court notes that exhibit D1 is a payment voucher. It is alleged to have been in respect of the purchase of drugs for the treatment of cattle in question. In his evidence, he said, he was directed to attend them on 28<sup>th</sup> October 2020. Exhibit D1 was issued on the 6<sup>th</sup> of December 2019, referring to the same cattle. In terms of exhibit P1, cattle were arrested on 8<sup>th</sup> October 2019 and handled to their respective owners on 21<sup>st</sup> March 2020 at 15.49 hours. Dw2 who arrested them, said, they were kept and died of normal diseases as per evidence from Dw1.

Having pondered the evidence in this aspect, the date variations, and other materials especially on the absence of the report on post-mortem examination, I am not convinced that the defence has proved exactly what were the causes of deaths.



I therefore cannot certainly hold that the cattle died due to the deceases alleged. Having determined the issues, I enter judgment for the plaintiff in the following reliefs;

- i. Plaintiff to be paid TZS 7,500,000.00, which is compensation for 15 cattle, one at the price of TZS 500,000.00 on average.
- ii. The interest on the decretal amount at 7% which is a court rate from the date of judgment to the final payment
- iii. Costs to follow the event.



A handwritten signature in black ink, appearing to read "ACK. RWIZILE", is written over a horizontal line.

**ACK. RWIZILE**  
**JUDGE**  
**31.10.2023**