

TANZANIA / JUDGMENT

19730108 TZHC Mwanza

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TZHCDECIDED
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I VN ' -) . IN THN HIGH COURT Oi TNNL -\ - AT N 7' (pc) kJIVIL PPL NO. 134 OF 197 1 (From the decision of the District Court of North Mara at Tarime in Civil Appeal No, 123 of 1970 before S.N. Kaji, hs q ,, I.N. & Nyamwaga Primary Court Civil Case No, 81 of 1970). IIIIOBA s/o HWiRE ,,,,,,*,,,,, ,,,,,,..... APPELLANT versus h' LISS/ OidINChA ,,,,,,*, ,,,,,,.....RESPOiDENT. .TTT1iTTi hL-KINDY, J. - The appellant, Rioba s/o Muhere, took his appeal against the judgement of the District Court 'of North Mare. The appellant was married to the sister of the responuent, and the trial court ordered that 26 heads of cattle be refunded, by the respondent, to the appellant, and costs amounting to She. 110/=.

During the subsiatance of the marriage, the respondent utilised the bride wealth to pay for the marriage of his brother Chacha, As a result, when the court ordered the return of the bride wealth, the respondent had no cattle to give 'back - whether the same or others, but, some how, on different days, eleven heads of cattle were given back to the appellant and a balance of 15 remained. The respondent became aware that the respondent had paid the original cattle for the marriage of his brother, and he proceeded to move the court to get them for him, Chacha was married to the daughter of Mwita Ngoga. The cattle, in the custody of Mwita Ngoga, were attached. These were 9 heads of cattle. As expected, Mita Ngoga comriienced objection proceedings contandin, that they were his property. In his defence, in the objection proceedings, the appellant said that he was merely following his cattle. after the court had held.that he was entitled to his bride vrealth. And in his defence in the objection proceedings, the respondent said that the 9 heads of cattle had ceased to be his property as he had given them to Chacha to pay his bride wealth. The assessors advised that the 9 heads of cattle be given to the appellant, and, although the trial magistrate was aware that the District Court, in Civil App. No. 123/70 of 1st October, 1970, rulei that it was quite proper for the respondent to gift the cattle to Chacha, held that the 9 heads of cattle be given to the appellant. The respondent, who was a party to the proceedings, took his appeal against the decision of the trial court in respect of the objection proceedings. He submitted that the appellant had been using unfair pressure to secure satisfaction of his dooreo and that he was not entitled to use methods which broke the marriage of his brother shacha to the daughter of Mwita Ngoga in an efortl to get back the aalanoe of his cattle. As it can be seen, the appellant was a decree holder. He was entitled to get bok 26 heaas of cattle from the appellant. He had aireahy got back II heads of cattle. There was a balance of 15 heads of cattle to get back. uoh being the case, was the appellant entitled to use all methods available to enable him to get the balance of his battlev he is entitled' to his rights, as specified, in

the decree, but, in the process of getting his rights satisfied, he is not entitled to violate other people's rights. His rights are not absolute. I agree with the views of the learned appellate magistrate that the appellant was not entitled to the 9 heads of cattle in possession of Mita Ngoga. The said heads of cattle became property of Mita Ngoga because of the marriage of his daughter to Chacha. The appellant had transferred ownership to the respondent when he paid the 26 heads of cattle to the father of the respondent. At the time of the marriage, the respondent had no other property, and therefore, transfer ownership to anybody he liked such as by gift to his brother Chacha. Once he has done so, he retains no more ownership rights over them. And as Chacha had paid them to Mita Ngoga, by custom, they became a property of Mita Ngoga. Therefore, the appellant, having surrendered his rights, cannot possibly claim them or keep on following them to whoever came into possession of them lawfully. He could not, therefore, claim them from the hands of Mita Ngoga, just because he could identify them as being part of the cattle he paid as bride wealth to the respondent. However, if, in event of breakdown of marriage, it is the appellant to have his bride wealth returned, cannot sue for it. In this case, the respondent had no legal duty to return the same heads of cattle to the appellant as he had received: the law. He would only be required to return similar heads of cattle. In the other case, a trial court seemed to think, would be impracticable, not only because such cattle could die but because ownership in such cattle changes according to the needs of the holders. In this case the owner of the 9 heads of cattle was no longer the respondent but Mita Ngoga with whom, to borrow a phrase from the English Law of Contract, he had no privity of contract. Although the trial court realised that Mita Ngoga came to own them lawfully, and that by confirming the attachment, the marriage of the daughter of Ngoga to Chacha was being broken, it, nevertheless, thought it reasonable to order the appellant take the 9 heads of cattle since he had been able to trace them, although it knew that the respondent was no longer the owner. If there is a custom which stipulates such manner of tracing cattle, as was the case in this case, although there is no such evidence of such custom, I do not hesitate to hold that the practice could be a public policy at least for two reasons. It ignores other people's rights and it breaks down marriages. It is in accordance with public policy that other people's rights should not be violated without lawful cause and that marriages should not be broken up in an effort to enforce obligations. In my view I therefore, the appellate court was right in setting aside the ruling of the trial court. Mita Ngoga is the owner of the 9 heads of cattle. He should keep them. The appellant should wait until his ex-wife is married

- or, until the respondent comes to own other heads of cattle before he could get the balance of the 15 heads of cattle. It appears that there is a practice, existing among curia's whereby ex-husbands visit until ex-wives are married before they can get back their bride wealth if the custodian of the bride wealth did not have bride wealth to be returned soon after
- the dissolution of the marriage. I do not see why the appellant should not be patient. He has already recovered a large part of it. In my view, the respondent was entitled to complain of the unfair pressure used on him when he was told that all he can do to satisfy the decree against him. I have perused the grounds of appeal. I see no reason to interfere with the decision of the District Court. As a result, this appeal is dismissed. As no party appeared, I make no

order as to costs. Parties should be notified of the results of this appeal. Delivered at Mwanza on the 8th day of January, 1973, Mwanza (ks. N. aL-kLLWY) 8th January, 1973, JU.Dc.

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