THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MBEYA SU-REGISTRY)

AT MBEYA

PC. CIVIL APPEAL NO. 27 OF 2022

(Arising from the decision of the District Court of Mbeya in Civil Appeal No. 31 of 2021 and Original Civil Case No. 91 of 2021, in the Primary Court of Uyole)

REHEMA ABRAHAMU..... APPELLANT

VERSUS

ELIUD KAMWELA..... RESPONDENT

JUDGMENT

Date of last order: 05/10/2023
Date of Ruling: 11/01/2024

NDUNGURU, J.

This is a second appeal. The appellant in this case, Rehema Abrahamu, is challenging the decision of the District Court of Mbeya at Mbeya in Civil Appeal No. 31 of 2021, which upheld the decision of the Primary Court of Uyole at Uyole (herein referred to as the trial Court), in Civil Case No. 91 of 2021. In the trial Court, the appellant, Rehema Abrahamu, sued unsuccessfully against the respondent, Eliud Kamwela, claiming Tshs. 15,000,000/= for what happened on 19th day of July 2021.

At the end of the trial, the trial Court partly entered the judgment in favour of the appellant and partly dismissed the claim of Tshs. 15,000,000/= being the compensation. Being discontent by the trial Court decision the appellant unsuccessfully appealed to the District Court of Mbeya vide Civil Appeal No. 31 of 2021. In that appeal the first appellate Court upheld the decision of the trial Court and dismissed the appeal with costs.

Aggrieved by the decisions of the lower Courts, hence the appellant lodged the present appeal before this Court. In her petition of appeal, the appellant set out two grounds of complaint against the decisions of the two Courts below. Her grounds of complaint read as follows:

1. *That, the 1st Appellate Court erred in law for failure to re-evaluate and access the evidence adduced by the parties and come out with its own conclusion.*
2. *That, the 1st Appellate Court upheld the decision of the trial Court contrary to the law.*

When the matter was called for hearing, the appellant enjoyed the services of Ms. Irene Msaki, learned advocate whereas the respondent

appeared in person, unrepresented. Upon request of the respondent and for interest of justice the same was ordered to be disposed of by way of oral submissions.

In support of appeal, Ms. Msaki opted to argue the first and second grounds of appeal jointly and together to the effect that, the first appellate Court failed to re-evaluate the evidence on record. Referring on page 3 of the first appellate Court's judgment to the effect that the first appellate Court held that the 1st ground of appeal is enough for disposition of the appeal. But she never re-evaluated the evidence adduced before the trial Court. She added that, failure to re-evaluate evidence led to the reaching of wrong conclusion. To justify her preposition, she referred the Court to the case of **Leonard Dominic Rubuye t/a Rubuye Agrochemical Supplies v Yara Tanzania Limited**, Civil Appeal No. 219 of 2018, CAT at DSM (unreported), which discussed the duty of the first appellate Court to revisit and re-evaluate the evidence adduced before the trial Court and come up with its own findings of fact.

She further argued that, the first appellate Court did not re-evaluate the evidence on record and reached into wrong decision by upholding the

decision of the trial Court. In conclusion, she prayed the Court that the appeal be allowed and the decisions of both lower Courts be quashed.

In response to the grievance that the first appellate Court did not re-evaluate the evidence on record, the respondent submitted that the first appellate Court's decision was correct and right. He added that, the first appellate Court's decision be upheld. Finally, he prayed the Court that the appeal be dismissed with costs.

In rejoinder, Ms. Msaki reiterated what was submitted in her submission in chief. Finally, she implored the Court to find merits in his submissions and allow the appeal.

I have gone through the records of both two Courts below, grounds of appeal and oral submissions by both parties. The issue calling for determination is whether or not this appeal has merit.

It must be noted that, it is trite law that in a second appeal, like the present, the Court is not entitled to interfere with the concurrent findings of facts by the two Courts below except in rare occasions where it is shown that there has been a misapprehension of the evidence or misdirection causing a miscarriage of justice. The similar position is well emphasized in

the case of **Amratlal Damodar & another v A.H. Jariwalla** (1980) TLR 31, it was held that:

> *"Where there are concurrent findings of facts by two Courts, the second appellate Court, as a wise rule of practice, should not disturb them unless it is clearly shown that there has been a misapprehension of evidence, a miscarriage of justice or violation of some principle of law or procedure."*

Also, see **Musa Hassani v Barnabas Yohanna Shedafa (legal representative of the late Yohanna Shedafa)**, Civil Appeal No. 101 of 2018, CAT at Tanga and **Mbaga Julius v Republic**, Criminal Appeal No. 131 of 2015, CAT at Mwanza (both unreported). It must also be noted that, the second appellate Court will only interfere with findings of fact of lower Courts in a situation where a trial Court had omitted to consider or had misconstrued some material evidence; or had acted on a wrong principle of the law, or had erred in its approach in evaluation.

Back to the present appeal, it is apparent from the record that the trial Court made a brief summary of the evidence adduced by the both parties then made critical comparison between the appellant's version and the respondent' story and therefore reached into proper decision. In fact,

the counsel for the appellant failed to demonstrate on how the trial Court and the first appellate Court had omitted to consider or had misconstrued some material evidence; or had acted on a wrong principle of the law, or had erred in its approach in evaluation of the evidence. I hold so because I neither see misapprehension of evidence or miscarriage of justice, nor do I see a violation of some principle of law or procedure. In the premises, I do not find cogent reasons to disturb the concurrent findings of the two Court below.

In the upshot, I find that the present situation does not falls within the scope and purview of those rare cases and exceptional circumstances warranting this Court to interfere with the concurrent findings of fact of the two Courts below save for the costs awarded by the first appellate Court on the reason that the Civil Appeal No. 31 of 2021, was heard exparte against the respondent. As result, I dismiss this appeal. Considering the nature of this case, I make no order as costs.

It is so ordered.

THE HIGH COURT OF TANZANIA

D. B. NDUNGURU
JUDGE
11/01/2024