

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT COURT OF UKERewe
AT NANSIO**

CIVIL APPEAL NO. 14/2020

(Arising from Ilangala primary court Civil Case No. 04/2020

HOSEA OBEDIAPPELLANT

VERSUS

KIKUNDI CHA NZENGO HALWEGORESPONDENT

JUDGMENT

2nd & 30th June, 2021

RUMANYIKA, J

According to records with respect to decision dated 05/06/2020 of Ilangala Primary Court the 2nd decree dated 23/12/2020 of Ukerewe District Court with regard to claims of shs. 1,659,000/= in the beginning against (Kikundi Cha Nzengo Halwego (the respondent) Hosea Obedi (the appellant) having had won the war and battle. Messrs Leticia S. Lugakingira and N. Charles learned counsel appeared for the appellant and respondent by way of audio teleconferencing I heard them on 2/6/2021 though mobile numbers 0766022673 and 0625747645 respectively.

Essentially the 6 grounds of appeal revolve around 3 points:- (i) that contrary to Rule 10(C) of the group constitution with respect to reporting and the 5 days limitation period, the 1st appeal court improperly evaluated it more so Sm2's evidence (ii) that the amount of sh. 1,659,000/= it was not actually special damages it therefore needed not be pleaded and proved as such. Rather it was mere consoling service and contributions.

In a nut shell, Ms. L.S. Lugakingira learned counsel submitted; (ii) that contrary to the 1st appeal court's view, provisions of the Law of Evidence Act Cap. 6 RE. 2019 were not applicable in primary courts but only the Magistrates Courts Rules/Regulations of Evidence. We humbly submit and pray that the appeal be allowed with costs. The learned counsel further contended.

Equally briefly, Mr. Charles learned counsel submitted; (a) that with regard to the death being accordingly reported to group leaders there was no direct evidence and, if any, it wasn't on balance of probabilities proved much as it was reported beyond five (5) days prescribed under the binding Rule 10(c) of the Constitution (b) that the appellant did not establish or prove the distance between Ngara (Kagera) and Ukerewe (Mwanza)

Regions or even mention transport problems that he may have encountered thereby causing the delay. That is all.

A brief account of the evidence reads thus:-

SM Hosea Obedi stated that he joined the communal Munkunguru group in 2011 but when he lost the 14 years old daughter, respondents refused him service or consoling contributions only on the ground that the deceased was adult then this time around but on 22/2/2020 he lost one Obedi Seshahau his father away at Ngara and buried him on 24/02/2020 but on arrival at Ukerewe, and having had accordingly notified the group chair on 29/02/2020 and urged them, but contrary to Rule 10(c) of the Constitution on 3/3/2020 that is beyond 5 days they considered it time barred therefore refused him service and contributions irrespective of apology for the delay or he had to travel all the way to and from Ngara mourning. That he complained to the local Halwego village government chair on 30/03/2020 but it appears due to Covid –19 pandemic the group chair and secretary could not have done it. They only promised to sit down and deliberate on it then, just at a later stage to give him service/contributions. That still with the view to settling the matter he also registered his complaints to the local Ward Executive Officer before who, in

full and final settlement the respondents promised to pay him the lesser sum of shs. 450,000/= on or by 8/5/2020 but in vain hence the case.

Sm2 Rosemary Hosea, wife of the appellant she testified as material as Sm1 did as she was the one who, on behalf of the appellant for that matter accordingly reported the death and burials of the father in law to the group chair, but upon burial ceremonies and rites away at Ngara the husband having had arrived on 2/3/2020 contrary to the group constitution on the time-bar basis they refused him service and contributions. That is all.

Su1 Kuboja Mugus stated that having had death of the appellant's father been reported to them on 3/3/2020 early in the morning, deceased father having been reported buried on 24/2/2020, it was contrary to Rule 10 (c) of the constitution 3 days far beyond the limitation period therefore the appellant was no longer qualified, for that reason the latter was refused service/ contributions.

Su2 James Misango and Su3 one Revocatus Busanya stated as materially evident as Sm1 did. That is it.

Unlike the 1st appeal court, which, in terms of timing and reporting it strictly construed provisions of Rules 10(c) of the group constitution as binding the parties, precisely so in my considered opinion the trial court magistrate held that the constitution abrogated common burial and mourning traditions and taboos such that it was practically impossible within the first five days the applicant to have buried, mourned and travelled and arrived from Ngara simply rushing for the consoling contributions from the group members more so when, like it happened in this case the appellant had just lost his bellowed father and it was an undeniable fact that still a group member the appellant had lost the father but upon burying him and reported it, he was available and ready to receive the consoling and contributions but say three (3) days far beyond the prescribed five (5) days.

In all fairness I would subscribe to the learned trial resident magistrate's reasoning and will increasingly hold that it is common knowledge that in some Tanzania communities, and the parties may not be exceptional, some mourned for a week, forty days or even 12 months. At some point it may sound unusual, untraditional and possibly inhuman for a community member, more so the survivor son who, just for the sake of

contributions short circuited funeral ceremonies and rites rushing the long established and accepted traditional arrangements. Again like the learned trial resident magistrate held, it is very unfortunate that the group members did not take all this on board. I think if provisions of Rules 10(c) of the group Constitution were that strictly interpreted it would have defeated purposes both of the group and the constitution itself much as very unfortunately the Constitution it did not room for one to apply for extension of time that one happening, it was dictates of justice in my considered view that the omission in the Constitution it should have been used only as a shield and not as a sword.

In the upshot, the meritorious appeal is allowed with costs. Decision and order of the trial court are upheld and the District court's decision and orders are quashed and set aside respectively. For avoidance of doubts therefore, the respondent pay the appellant sh. 1,659,000/= (one million six hundred thousand fifty-nine) only. It is so ordered.

Right of appeal explained.



S. M. RUMANYIKA

JUDGE

03/06/2021

The judgment is delivered under my hand and seal of the court in
chambers this 30/06/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

30/06/2021