

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

PC. CIVIL APPEAL NO. 14 OF 2022

*(Arising from PC. Civil Appeal No.11 of 2022 Rungwe District Court, Originating from
Civil Case No. 33 of 2021 Kandete Primary Court)*

ANYITIKE SIMON MWATESA.....APPLICANT

VERSUS

EDA NTINDILI.....RESPONDENT

EXPARTE JUDGMENT

8/12/2023 & 23/02/2024

POMO, J

The Appellant, ANYITIKE SIMON MWATESA, is aggrieved with the judgment of the District Court of Rungwe in PC. Civil Appeal No. 11 of 2022. It is a judgment which was delivered on 21st June, 2022 Hon. R.I. Shehagilo, SRM against the appellant's favour by reversing the trial court decision, Civil Case No. 33 of 2021 Kandete Primary Court, which was in Appellant's favour.

To appreciate the case, I will summarize the facts of the case. Before Kandete Primary Court the Appellant herein filed Civil Case No. 33 of 2021

against the Respondent. The Appellant's complaint in the suit was that the Respondent maliciously prosecuted him in Criminal Case No. 39 of 2020 at Rungwe District Court therefore claimed TZS 5,000,000/- compensation from her. The trial court was satisfied by evidence of the Appellant, therefore, on 4th April, 2020 delivered its judgment in favour of him. The trial court, out of the TZS 5,000,000/- claimed, it awarded the Appellant TZS 2,000,000/- general damage for malicious prosecution.

Aggrieved, the Respondent filed PC. Civil Appeal No. 11 of 2022 before Rungwe District Court. The Appeal which comprised of three grounds, which went thus, I reproduce them verbatim: -

- 1. That, the trial learned Magistrate misled himself to enter judgment against the Appellant (the respondent herein) basing on irrelevant findings without considering the fact that the parties to the original case are slightly different*
- 2. That, the learned Magistrate erred in law and fact in reaching the decision without considering appellant's evidence tendered before the court*
- 3. That, the trial learned Magistrate's judgment is poor as it based on illogical and irrelevant argument*

According to the District Court record, the appeal came for hearing on 31st May, 2021 and both parties were present fending for themselves unrepresented. This is what they said:

"APPELLANT:

I have nothing to add in my appeal. I pray to adopt the memorandum of appeal

RESPONDENT:

I have used costs to the case, pray the court to consider that"

Following that, the appellate district court set a date for judgment on 14th June, 2022 and composed judgment to that effect. The judgment was delivered on the very date and, as alluded earlier on, it reversed the trial court decision against him.

Now, aggrieved with that judgement, the Appellant has approached this court armed with three grounds of appeal. I reproduce them in their own wordings: -

- 1. That, the trial learned magistrate directed himself to know that the disputed land belonged to the respondent only*
- 2. That the learned trial magistrate misled himself to enter judgment respondent who she said she did not have a husband who he used at the case before judgment*

3. That the trial learned magistrate by giving the decision at Ikama Primary where the Decision is before me.

On 1st August, 2023 this court Honourable J. M. Karayemaha, J ordered for **exparte** hearing of the appeal against the Respondent having been satisfied by the process server's proof of service to her.

Mindful of the existing order of this court dated 1st August, 2023 Hon. J.M. Karayemaha, J to proceed exparte against the Respondent, I order hearing be by way of written submission.

The Appellant commenced his submission by dropping the 3rd ground of appeal and therefore remained with the 1st and 2nd grounds

Arguing the 1st ground, the Appellant submitted it is on record that the respondent without reasonable cause initiated criminal proceedings against him. That, Kandete Primary Court found him not guilty in a criminal charge the respondent commenced against him while impersonating her husband's name.

As to the 2nd ground, the Appellant argued that the question to be considered by this court is whether the respondent initiated malicious prosecution. That, either the appellate magistrate misconstrued the facts of

the case or allowed his imagination to take the better of him. Having so submitted the appellant prayed the appeal be allowed.

Having gone through the submission and the grounds of appeal as well the lower courts record, the issue for determination is whether the appeal is merited or otherwise.

