

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

HC. CIVIL APPEAL NO. 01 OF 2007
(*Arising from Bunda District Court Civil Case No. 13/2005*)

MUGETA TOROKOKO APPELLANT

Versus

1. MURUGA GACHUMA

2. S&C. GINNING CO. LTD } RESPONDENT

22.04.2009 – 27.04.2009

JUDGMENT

G. K. RWAKIBARILA, J

Appellant **Mugeta Torokoko** was a plaintiff in both Bunda District Court Civil Case No. 13 of 2005 and Bunda District Court Civil Case No. 16 of 2004.

In the civil case with No. 13 of 2005, defendant was S&C Ginning Co. But in the civil case with No.16 of 2004, Defendant No.1 was Muruga Gachuma and Defendant No.2 was S & C Ginning Co. Ltd.

The claims by plaintiff in both suits were different because in the civil case No.13 of 2005, his main claim was Shs 10,545,000/= commission which accrued in his favour in five

years, i.e 1997, 1998, 1999, 2000 and 2003 when he purchased cotton on behalf of defendant at various stations in Maswa, Magu and Meatu Districts. But in the civil case with No. 16 of 2004, he was claiming Tshs 30,000/= for defamation from both Defendant No.1 and Defendant No.2.

This appeal with No.1 of 2007 was lodged from the decision given in a file with No.13 of 2005 of a civil case at Bunda where plaintiff's claim was for Shs 10,545,000/= commission. In that suit both defendants who are now respondents were represented by Mr. Makowe, learned advocate who represented them even in this appeal.

During hearing in that civil case No.13 of 2005, plaintiff Mugeta Torokoko and his witnesses Pw² Daniel Mkamwa, Pw³ Ester Torokoko and Pw⁴ Mary Mugeta d/o Torokoko gave evidence to show that plaintiff was defamed. In fact evidence about defamation was strictly proper only in the civil case No.16 of 2004 and not this appeal with No.1 of 2007 which was lodged from civil case No.13 of 2005, which concerned a claim for the commission of Shs 10,545,000/=.

The trial Senior District Magistrate (Hon. Maganga, SDM) dismissed with costs the civil suit with No.13 of 2005 of Bunda district court after observing, **inter alia**, that:

"The plaintiff should therefore have (sic) given his evidence concerning the running of a

consideration of a commission he realized in all those 5 years period which he now claims from the defendant as per his plaint filed in court, rather than testifying differently with the claim (sic)."

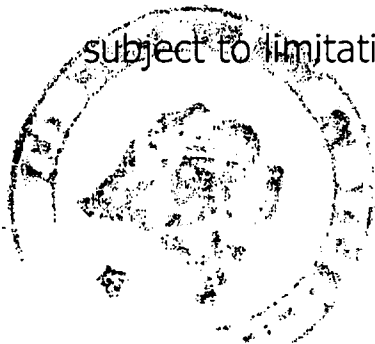
In his memorandum of appeal appellant raised six grounds whose core is reflected in his first and second grounds. The first ground is that the trial senior district magistrate erred in law and fact by consolidating the civil case No. 16 of 2004 and No.13 of 2005 without his (appellant's) consent. And his second ground is that the trial district magistrate having consolidated the two cases wrongly proceeded to hear them and raised issues which did not include the reliefs sought in each case.

But learned counsel for respondent Mr. Makowe in his submission during this appeal prayed on this court to dismiss the appeal after stating that appellant was the one who distasted the sequence of his civil case No.13 of 2005, when he called witnesses there to testify on defamation.

What Mr. Makowe and appellant submitted in this appeal have been taken into account. This court has in addition taken into account the conduct of the senior district magistrate who was presiding over in civil case No. 13 of 2005.

· Appellant wrongly called Pw² Daniel Mkamwa, Pw³ Ester Torokoko and Pw⁴ Marry d/o Mugeta Torokoko to testify about defamation, instead of the Shs 10,545,000/= commission. Both Mr. Makowe and the trial senior district magistrate are officers of the court who are expected to draw to attention of parties where any of them testify in court matters which are not in the ambit of matters which are contested. Therefore Mr. Makowe and the trial senior district magistrate were not acting properly when they maintained passiveness, during the stage when appellant throughout hearing of civil case No. 13 of 2005 called a total of four witnesses, including himself, to testify about defamation, instead of his Shs 10,545,000/= commission.

Therefore proceedings in the said civil case No. 13 of 2005 where this appeal originated from are quashed. And due to the unusual nature of the origin of this appeal, parties shall shoulder their respective costs. But appellant is not barred to institute a fresh suit for the claim of Tshs. 10,545,000/= commission, subject to limitation.



G. K. Rwakibarila

G. K. Rwakibarila
JUDGE
26.04.2010

Date: 27/04/2010

Coram: Hon. G. K. Rwakibarila, J

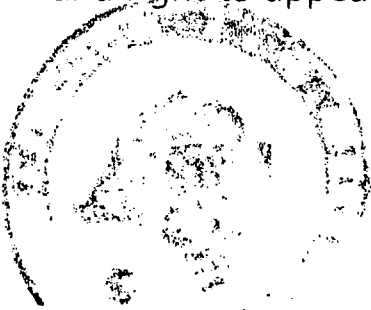
Appellant: Present in person

Respondent: Mr. Makowe, Adv for respondent.

B/C: Ihuya

Court:

Judgment delivered at Mwanza this 27th day of April, 2010
and right to appeal in time has been thoroughly explained.



AT MWANZA
27.04.2010

A handwritten signature in black ink, appearing to read 'G. K. Rwakibarila'.

G. K. Rwakibarila
JUDGE