

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA
PC CIVIL APPEAL NO. 14 OF 2020**

[Appeal from a Judgment of the District Court of Kondoa at Kondoa in Civil Appeal No. 18 of 2019 which originated from Busi Primary Court in Civil Case No. 1 of 2019]

RASHIDI NDEE APPELLANT

VERSUS

SOPHIA JUMA RESPONDENT

JUDGMENT

22nd July, 2020 & 20th November, 2020

M.M. SIYANI, J.

This is a second appeal against a decision of Busi Primary Court in Civil Case No. 11 of 2019 where Sophia Juma who is the respondent in the instant appeal, successful claimed for Tshs 2,244,000/= as compensation of her crops damaged by the appellant's cattle. As the record reveals, on 9th September, 2019, the respondent found the appellant's son grazing in her farm which is located at Naivashi, Kondoa. She raised an alarm and

with an assistance of those who responded, they managed to detain a number 41 heard of cattle.

Evidence led at the trial court shows, out of the 37 acres which contained peas and white sorghum, 22 acres were destroyed by those cattle. The matter was reported to the village chairman who directed them to count the cattle, inform him of the total number and handing the said cattle back to the herder. Through his defense, Rashid Ndee (the appellant) contended that there was no evidence to prove that the respondent's crops were destroyed by his cattle, neither was his son responsible for grazing in the respondent's farm. Relying on an assessment done by an agricultural officer, the trial court awarded the sum of Tshs 2,244,000/= as claimed.

The appellant was dissatisfied and so he approached the District Court at Kondoia which upheld the trial court's findings but reduced the amount awarded as compensation to Tshs 1,220,000/= on the reason that the valuation report which was the basis of the trial court's decision, was not tendered and admitted as evidence and so wrongly relied by the trial court.

Still aggrieved, he has knocked the doors of this court. His memorandum of appeal contains the following three grounds:

1. *That, the trial court magistrate grossly erred in law and fact by arriving into decision by basing on contradictory evidence adduced by the defendant and her witnesses which misdirected the court to reach in to unfair decision.*

2. *That, the trial court magistrate erred in law and fact by receiving and relying on the valuation report prepared by the extension officer which was conducted on 11th September,2019 while the destruction of the claimed farm crops took place on 9th September, 2019.*

3. *That, the trial Court grossly erred in law and fact by entertaining and determination of the matter in dispute basing and relying on weak evaluation report prepared by the extension Officer who unlawfully conducted it to his own without involving neither any of the village leaders nor any witness from the village.*

Hearing of the appeal was done by way of filing of written submissions. Arguing in support of the appeal, it was submitted that the first appellate court wrongly upheld the trial court's findings which was premised on contradictory evidence. It was contended that while the respondent's crops were allegedly destroyed by a herd of cattle on 9th September, 2019, a valuation in respect of the damages, was conducted on 11th September, 2019 which is two days later. In view of the appellant the delay was unjustifiable owing the fact that the person who assessed the damage, resides not more than seven miles from the scene. It was further argued that the evaluation itself was conducted without involving the appellant or the village leaders as witnesses.

In reply, the respondent argued that courts of law always decide civil suits on the balance of preponderance of probabilities basing on available evidence. She cited the case of **Miller Vs Minister of Pensions** [1947] 2 ALL ER 372 to support her stance. The respondent contended that the suit was well proved by evidence from eye witnesses which was tendered at the trial court and that such evidence was not controverted by the

appellant. In her view therefore, the trial court correctly relied on such evidence when reaching its decision.

Having revisited the rival submissions by the parties, the appellant's concern through the first ground of appeal, is that the findings of the two courts below were wrongly arrived basing on contradictory evidence. Apparently, this ground is premised on evaluation of evidence. An established principal of law is that a second appellate court should only be enjoined to deal with questions of law and as such it should not interfere with concurrent findings of facts by the courts below unless the evaluation of evidence was not done properly hence resulting in a miscarriage of justice. See **Amratlal D.M t/a Zanzibar Silk Stores Vs A.H. Jariwala t/a Zanzibar Hotel** [1980] TLR 31.

I have perused the record from both the trial and first appellate courts. I could not see any contradictory evidence as alleged by the appellant. Indeed, the respondent had strong evidence of people who not only found the appellant's son grazing in the respondent's farm, but also witnessed his 41 cattle eating the crops therein. Apart from the respondent, testimony

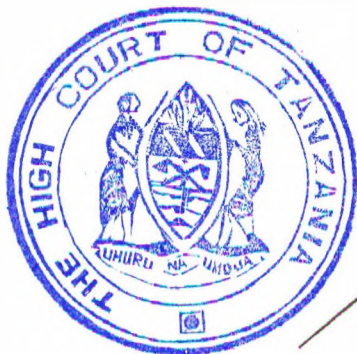
from Maliki Shabani (PW2) and Ismail Juma (PW3) clearly indicated that they found the appellant's son who was not a stranger to them, grazing in the respondent's farm. In my considered view such evidence satisfactory answered in affirmative, the question whether or not the appellant's cattle trespassed to the respondent's farm and destroyed crops as framed by the trial court.

There was therefore a concurrent finding from the lower courts that the appellant was liable for the damage done to the respondent's crops by his herd of cattle. Such a conclusion was based on facts presented and cannot be reversed by a second appellate court unless, it is shown that both courts completely misapprehended the substance, nature and quality of the evidence consequently arriving in unfair conclusion. In the instant appeal, the appellant has not pointed out the alleged contradictory evidence. Neither has he stated how such evidence was misapprehended hence occasioning failure of justice on his party. The first ground of appeal is therefore baseless.

The second and third ground of appeal was on evaluation report. The appellant faulted the trial court for relying on it. It seems to me, that the appellant did not grasp what was decided by the first appellate court. He raised similar ground of appeal at the first appellate court and through its well-reasoned decision, the court correctly observed that the complained evaluation report, was not party of the record of the trial court and that the trial court wrongly relied on it. Such a document was consequently expunged from the record by the first appellate court and since the same is no longer party of the record, the second and third grounds of appeal are as well unfounded.

The above said, I find nothing to fault the decision of the first appellate court. I therefore hold that the instant appeal lacks merit and consequently the same is hereby dismissed with costs. It is so ordered.

DATED at **DODOMA** this 20th November, 2020



M.M. SIYANI
JUDGE