

TANZANIA / JUDGMENT

anna ramadhani mrisho vs tanzania national roads agency and 2 others 2023 tzhc 15661 16 february 2023

COURT
TZHCDECIDED
16 February 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY
OF ARUSHA AT ARUSHA CIVIL CASE NO. 5 OF 2020 ANNA RAMADHANI
MRISHO..... PLAINTIFF VERSUS TANZANIA NATIONAL ROADS
AGENCY..... 1stDEFENDANT NUTMEG ACTIONEER & PROPERTY
MANAGERS CO..... 2ndDEFENDANT ATTORNEY
GENERAL..... 3rdDEFENDANT

JUDGMENT

16.09.2022 & 16.12.2022 MWASEBA, J. The plaintiff, Anna Ramadhani Mrisho, sued the defendants for a claim of Tshs. 164,100,000/= being the amount caused by the actions of the 1st defendant on the 30th November, 2014 authorizing the 2nd defendant to illegally auction the plaintiff's motor vehicle with registration No. T 327 CTD make Toyota Hiace. Page 1 of 17 The plaintiff alleged that; the 1st defendant herein appointed the 2nd defendant to auction her vehicle with registration No. T 327 CTD Toyota Hiace despite her efforts of writing letters to the 1st defendant to be given back her motor vehicle which was impounded illegally at a Petrol Station located at Kwa Mrombo area within Arusha City. Aggrieved, the plaintiff decided to file this case and prayed for judgment, orders and decree against the defendants as follows:

- a) Declaration that the procedure for sale of the plaintiff's motor vehicle was illegal.
- b) An order compelling the defendants herein to remit or pay back the plaintiff's motor vehicle and loss suffered at the tune of Tshs. 164,100,000/= (One Hundred Sixty Four Million one hundred thousand Tanzanian Shillings only) being the total claim by the plaintiff herein.
- c) Interest on (b) above at 30% commercial rate from the due date of 30th November 2014 up to the date of judgment.
- d) Interest on the decretal amount at court's rate from the date of judgment to the satisfaction of the decree.
- e) General damages to be assessed by the court. [Page 2 of 17

- f) Costs of the suit.
- g) Any other reliefs this court may deem fit and just to grant. On the other hand, the 1st and 3rd defendants, in their written statement of defence, disputed the plaintiff's claims contending that the said motor vehicle was auctioned by the 2nd defendant after being abandoned in the road reserve. Therefore, the plaintiff has no lawful claim against the 1st and 3rd defendants. To prove her case, the plaintiff brought two witnesses while the defendants also had two witnesses. During the hearing of this case the plaintiff was represented by Mr Richard Manyota Learned Counsel while Mr Peter Musetti Senior State Attorney appeared for the 1st and 3rd defendants. The 2nd defendant defaulted appearance although he was duly served. However, during defence hearing, he came to testify on behalf of the 1st and 3rd defendants. PW1, Anna R. Mrisho testified in court that she is the owner of the vehicle make Toyota Hiace with registration No T. 327 CTD (Exhibit P1). It was a business vehicle taking a route of Kwa Mrombo to Mjini and vice versa. She was earning Tshs. 75,000/= per day of which a hand over of the same Page 3 of 17 from a driver, Pauli Michael to her was kept in writing. In court, two Flamingo exercise books titled "Mapatd" was admitted as exhibit P2 collectively. She averred that her driver was parking the said vehicle at Kwa Mrombo Petrol Station overnight with an agreement that she would be buying fuel there. On 6/11/2014 in the afternoon, she was informed via call by Mr Mollel (now deceased) who was a security guard of the petrol station that her vehicle was taken by people who introduced themselves as people from the government. They did not state the reason for taking the said vehicle. By then PW1 was 9 months pregnant. They went to the petrol station but still they could not know who they were "watu wa serikali". So, they went to Majembe Auction Mart at Mbauda but her vehicle was not there. They were advised to check with TANROADS. However, due to her condition she could not manage to proceed with follow ups. Her friend made a follow on her behalf by going to TANROADS, but the vehicle was not there. But she was advised to go to Nutmeg Auctioneers office as they had a contract with them. Thereat, she was told that the vehicle was there, but she was supposed to pay a fine to TANROADS before taking the said vehicle. PW1 was notified so by her friend but she could not make a follow up due to her Page 4 of 17 p ' (>—t JCl health status. She delivered a baby on 9/11/2014, three days after her vehicle being impounded. After maternity leave i.e in March 2014 PW1 started to make a follow up of her vehicle. She wrote a letter to TANROADS Manager asking why her vehicle was taken away. In court, the said letter was admitted as Exhibit P3. Then TANROADS wrote to NUTMEG Auctioneers asking for the clarification on the procedure they took to sell PW1's vehicle and copied her. The same was admitted in court as Exhibit P4. Further, the reply letter from NUTMEG was admitted as Exhibit P5. Following the letter from NUTMEG explaining the procedure they followed to sell the vehicle in dispute, TANROADS replied to PW1 through Exhibit P6 that they were satisfied that the procedure for selling the vehicle was followed. PW1 was not satisfied with the reply as she was not notified that her vehicle was to be sold for her failure to pay. PW1 stated further that she bought the said vehicle after securing a loan from Shalom SACCOS in Arusha. So, after her vehicle being impounded, she failed to pay back a loan eventually, she was sued at Arusha Resident Magistrates' Court

