

TANZANIA / JUDGMENT

BELELE NSOMI concurrent findings

COURT
TANZLII

DECIDED
9 August 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUB REGISTRY OF SHINYANGA
AT SHINYANGA DC CIVIL APPEAL NO. 16135 OF 2024 (Arising from the District Court of Itilima
as Civil Appeal No. 15208/2024 and the same originating from Luguru Primary Court as Civil Case
No. 18/2023) BELE NSOMI..... APPELANT VERSUS KIMILA
NHABI RESPONDENT

JUDGMENT

31 July & 9 August 2024. st th MASSAM J:- In this appeal, the appellant is appealing following the decision of Itilima District Court which was originated from Luguru Primary Court which in both courts it was decided in favour of the respondent, that appellant failed to proof the claim of 90 bags of maize which is equivalent to Tshs. 756,0000 which he was claiming from the respondent. Being distressed by the decision and orders of the 1st appellate court, the appellant appealed to this court based on the ground of appeal that,

1. That the appellate Magistrate erred in law by and facts by failure to recognize the appellant's evidence of which he proved the case to the balance of probability. 1
2. That the appellate Magistrate erred in law by failure to determine the other grounds of appeal. Again, appellant prays to this court to allow this appeal and decision of the lower court to be quashed and respondent to be ordered to bear costs and other reliefs this court will find fit and convenient to grant. When the matter was called for hearing, this court on perusal of this file especially the decision of the trial court it find pot that the decision and order given was contradictory as the decision given show that the appellant/plaintiff in trial court failed to prove his case on the standard on balance of probabilities but the order said that the plaintiff/appellant won the case so the respondent/defendant to pay Tshs. 300,000/= to the plaintiff/appellant. This court invited the parties to address the court concerning this irregularity. In submitting the same both parties appeared in persons unrepresented. Appellant in support of his grounds of his appeal conceded that the decision given in trial court and its orders are contradictory as it has different findings, so he prayed to this court to nullify the proceedings of both courts and set 2 aside the decisions and order given, also this court to order re trial before another magistrate. Respondent in his side conceded and pray this appeal to be dismissed and nullify the proceedings of both courts, set aside the judgment and orders given and the matter be remitted to the trial court for re trial before

another magistrate. Having heard the parties, the issue for deliberation is whether the irregularity found in the trial court records is fatal. It is trite law that where there is concurrent finding of two lower courts (trial court and first appellant court) on a question of fact, the second appellant court will rarely interfere with concurrent findings of fact made by the court below. The exception to the rule is when the findings are perverse or demonstrably wrong and occasioning miscarriage of justice. This position was well stated in *Direction of Public Prosecution vs Jaffar Kawawa*

[1981] TLR 149, *Amratlal Damodar Malteser and Another T/A Zanzibar Silk Stores vs A.H. Jariwala T/A Zanzibar Hotel* (1980) TLR 31, *Mussa Mwaikunda vs Republic* [2006] TLR 387 and *Wankuru Mwita vs Republic*, Criminal Appeal No. 219 of 2012 (unreported). 3 Specifically, in the latter case the court stated that” The law is well- settled that on second appeal, the court will not readily disturb concurrent findings of facts by the trial court and first appellate court unless it can be shown that they are perverse, demonstrably wrong or clearly unreasonable or are a result of complete misapprehension of the substance, nature on non-direction on the evidence, a violation of some principle of law or procedure or have occasioned a miscarriage of justice” Therefore, in determining this appeal, I shall be guided by the above principle. This court has carefully considered the conceding arguments of both parties and get satisfied that there was a gross mishandling of this case by the trial court as the decision and orders granted was contradictory. In the circumstances, this court is of the considered view that the trial court did not properly direct its mind to abide with the procedures required when giving the decision and orders as its gives two different decision and orders in the same case and make the same contradictory and difficult to know which one parties required to execute, that mistake also was done by the 1st appellate court as it was required to see that mistake and give some directives to the trial court but the same proceed in hearing 4 and determine this appeal on merit while the same was contradictory. The said procedural irregularities are fatal which vitiates the proceedings of both courts. Subsequently, since this irregularity committed by the trial court goes to the root of the whole case, and its consequences nullify the whole proceedings of both courts. In the results, this court is hereby nullifying the entire proceedings and quash the decision and orders of the both courts. And order that If parties are still interested are at liberty to institute a fresh matter in competent court with competent jurisdiction. In the effect this appeal is here by partly allowed to the extent explained above. In regard of the circumstances of this case. No order to the costs. It is so ordered. DATED at SHINYANGA this 9th day of August, 2024. R. B. Massam. Judge 5

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