

TANZANIA / JUDGMENT

19760721 TZHC Mwanza

COURT
TZHCDECIDED
21 July 1976

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' AT MVIANZA /1 c (PC) CIVIL iPFAL 10. 230 OF 1975 71 prom the decision of the district court of Musoma at Musoma n Civil Appeal No. 135 of 1973, bof ore J. Mboneko, Esq., D.M.) Original Civil Case No. 33 of 1972. YLJSUPABDI.....APPELLANT Versus IYASHTy KICETJCHE RESPONDENT OoO

JUDGMENT

MFALII., J.: I think that this appeal has absolutely no merit. In the Primary Court of Musoma district at Isenye, the appellant sued the respondent to recover 14 heads of cattle allegedly wrongfully seized, from his herd sometime in 1960. He added that the heads of cattle were seized apparetly to satisfy a debt in which he was not in any way involved. This was by any standard a very strange claim, for it just cannot be easily understood how the appellant could have remained silent f or 12 years even if it be accepted as he contended that he was ill. In any event the enia was solved by the respondent's explanation. He said that during the year of 1957 the appellant was caught having stolen his box containing some money. He was charged and convicted, and sentenced to 2 years imprisonment. At the same time the respondent filed civil proceedings against the appellant to recover the value of bis unrecovered property worth Shs. 7,600/=. This was Musoma Resident Magistrate's Court Civil Case No. 2/57, and in which he had judent entered in his favour. It was in execution of this decree that the appellant's ca were attached. In the circumstancea he said that he be liable for this attachment because it was ãone under a cotirt order • In a judgment which the learned appellate district Magistrate called "surprising", the primary court virtually challenged the correctness of the decision of the Resident Magistrate in Civil Case No. 2/57. They therefore found that the respondent was liable for the wrongful seizure of the appellant's cattle, and awarded judgment as prayed. On appeal to the District Court this perverse judgment was set aside. The district Magistrate held that as the cattle were attached under a lawful court order, the respondent cannot be held liable,. Prom this decision the appellant appealed. I went only to say that I agree with the district Magistrate that the appellant has no lawful claim against the respondent. In Civil Case No. 2/57 he was made to restore albeit in kind what he had stolen from the respondent. I cannot see the basis of his complaints if the cattle were seized to satisfy this debt. In any event he should have challenged the seizure at the time but certainly not. 12 years later whatever the-excuses. The district Magistrate was right in thinking that the appellant decided to start these proceedings so many years afterwards in the hope that all the relevant records and even witnesses in Civil Case No. 2/57 could be untraceable. He has

been proved wrong, for not only is the record available, but the excuting messenger is very much alive and testified. In conclusion I should have thought that at such an advanced age, the appellant has abandoned the habit to pilfer. With these remarks the appeal is dismissed. r. MWANZ A, I • AL LA, 21st July, 1976: JUDGE.

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