which ordered her to pay Tshs. 10, 886,000/=. A copy of judgment was admitted in court as Exhibit P7. Page 5 of 17 On 16th day of May 2019 Shalom SACCOS gave her a 14 day notice from NUTMEG that they would sell her house. Thus, she is worried about her house being sold. She further insisted that her vehicle was illegally impounded because she was not informed and there was no proof by pictures that her vehicle had a misconduct. So, she prayed to be paid her daily gain of 75,000/= per day from the date her vehicle was impounded to the full payment of her dues, the defendants to pay her Tshs 18,000,000/= the amount she spent for buying the vehicle, payment of 30% of her gain of 75,000/= per day from the date her vehicle was impounded to the full payment, general damages to be assessed by the court, the defendants to pay the costs of the case and any other relief (s) the court may think fit to grant. On cross examination, she said after making a follow up of her vehicle she noticed that TANROAD on their contract assigned NUTMEG to impound PW1's vehicle. PW2, Paul Michael testified in court that he had been driving the said vehicle as an employee of the plaintiff. His monthly salary was 300,000/=. He said the vehicle was being parked at kwa Mrombo Olasiti Petrol station. His employer had an agreement with the owner of the petrol station and that they would be filling fuel there. PW2 stated further that he had been handing over a daily gain of Tshs 75,000/= to his employer and they were signing a handing over of the said money in the exercise books. PW2 was shown the exhibit P2 collectively and he identified them. He insisted that at the end there was disagreement with his employer, so he handed over the vehicle and keys to PW1 and they left the vehicle at the said petrol station where a number of vehicles were parking as well. On cross examination, he said he does not know the distance from the petrol station to the road. But they parked the vehicle at the petrol station premise. PW3, Eveta Mosha stated that on the material date PW1 informed her via phone that PW1's vehicle was impounded so they agreed to meet at Kwa Mrombo petrol station where the vehicle was being parked. Arriving at the petrol station, they were informed by a watchman that there were people in a uniform who came to pick the said vehicle. They started making a follow up at Majembe Auction Mart who told them that they did not impound such a vehicle. Due to the health status of PW1 who was Page 7 of 17 pregnant, she returned home then PW3 started to make a follow up by herself. The following day she went to TANROADS. They told her that the vehicle was not there and advised her to go to NUTMEG who was their agent. PW3 went to NUTMEG who after being asked, they admitted having the vehicle in dispute. They wanted her to pay the fine. She asked them about the offence and how much to be paid. They did not disclose it to her, but they directed her to go back to TANROADS to pay a fine. PW3 decided to go back to PW1 and informed her about the whereabouts of the vehicle. Thereafter, the PW1 waited until she delivers a baby then she would make a follow up by herself. She clarified further that she had been passing at the petrol station and seeing the vehicle parked at the petrol station area. On cross examination, she stated that she was not present when the vehicle was parked. When the ball turned to the defence, DW1 who was the director of NUTMEG Auctioneers and Property Managers Company testified in court that on 12th June, 2014 they entered into a contract with TANROADS Arusha to make a follow up to all people who were breaking the law by Page 8 of 17 parking vehicles in the road reserve. The said contract No

