

TANZANIA / JUDGMENT

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TZHCDECIDED
1 January 1971

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L'/ IN THE JIG-il CO1jRT OF TANZANIA C .- AT I:F/AIZA (PC) CIVIL APPEAL ITO. 15 OF 1975
(From the decision of the' District Court of Tarine at Tarine in Civil Appeal No. 166 of 1972 before
T.B. Mutakyawa, Esq., D.M. and oroginal Kinosi Primary Court Civil case No. 5/71)
MA1TYEREREMI3AI.....00*.....1PPELLANT versus JUD&I/llN1 KATITI, AG.J.: This is the 2hd
appeal in attachment objection proceedings. The judgment creditor had successfully filed a suit
in Kinesi Primary Court vide Civil Case No. 5/1971 claiming a refund of dowry 28 heads of cattle.
Consequent upon the decree and the judgment debtor's failure t satisfy the decree execution
process was put in notion under the provisions of rul - 63 and E4 of the Magistrates' Courts (Civil
Procedure in Primary Courts) rule 1964. Consequently 17 heads of cattle were attached from the
heads of cattle that were in the possession of the attachnent objector - the appellant in these
proceedings. The appellant raiced the objection, in the court of first instance, but unfortunately
hs objection could not be uphold, hence his appeal to the. District Court where the wheels of
fortune did not bother to help him. His contents on that the heads of cattle attached were his
property, the claim that was unanimously rejected by the Primary Court., could not be
countenanced by District Court in the face of the evidence. He was unsuccessful and hence his
appeal to this Court. I must say, at the outset that, this appeal must fail for the wheels of justice
lubricated by the congent and uncontrövertible evidence is turning in favour of the respondent,
so much so,that the court would have no cause tc find difficulty in concluding , 04 that the
property i.e. cattle seized belonged to the judgment debtor, whose property was being sought.
According to the record it is the appellant who admitted before the officials that were on
attachment mission, that he had 17 heads of cattle belonging to the judgment debtor. The
attachment warrant, was for attachment of 25 heads of cattle and as the appellant had about 35
heads of cattle in all, in his possession it would have been difficult for the officials to pick out 17
heads on thei,r own. They would have perhaps taken 28 heads as directed by the warrant. The
record further shows that, not only wore 17 heads of cattle said to belong to the judgment debtor,
but also the sane were selected out of the lot by the appellant as the property of the judgment
debtor. I an unpersuaded to think that the appellant, a.free agent as he was, would do and
accomplish all this, if the heads of cattlo in question were his property. In the face of this
evidence, the unanimity of the magistrate and the assessors and subsequent dismissal of the
appeal by the District Court was a natural consequence. The heads of cattle seized under
attachment were rightly seized as they belonged to the judgment debtor. The appeal must
therefore fail. It is dismissed with costs. ' ITI AG-. JUDG-E

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