IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC. CIVIL APPEAL NO. 72 OF 2017

(Arising from Geita District Court Civil Appeal No. 18 of 2017, originating from Katoro Primary Court Civil Case No. 06 of 2016)

NYERERE WILLIAM ..... APPELLANT

VERSUS

1. SHIGONGO BUNUMA
2. SPRIAN PROTAS
3. FRANSISCO SYLIVESTER } **..... RESPONDENTS**

JUDGMENT

20/09/2018 & 21/01/2019

RUMANYIKA, J.:

The very simple, and, for reasons hereinafter shown straight forward appeal is against judgment and decree of 16/08/2017 of the District Court – Geita (K.M. Mrisho, PDM). Having reversed decision of Katoro Primary Court (the trial court) by so reducing a Shs. 1,226,793.60 compensation for crops damaged in shamba by goats of the respondents.

The single ground of appeal may be rephrased and read as follows:

> **That the learned PDM erred in law and fact without justification reducing the amount ordered as compensation.**

The appellants and respondents appeared in person. None of them made submissions. They in fact had nothing to add to the respective petition of appeal and reply thereto respectively.

According to evidence briefly on record, having been convinced, it appears on balance of probabilities that indeed the respondents' goats had, on the 12/09/2016 on appellant's shamba destroyed sugar cane, maize, banana and pawpaw plants/seedlings, damage was on 19/09/2016 assessed at Shs. 1,226,793/60. But again another Extension Officer (DW4) one Daniel Kibanda assessed it at Shs. 46,203.5 on 12/09/2017.

The 1st appeal court doubted the double assessment and in fact sort of found himself at loss. The appeal magistrate further faulted the trial magistrate having not visited the locus in quo with a view of assessing the damage. As said, even without visiting the scene, or doing something, from the shs. 1,226,793/60 the magistrate just cut it down to Shs. 300,000/= only.

Now the issue is whether by so cutting down the assessed damages, the trial court was justified. The answer is in the negative! Reasons are two:-

One; the two assessments made on different occasions by different ,but qualified extension officers were, for no apparent reasons greatly at variance.

Two; I wonder how easily and possible could, report No. 2 be made say a year later (i.e. 19/09/2016 – 12/09/2017). Much as, especially for the maize, the crop may have had ripped and harvested.

Three; it is not clear how could, without basis the appeal magistrate assess and arrive at Shs. 300,000/=. What a guess work? I just cannot know!

Four; how could the qualified 2 extension officers see into it but differently?

The said two assessment reports do confuse yes! But the appeal magistrate's assessment was even strange and increasingly confuses. He just for the sake imposed the figure !

Equity demanded that now that the record shows no cogent reasons/basis why was report No. 1 vacated, and why did the qualified extension officers arrive at material different assessment reports, the appeal magistrate should have, by formulae (Assessment No. 1 + Assessment No. 2 divide by 2). Meaning: (sh.763,396.08 being compensation for the damage caused. Appeal allowed with costs. Ordered accordingly.

Right of appeal explained.

S.M. RUMANYIKA
JUDGE
12/01/2019

Delivered under my hand and seal of the court in chambers this 21st day of January, 2019 in the presence of appellant and respondent in person.

THE HIGH COURT OF TANZANIA
MWANZA

M.A. Moyo
DEPUTY REGISTRAR
21/01/2019