AE/001/13- 14/AR/CON/NS/73 was admitted as Exhibit DI. He clarified further that due to the said contract, their duties were to inspect road reserves in Arusha. The inspection included among other things, to arrest everything which has been found in the road reserve and thereafter inform the Arusha TANROADS manager to assess fines. He further stated that on 26 and 27 November, 2014 they were on their duty inspecting motor vehicles that were parked in the road reserve and they were inspecting Mbauda road which passed at Olasiti area near the Petrol station. When they were still at that area, they informed people to remove things that were parked within 22 1/2 meters from the main road within six (6) hours or the same would be taken away. On that area they saw some motor vehicles parked in the road reserve near the petrol station, they informed the Manager of the Petrol Station who said he knew some of the owners so, he was told to inform them to remove their vehicles. Upon the lapse of six (6) hours they took those vehicles and informed TANROADS for further action including the payment of fines and most of the owners paid the fines and took their vehicles. Page 9 of 17 He testified further that, on 1/12/2014 PW2 went to their office asking for their vehicle and they told him to go to TANROADS for assessment of the fine, but they never returned. On 16/01/2015 they had a meeting with TANROADS where they agreed to sell all the remained motor vehicles to compensate fined and the arresting costs. Following the said meeting on 28/01/2015, they advertised those motor vehicles via Newspaper (exhibit D2) and then the said motor vehicle was sold. To prove the vehicle was legally taken PW1 sent his driver to make a follow up but she never paid a fine as required. When he was cross examined, he confidently declared to be aware of the legal procedures for conducting auction. Prior to removing the vehicle in dispute, he orally informed the manager and the watchman that the vehicles around there should be removed. Further, they had a meeting with TANROADS and agreed to sell the vehicles that were arrested, and the certificate of sale was signed by another director. DW1 clarified about the road reserve that they measured 22.5 meters from the center of the road. So, two vehicles were taken away after being found around the petrol station. In exhibit DI which is advertisement for sale the vehicle in dispute Page 10 of 17 was not listed as it was a general advertisement which meant to all people whose vehicles were impounded. On re-examination he stated that, the notice on newspaper was for all owners whose motor vehicles were impounded in wrong parking, and they were guided by the Road Act of 2007 regarding the measurement of reserved road. On his side, DW2, Godfrey Reuben Jairo, testified that she has been working with TANROADS since 2014 as In-charge of Maintenance Unit, supervising the proper use of the road. He became aware of this dispute via a complaint letter written by PW1 that her motor vehicle was illegally impounded, and the 2nd defendant entered into a contract with TANROADS on 12/06/2014 to supervise the proper use of the road as per Act No. 13 of

2017. He testified further that; the road reserve was measured 22 Vi meters on each side of the road and as per Section 50 (f), (h) (i) of Act No. 13 of 2007, Regulation 16 (4) of 2009, upon impounding a vehicle they are supposed to notify TANROADS for further action. It was his further submission that, prior to their contract with the 2nd defendant, they notified the District Commissioner and the public via Page 11 of 17 loudspeakers and the ward Officers

were notified via exhibit D3 that their agent would supervise the roads. More to that, he said after the vehicles were impounded and no one claimed them, they had a meeting with the 2nd defendant and agreed to sell the motor vehicles as per Regulation 16

- (1) of 2009 governed by Section 50 of Act No. 13 of 2007. After the advertisement via Newspaper and loudspeaker then the auction was conducted by the defendant. Thereafter they started receiving complaints from PW1. Thus, since the vehicle was legally impounded her claim is baseless. During cross examination, he said PW1 was not notified personally about the auction as they did not have his address that is why it was advertised via a newspaper. He was not present during the auction but was informed about it by the 2nd defendant that he was allowed to conduct the auction. He never knew Anna personally, but he was informed that her representative went to the 2nd defendant prior to the auction, and it is not Engineer Ngeleja who bought the vehicle. He asserted that the fine for wrong parking is 300,000/= but he was not aware how much the vehicle was sold. Exhibit DI indicates that after the payment of fine and storage fees the remaining amount need to be returned to the owner. He is sure Page 12 of 17 pT O—f that the vehicle was parked in a road reserve and not at a petrol station and PW1 was not informed about the auction as the vehicle did not have her address. Having heard the evidence from both parties and the exhibits tendered in court, the agreed issues for determination in this matter are as follows:

1. Whether the plaintiff's motor vehicle was legally impounded.
2. Whether the procedure for sale of the impounded motor vehicle was adhered to.
3. To what reliefs are the parties entitled. Starting with the first issue of whether the vehicle was legally impounded, PW1 stated that her motor vehicle with registration No. T 327 CTD was unlawfully impounded as the same was parked at a petrol station and not along road reserve as alleged by the 2nd defendant. On their side, the defendants alleged that the vehicle was legally impounded as the same was parked along a road reserve contrary to the Road Act No. 13 of 2007. Thus, the defendants here are dutybound to prove that the motor vehicle was legally impounded as it is a cardinal principle that, in civil cases the Page 13 of 17 burden of proof lies on the one who alleges. The same is provided under Section 110(1) of the Evidence Act, Cap 6 R.E 2022 that: "Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts do exist." See also the case of *Africarriers Limited vs Milenium Logistics Limited*, Civil Appeal NO. 185 of 2018 (CAT-Un reported). In our present suit, the plaintiff brought two witnesses who also proved that the plaintiff's car was parked at a petrol station and that all the efforts made by the plaintiff to retrieve the said motor vehicle after being impounded went in vain (See exhibit P3). On his side, PW2 testified in court that he had been parking the said vehicle at petrol station and on the material date it was parked there and not along the road reserve. PW3 was also one of the people who helped the plaintiff to make follow up of her motor vehicle because the plaintiff was pregnant at that time, hence, not being able to make follow up by herself. On the defence side, it was the 2nd defendant who impounded the said motor vehicle for the alleged reasons that it was wrongly parked in the

road reserved area. So, it is clearly that the 1st defendant relied only on Page 14 of 17 17 words of the 2nd defendant without having a concrete proof that the appellant's motor vehicle was wrongly parked. During their entire evidence they were only able to prove that they were ordered by the 1st defendant to impound motor vehicles and other properties that were wrongly parked and that after advertising the same they sold them. No proof was submitted to prove how the said motor vehicle was impounded and if it was really parked along the road reserve as alleged. As it was held in the case of Godfrey Sayi vs Anna Siame as legal representative of the late Mary Mndolwe, Civil Appel No. 114 of 2012 (Unreported), that: "It is commonly knowledge that in Civil proceedings, the party with legal burden also bears the evidential burden and standard in each case is on a balance of probability." Therefore, based on the reasons submitted herein, it is the firm view of this court that the plaintiff's vehicle was illegally impounded and thus the 1st issue is answered in negative. The second issue is whether the procedure for sale of the impounded motor vehicle was adhered to. Taking into consideration that the first issue is answered in negative, it goes without saying that even the procedure for sale of the impounded vehicle was not adhered to. This is because they Page 15 of 17 sold the vehicle of innocent person while the sale is expected to be on the vehicles which were wrongly parked and not timely redeemed. Further to that, DW1 told the court that for unclaimed impounded vehicles they sold them in compliance of Regulation 16(1) of Road Management Regulation of 2009 and Section 50 of Roads Act of 2007. Going through the said provisions, they are less concerned with the procedure for selling impounded vehicles. Therefore, this issue is answered in negative too. As for the 3rd issue of relief, since the plaintiff's vehicle was illegally impounded and sold, she deserves to be awarded some relief (s) as prayed. In the circumstances, I am inclined to enter a judgment against the defendant and order as follows: -

- i. The procedure of selling the plaintiff's motor vehicle was illegal.
 - ii. The defendants to pay the plaintiff TSH. 28,000,000/= being the costs of the said motor vehicle and the loss suffered by her.
 - iii. The defendants to pay the plaintiff general damages at the tune of Tshs. 5,000,000/=
 - iv. Interest on the decretal amount at 7% from the date of judgment to the satisfaction of the decree.
- Page 16 of 17 V. Each party to bear its own costs. Ordered accordingly. DATED at ARUSHA this 16th day of December 2022. N.R. MWASEBA JUDGE 16/12/2022 Page 17 of 17

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Prepared on 13 October 2026 · Esheria