

IN THE HIGH COURT OF TANZANIA
MUSOMA SUB-REGISTRY
AT MUSOMA
PC CIVIL APPEAL NO. 27362 OF 2023
REF NO. 20231211000027362

*(Arising from Civil Case No. 18 of 2023 of Tarime District Court, Originating from Civil
Case No.91 of 2023 of Sirari Primary Court)*

GRACE ELIAS APPELLANT

VERSUS

MARWA KIRUTI RESPONDENT

JUDGMENT

08th May & 12 June 2024

M. L. KOMBA, J.:

Appellant was dissatisfied by the decision of the 1st appellate court which overturn the decision of the trial court which convicted the respondent. He prayed this court to allow her appeal by quashing and set aside the decision of the 1st appellate court on the following grounds;

- 1. That, the 1st Appellate Court erred in law and fact in its judgment by failure to consider and scrutinize properly the evidence were adduced at the trial court from both parties and their witnesses.*
- 2. That, the 1st Appellate Court erred in law and in fact in its judgment by adding new fact that were not adduced at the trial Court.*

3. That, the trial Court erred in law and in fact in its judgment by failure to award the appellant the damage his claimed while in fact the appellant proved his case against the respondent on balance of probabilities.

When the matter was scheduled for hearing, appellant was represented by Mr. Samson Samo, an advocate while the respondent had no representation.

Arguing the appellant's appeal, Mr. Samo submitted that District Court erred for not consider evidence educed during trial as it was clear that respondent is the one who went to the appellant, around 12: 00 pm and untie six cows and send them to the village office. He explained that respondent took cows without consent of the owner claiming that he was ordered to do so by the village chairman, he was not amused by the finding of the first appellate court that it was the Chairman who was supposed to be sued and not respondent.

On the second ground he faulted the appellate Magistrate by recording that cows were taken on 21/7/2023 while in her testimony during trial the appellant said her cow was stolen on 14/7/2023 noon time and was

respondent who took her cows. He complained that the Magistrate analysed evidence which was not in record.

Arguing the last ground, counsel submitted that appellant was awarded the sum of Tshs. 2,280,000/= by the trial court as the cost of cows but the first appellate Court nullified that order on ground that the appellant failed to prove her claim against respondent while it was not right. It was his submission that appellant managed to prove her cows was taken by respondent as testified by other witnesses.

He prayed this court to find the appeal has merit and nullify the district court findings and maintain what was decided by the trial court. He further prays your court to order for the payment of sum of Tshs. 2,280,000/= as awarded by the trial court and any other reliefs.

On the other side the respondent had a short submission that there was an alarm that somebody's cows were stolen. People in the village decided to follow animal foot prints which ended up at the appellant's cow shade. Those people took cows from appellant's boma (cow shed) and were sold by the order of the village chairman. When asked when the appellant's cows were taken, he confidently replied it was on 14/7/2023 and were

taken by group of people. He complained on the order for damages insisting that, it was village chairman who ordered cows to be sold on the same date.

While rejoining Mr. Samo insisted that respondent has admitted on date and time when cows were taken from appellant's home and were owned by appellant. He finally re-iterates his submission in chief.

In handling this appeal I had time to peruse the record of the previous courts over the subject matter and petition of appeal and impugned judgment. In considering directives of the Court of Appeal in **Firmon Mlowe vs. The Republic**, Criminal Appeal No. 504 of 2020 Court of Appeal directed that during appeal the court is at liberty to address the grounds separately or generally or the decisive one only, it must specifically indicate so in the judgment. In the appeal at hand, I shall analyse all grounds.

On the first and second ground counsel complained that the 1st appellate court failed to scrutinize evidence and introduced new facts in judgment. The base of this averment is testimony of the witnesses during trial. I have carefully read the judgment and at the very first page the appellate court

Magistrate quoted contents of claim form Number 2 where the appellant reported the cows were taken by respondent on 21/7/2023. The analysis was done at page 3 and 4 that on 14/7/2023 there was incident of cattle stealing, stolen cows were recovered, returned to the owner and the rest was sold by the order of the village chairman. The same was picked from the proceedings.

I find it was not proved that it was respondent who went to the appellant on 14/7/2023 when her cows were taken, but a group of people. The date which is the source of complain, which is 21/7/2023 was found in no other place but in the claim form which filed at the trial court. It is in that form, the claim form where the name of the respondent appeared. It was not the words of the Magistrate and it must be remembered that parties are bound by their own pleadings. See **Barclays Bank T. Ltd vs Jacob Muro (Civil Appeal 357 of 2019) [2020] TZCA 1875 (26 November 2020)**, **Paulina Samson Ndawavya vs Theresia Thomasi Madaha (Civil Appeal No. 45 of 2017) [2019] TZCA 453 (11 December 2019)** and **James Funke Gwagilo vs AG Civil Appeal No. 67 of 2001**.


The third ground is analysed in line with the findings on the previous grounds that, it is the appellant who failed to prove her case and therefore

she is not entitled to any damages as claimed. I am aware that in cases of this nature the standard of proof is to the balance of probability as was in **Paulina Samson Ndawavya vs Theresia Thomasi Madaha** (supra). In appeal at hand, there are two dates which make the probable of probability not to balance.

From the analysis of the three grounds as found in the petition of appeal, I find the appeal lacks merit and is hereby dismissed. I make no order as to cost.

DATED at **MUSOMA** this 12th day of June, 2024.




M. L. KOMBA
Judge