Frankly speaking, I have failed to comprehend the Appellant's only two grounds of appeal, the 1st and 2nd ground of appeal. I say so mindful that the 3rd ground was abandoned by him in the cause of submission.

Grounds of appeal are intended to challenge what was decided by the lower court, therefore have to come out of what was decided in the impugned judgment. In **Remigious Muganga Vs Barrick Bulyanhulu Gold Mine, Civil Appeal No.47 of 2017 CAT at Mwanza (Unreported)** at page 13 the Court of Appeal of Tanzania had this to state: -

*"It is a settled principle that a matter **which did not arise in the lower court cannot** be entertained by this Court on appeal. In the case of **Hassan Bundala @ Swaga v. Republic**, Criminal Appeal No. 386 of 2015 (unreported), for example, the Court stated as follows:*

"It is now settled that as a matter of general principle this Court will only look into the matters which came up in the lower courts and were decided; and not new matters which were neither raised nor decided by neither the trial court nor the High Court on appeal".

The Court of appeal went on to conclude at page 13 thus: -

"On the basis of the foregoing reasons, there is no gainsaying that the ground of appeal raises a new matter which cannot be entertained by the Court." End of quote

From the settled law above, applying it in the instant appeal, in my considered view, I am constrained to hold that there is nothing to be determined by this court because the allegedly two grounds of appeal do not stem from what was determined or rather the findings of the first appellate decision.

To be precise, the first appellate court gave two fold findings judgment. Firstly, it dwelt much into expounding what malicious prosecution is and the elements thereof which need to be proved by the complainant, thereafter



and secondly, applied the same though completely differently from what was brought as grounds of appeal before it.

The grounds of appeal, as reproduced earlier on, were:

- 1. That, the trial learned Magistrate misled himself to enter judgment against the Appellant (the respondent herein) basing on irrelevant findings without considering the fact that the parties to the original case are slightly different*
- 2. That, the learned Magistrate erred in law and fact in reaching the decision without considering appellant's evidence tendered before the court*
- 3. That, the trial learned Magistrate's judgment is poor as it based on illogical and irrelevant argument*

And the first appellate court findings, which is page 6 – 7 reads thus:

*"In the case at hand also, **the respondent had managed to prove only the elements of malicious prosecution as follows: 1st** that the appellant initiated the criminal proceedings against the respondent and the **2nd** that the prosecution ended in favour of the appellant, that the issue of malice is not proved though the appellant had used another name but that alone does not prove malice on part of the appellant as it is on record of*

lower court that SM2 one Edwin Mwaikenda had told the court that Andikisye Kabombo complained that the respondent had destructed his crops and went there and prevented him to continue doing so and so the evidence of SM2 Wilson Mwailete, from that piece of evidence it means that the respondent had really destructed the property and the case ended into his favour just because the one who initiated the proceedings before the court is the appellant the wife of the victim, and it is the view of this court that alone is not malice on part of the appellant, as there was reasonable and probable cause, offence was real committed. The appellant ought to be charged with personation and not otherwise. Accordingly, the appeal is allowed, the decision of the lower court nullified”.

Therefore, the instant appeal is founded on grounds of appeal which are out of context to what was determined by the first appellate court, the first appellate court also having determined nothing out of the grounds brought before it.


From the foregoing, I hereby dismiss the appeal for the above stated reason on how grounds of appeal were preferred

Since I am retained with the lower court record, I invoke revision power vested in this court under section 31(2) of the Magistrate's Court Act, [Cap. 11 R.E. 2022], guided by the decision in **Firmon Mlowe versus Republic**, Criminal Appeal No. 504 of 2020 CAT at Iringa (unreported), pp. 14 – 15, I hereby revise by setting it aside the decision of Rungwe District Court in Civil Appeal No. 11 of 2022 which didn't address the grounds of appeal before it and also quash the proceedings. Further, I order for rehearing of that appeal before another magistrate and the same be expeditiously


It is so ordered



Right of appeal explained


MUSA K. POMO
JUDGE
23/02/2024

Judgment delivered in chamber in presence of the Appellant and in absence of the Respondent


MUSA K. POMO
JUDGE
23/02/2024