

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SONGEA SUB-REGISTRY)**

AT SONGEA

PC - CIVIL APPEAL NO. 0000284 OF 2023

(From the decision of the District Court of Songea at Songea in Civil Appeal No. 20 of 2023; originating from Songea Urban Primary Court in Civil Case No.42 of 2023)

BRUNO BRUNO MAPUNDA APPELLANT

VERSUS

MODESTUS KIHWILI..... RESPONDENT

JUDGEMENT

Dated: 24th April & 12th June, 2023

KARAYEMAHA, J.

The proceedings that bred the instant appeal were commenced in the Primary Court of Songea Urban at Songea, (hereinafter the trial court) and it involved a claim of TZS. 2,000,000/= . The said sum resulted from the agreement between parties whereby the appellant entrusted his cow to the respondent and a consideration was dividing calves.

Of course, it is discerned from the record that parties divided calves. While the appellant was waiting for his turn to receive the calf, things turned upside down. What brought forth the dispute was the respondent selling the appellant's cow without notifying or seeking his



consent. Having allegedly failed to settle the dispute on their own, the appellant sought intervention of the trial court.

At the zenith of the trial and having analysed the evidence adduced by both parties, the trial court judged in favour of the appellant on the reasons that parties had a valid agreement of giving and receiving the cow. Similarly, the trial court held that the respondent breached the agreement. In the end, the respondent was ordered to pay the appellant TZS. 2,000,000/= being the price of the cow which was to be paid within two months.

This decision triggered an appeal which was preferred by the respondent. The 1st appellate court, before which the appeal was preferred, saw nothing blemished in the substance of the decision of the trial court. It simply altered the amount alleged to be the value of the cow to TZS. 800,000/=. The 1st appellate court found the amount awarded unreasonable and not reflecting the market price. This decision did not amuse the appellant. He chose to climb a ladder up to this Court with the instant appeal. The appeal has two grounds, reproduced as hereunder with their grammatical challenges:

1. That, the trial court erred in law and facts, by delivering judgment by reduced (sic) the amount awarded by the first



trial court without state (sic) how did the same reach such amount in what kind of calculation used.

2. That the trial court erred (sic) in law and facts by failure (sic) to consider, analyze and evaluate properly the evidence in record adduced during the trial and it came with its own words.

When the appeal was called on for hearing on 23/4/2024, parties appeared in person, unrepresented. The parties' contending arguments were, pursuant to the Court's order, presented by way of written submissions in conformity to the scheduling order.

Parties' contending arguments do not offer any significant input. I shall therefore be guided by the evidence on. Having carefully examined the grounds of appeal, the evidence on the record and judgments of the subordinate courts, I am of the opinion that the raised grounds of appeal can be conveniently discussed in a combined fashion. In my view, these grounds were raised to assail the 1st appellate court's decision with respect to the value of the dairy cow. Whereas the appellant was convinced that he gave evidence on the value of the cow, the record has a different information. In fact, the appellant did not inform the trial court on the market value of the dairy cow. He simply



stated what he thought would be the value of his cow. However, the appellant's evidence reveal that the cow had given birth to calves twice and expectedly was producing milk. It is therefore of no significant to hold that it was of great value. This is supported by the respondent's evidence he gave before the trial court that the appellant's cow valued at TZS. 1,000,000/=. He said, and for ease of reference, I quote:

"Mwezi 06/2022 alikuja nyumbani usiku anasema amekuja kuangalia ng'ombe wake kwangu mwenye thamani ya Tsh. 1,000,000/=..."

However, the appellant testified that the cow's value was TZS. 2,000,000/=. Deciding as it did, is an indication that the 1st appellate court did not get to the thick of the evidence with respect to the value of the cow allegedly sold by the respondent.

My thorough review of the whole evidence reveals that the market value of the cow in question was between TZS. 1,000,000/= and TZS. 2,000,000/=. It was therefore, legitimate for the 1st appellate court to pin its findings between the price mentioned by parties to the case instead of declaring the value of TZS. 2,000,000/= unreasonable. In cases of these nature where parties are differing on the market price, courts must base their decisions on the evidence from parties who are taming cows and are surely placed to know the real price in the field.



Taking into account the fact that that parties were the ones who dealing with cow business, they better knew the price of dairy cows. I also consider the fact that the said cow was not a calf. Hence, its price might be TZS. 1,500,000/= . The amounts of Tzs. 2,000.000/= and Tzs. 800,000/= awarded by the trial and 1st appellate courts respectively are set aside. In a nutshell, I find and hold that the appellant is entitled to TZS. 1,500,000/= . The appellant's appeal is partly allowed. It is allowed so with costs.

It is so ordered.

DATED at **SONGEA** this 12th day of June, 2024



A handwritten signature in black ink, appearing to read 'J. M. Karayemaha', written over a horizontal line.

J. M. KARAYEMAHA
JUDGE

