

TANZANIA / JUDGMENT

Ilyenze Jihamba vs Raphael Njile and another 2024 TZHC 856 30 January 2024

COURT
TZHCDECIDED
30 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB - REGISTRY OF
SHINYANGA AT SHINYANGA CIVIL APPEAL NO. 1 OF 2022 ILYENZE

IJHAMBWA APPELLANT VERSUS RAPHAEL

NJILE 1st RESPONDENT ANTONY

NJILE 2nd RESPONDENT [Appeal from the decision of the District
Court of Kishapu at Kishapu.] CHon. M.P. Mrio PRM.1 dated the 2nd day of December, 2021 in
Civil Case No.1 of 2020

JUDGMENT

Z'd July, 2023 & 3/h January, 2024. S.M. KULITA, 1. The story behind this appeal in a nut shell is that, the appellant herein instituted a civil case at Kishapu District Court claiming for Specific Damages at the tune of Tshs. 775,000/= and General Damages at the tune of Tshs. 15,000,000/=. Both being the results of the respondents' act of damaging the appellant's crops, The case was heard and finally, the 1 trial Magistrate found that, the appellant failed to prove his case at the required standard. That decision aggrieved the appellant, hence appealed to this Court with 2 (two) grounds; one, that the trial court erred for disregarding the appellant's evidence and deny the appellant's witnesses to adduce their evidence and two, that the trial Magistrate erred for not recording correctly the proceedings of the case. On 2th May, 2023 the matter was scheduled for hearing. On that date, both parties appeared in person, unrepresented. For the reasons which will be apparently seen shortly, I will not endeavor into summarizing the parties' submissions. I have gone through the entire records concerning the parties glaring dispute over the alleged damaged crops. What I have noticed therein is that, there at Kishapu District Court the appellant had instituted a Civil Case No.2 of 2017 claiming for Specific Damages at the tune of Tshs. 775,000/= and General Damages at the tune of Tshs. 15,000,000/=. The said suit was instituted on 10th August, 2017. The record transpires that, the appellant won the case by being awarded Tshs. 500,000/=. The record further provides that, the respondent was aggrieved, hence appealed to the High Court, through 2 Civil Appeal No. 8 of 2018. Due to the irregularity that the witnesses' evidence were not appended signature of the trial Magistrate after being I recorded, the entire case collapsed as the presiding Judge, nullified I proceedings and its resultant judgment and proceeded to order retrial of I the matter. That th was 9 day of Octlber, 2019. That led the

appellant to refile a fresh suit, Civil Case No.1 of ~020 at Kishapu District Court, which I is now subject to this appeal. That scenario led my mind into the following findings; First, it was not proper for the appellant to instiute a fresh suit, Civil Case No.1 of 2020 while the order by the High colrt Judge, required the Civil Case No. 2 of 2017 to go for retrial. SecondlJ even if we take it that the appellant was right to file a fresh case, this fresh case was bound to be instituted within the ambit of the law of limi1ons. As long as the appellant sued the respondents for damaging his crops, he thus needed compensation thereof, Item 1 of Part I of tte 1" Schedule to the Law of Limitation Act bound him to have filed his case within one-year period from the date of arising of the cause if action. As the appellant claims the damaging of crops happened in oCIOber, 2015, then, by instituting the fresh case, Civil Case No.1 of 2020, in the year 2020, it is time bared for I 3 I being instituted out of the prescribed time limit of one year. On that account, all what had been conduoted in the Civil Case No. 1 of 2020 at Kishapu District Court is a nullity. I Additionally, the appellant's claims in both cases at the District Court, that is, Civil Cases No. 2 olf 2017 and No. 1 of 2020, were for Specific Damages to the tune of TJhS. 775,000/= and General Damages to the tune of Tshs. 15,000,000/=. The law goes that, Specific Damages, is what determines pecuniary jurisdiction of the court. See TANZANIA- CHINA FRIENDSHIP TEXTILE CO. LTD. V. OUR LADY OF USAMBARA SISTERS [2006] TLR 70, see also REV. CHRISTOPHER MTIKILA V. YUSUPH MEHBOOB MANJI &. 9 OTHERS, Civil Case I No. 86 of 2006, HCT at DSM, and the case of JOHN MOME MORRO V. GRATIAN MBELWA & 3 OTJERS, Civil Case No. 80 of 2011, CAT. As the amount that the Appellant claims as Special Damages is Tshs. 775,000/= which falls within the ambit of the Primary Court, the District Court had no pecuniary jurisdiction to determine the matter. On that account, I firmly find it that, the trial court conducted the Civil Case No.1 of 2020 without jurisdiction. 4 For the said findings, I hereby proceed to nullify the whole I proceedings for the Civil Case No.1 of 2020, Kishapu District Court. I also nullify its resultant judgment and ordrrs thereof. In upshot, the appeal is dislissed. Appellant to bear the costs. R s.M.I' KULITA l~DGE 30/01/2024 I DATED at SHINYANGA this 30th day of January, 2024. ..~~ ,J~ 1.,~~(oU'RTo~~ (Ii ~ ~U1. ~1 '1 z· S.M.I KULITA IUDGE 30/81/2024 ttL \~~, ',, " ,~f'--__ //~•'// ,1 I ',./ -". '* .---~. 5

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CASE PAGE <https://chat.esheria.ai/case-law/tanzania/iliyenze-lihamba-limitationofactions-tzhc-2024>

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