

TANZANIA / JUDGMENT

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- • AT/L3A (sd) HIGH 'COURT civii1 Av NUMBER 43 OP 1980 PT.OL1 HE. OISSION OP T-IE DISICT COURT OP IRfITGA CIVtLAPEAI NUIVthER 3 OF 1977 (ORZINAL KIIOLO PRMAIff COURT CIVIL CASE 1ThIE 4 OP 1977 \$
- -. • APPEUNT VEIUS \$ TNLEY UGULtJMU - ZPNdENT CId: sj 900/ au dàmagcc fQr crop destruction. J13ThlMBt1T KATII 'e Ardreas Ifldni the appellant/plaintif; filelan action in Kilolo rair dourt, against the respondent/defendant 3 claiming Shs4 900/ as) Qopensatbn for his rop allegedly destroyed by the lattei heads of cattle, Zie Prizaany Court unanimously gave verdict in favour of the appellant s -thereby provoking an appeal to the District Court by the respondent, who won, and hence this appeal According to tao appellant supported by other witnesses, the evening of 9th of December, 1976 witnessed the destruction of his crops N (rnaizø) by headcattle. While this open facts is not disputed by the N defene, -the crucial question, as to whose heads of cattle, were rsponsjbe for the destruction complained of, did pose a challenge, ie appellant told The trial Court, that, lie fos_ud the respondens cat -tie in his shasba, trampling, eating and or destroying his crops. He thaa, took then to the ten Cell leader, end impounded- tiC sasie Only to give ao same back to the respondent subsequently. In the face of this evidence, tic rospndent t s dsul:tcr then aged tiiirten, and who was supposedly in charge of The same headsof cattle, alleged The heads were only force±üllly then away by the respondent. Tee Primary Court Magistrate and The assesssoas, found. The appellant Qredib3,e and hence the judgement the Court gaye. On appeal The District Court rewersed, tee lower Courts dóaision mainly on the ground, th t, The api)ollant should have, first raised claims to attract witnesses and tact in The absence of coborative evidence, his claim had not been established; He)ace t.iis appeal,
- Having studied the case closely, I find myself as was -the alipellant mystifiOd by the District Court 1 s reaoning. For if in tie circumstances of tee case such corroborative witnesses were required whether by IW or force of practice -the appellant was bound to lea7o tee heads of cattle consuming, and destimying crops till witnesses came, and if none at all came ' • •
- - I,-

- •_ i,ç. - ----•_ -- - ..-2 oi the same r is tn;te seeus to think, tlqe appellant should have no redress It is not in the dircitristaince oi' this case -the requireiaent of the law nor practice iiat, toore uuct be oro than one Witleas, testi±jing to the same effort.,But puioyly and simply this was and is a case , which depended on the credibility of witneaaea an area btter by adjudged by the trial Court, which had thb 3dVOnTO . 0 oi aeeng nd assessing the wj-iesses trgdibil.ity In this caae -the laintiff base, was found credible and I think jts assssmént is unaaailahl. In the first plae, the bartjos - are on recoid with relat±ohship httheito untaintd, and I tannot gultivtte myself to imagine ho, from the bluethe appellant wOuld make such a.lagations against the ±'epondent Ru-tii.er, the trouble the 8ppellant took driving tao heads 1 attle that the respondent admitted were his s to the ten cell leader anthen impotuad.ng - them eoujd not be Without justitit±On Farther, the resonndnt while conceding such desruetion -the was ventured no croscxariination of the appellant on the same aspei And DW3 Enock Uguluao whO was supposed to have been in - - chaige of the cattle, cOuld not explain and I caannot think of reason why, the appeUant sfiould on of sheer v:izl forcefully take the heads of ca:htle - from her, only to take them to the ten cell leader. For reasons above, I am in full agreement with the trial court haai it ILS true, the appellant found the respondent 1 s heads. of cattle in the sha.r'ha 3troying the crops, and the respondent is italic, since fe Should 70 known that such a child - no. DVI3 did not have sumFicaena cegacty to control nb said heads of cattle. e question, tlmt even escaped the trial courta attention, was thO añount of compensation souat, maci hOW it was quantified We do not kiow how many aires if all y were destroyed, we Co not lmow The expected yid nor do we therefore knOW what would have The commercial wluue It was probably on the high side. In these oircLtnistancos while allowing the apeag I reduce the amount to 450/= with costs flelivered this 20th day of August, 198 E.W. Katiti 20/08/198 dITDGE Lwc/RDN COURT: Partieg absent - to be aexed with copies of Judgnenth I certi±r that the foregoing! is a true and Qorieawt copy of the original DISL2JCTISThAR I

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