

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB - REGISTRY OF SHINYANGA
AT SHINYANGA

PC. CRIMINAL APPEAL NO. 16 OF 2022

KAPONGO ERNEST.....APPELLANT

VERSUS

KIGALU MANYANDA.....1st RESPONDENT

CHRISTINA BALEKELE.....2nd RESPONDENT

[Appeal from the Decision of District Court of Bariadi at Bariadi.]

(Hon. C.E. Kiliwa, RM)

dated the 20th day of September, 2022
in
Criminal Appeal No. 40 of 2021

JUDGMENT

5th October, 2023 & 30th January, 2024.

S.M. KULITA, J.

It is alleged that one KAPONGO ERNEST @ NGOFILO instituted a Criminal Case No. 227 of 2021 at Nyashimo Primary Court against the respondents herein, namely; Christina Balekele, Tambula Kigalu, Kigalu Manyanda and Godfrey Kigalu for the offence of Malicious damage to property, contrary to section 326 of The Penal Code [Cap. 16 RE 2019].

The allegations in nut shell were to the effect that, on 23rd September, 2021 around 1300 hours, all the above-mentioned respondents had, without color of right, did break the appellant's car by using stones and caused damage over that said car at the tune of Tshs. 2,500,000/=.

It is read in the records that on the material date, the complainant was called by the Ward Executive Officer (WEO) for Kibita and the Hamlet Chairman to help them to execute the court order of taking a car owned by Kigalu Manyanda to the WEO's office premises. While at the premises of Kigalu Manyanda for taking the said vehicle, one Christina Balekele appeared, and when WEO wanted her to identify herself, but she didn't. It is when the appellant informed WEO that, Christina Balekele is the wife of Kigalu Manyanda. Upon hearing that the appellant has disclosed that information to WEO, it is when car breaking started, till when the appellant resorted into running away towards the Police Station.

The case was heard and finally, the respondents were found guilty of the offence, hence convicted and sentenced accordingly. As for the compensation of the broken car, the trial court ordered the appellant to institute a civil case to prove that specific damage resulted from the car breaking. That was on 2nd December, 2021.

Aggrieved with the said decision, Kigalu Manyanda and Christina Balekele appealed against Kapongo Ernest at Bariadi District Court on the ground that, the case was not proved to the required standard. Appeal was heard and finally found meritorious.

That decision of the District Court aggrieved the appellant, hence appealed to this court with four grounds, **one**, the District Court erred to determine the appeal against a person who was not a party in the original case, **two**, the 1st appellate court allowed the respondent's appeal on the curable defect, **three**, the 1st appellate court erred to ignore the ample evidence of the appellant's side and **four**, the 1st appellate court's Magistrate erred to shift the case file from one Magistrate to another without following the underling procedures.

On 15th February, 2023 the matter was scheduled for hearing through written submissions. Both parties complied with. Mr. Joseph Mange, Advocate represented the appellant whereas the respondents were unrepresented.

Submitting in support of the appeal on the first ground, Mr. Mange stated that, the 1st appellate court erred to determine a case against non-existing party to the original suit. He explained that, the judgment and

decree of the trial court, the appellant was known as Kapongo Ernest Ngofilo, but the 1st appellate court entertained an appeal against Kapongo Ernest. To him, these names represent two different people, hence prayed for the proceedings and its resultant judgment, decree and orders, be nullified for that matter.

In reply to that ground, respondents admitted that, judgment and decree of the trial court, the appellant's name reads Kapongo Ernest Ngofilo, but they insisted that, as the trial court's proceedings show that the appellant's name is Kapongo Ernest, then, they formed an opinion that, the appeal at the 1st appellate court was competent. This is the end of both parties' submissions on the first ground of appeal.

Concerning this first ground of appeal, I have thorough read the lower courts' records, submissions and the authorities pertaining to the issue.

My perusal on the records, revealed that, the trial court's judgment, which the respondents appealed against at the first appellate court, bears the appellant's names as Kapongo Ernest Ngofilo. Also, it is true that, the appellant's name in the judgment of the 1st appellate court reads as Kapongo Ernest alone. The question is, could this be fatal?

In the case of **Christina Mrimi vs. Coca Cola Kwanza Bottlers Ltd, Civil Appeal No. 112 of 2008, CAT at DSM** when faced with an akin situation, it stated that;

"Companies, like human beings, have to have names. They are known and differentiated by their registered names. In the instant case, it is apparent that the names "Coca Cola Kwanza Bottles"; "Coca Cola Kwanza Bottlers Ltd" or "Coca Cola Bottlers Ltd" have been used interchangeably. Although the Appellant wants this Court to hold that they mean one and the same Company, strictly, this view cannot be accepted without same risk of inexactitude".

The Court of Appeal went on showing that, the defect of giving different names to parties which appear at the original case file and that in the appeal, is fatal which cannot be cured lightly. As a result, the said court went on declaring the appeal incompetent.

Bound with such authority, the defect of naming Kapongo Ernest Ngofilo, the name that appears in the judgment of the trial court, as Kapongo Ernest in the appeal, is fatal, hence, vitiated all proceedings and resultant judgment and orders of the 1st appellate court.

On that account, I find this ground of appeal meritorious. Hence, I proceed to nullify all proceedings, judgment and orders of the first appellate court. The trial court's decision and orders are thus restored. On that note, I will not proceed to determine other grounds of appeal, as this ground alone, suffices to dispose of the appeal.

In upshot the **appeal** is hereby **allowed**. No order as to costs.



S.M. KULITA
JUDGE
30/01/2024

DATED at **SHINYANGA** this 30th day of January, 2024.



S.M. KULITA
JUDGE
30/01/2024