

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**PC. CIVIL APPEAL NO. 36 OF 2021**

(Arising from judgment and decree of the District Court of Magu in Civil Appeal No. 2/2021 before E.J. Kimaro – RM, Original Civil Case No. 32/2020 in the Primary Court of Kisesa at Magu)

**AGNESS MALIKITA .....APPELLANT**

versus

**JEGO MUSA .....RESPONDENT**

**JUDGMENT**

23<sup>rd</sup> & 30<sup>th</sup> August, 2021

**RUMANYIKA, J.:**

The 2<sup>nd</sup> appeal arises from judgment and decree of Magu district court dated 04/06/2021 whereby, with claims of shs. 2,135,000/= the latter upheld a decision of Kisesa primary court (the trial court) dated 12/02/2021.

The five (5) grounds of appeal revolved around, and could be reduced to four (4) points essentially; **(a)** that the 1<sup>st</sup> appeal court failed to hold that the appellant's case was proved on balance of probabilities **(b)** that the two courts below improperly analyzed/evaluated the evidence on record **(c)** that it violated legal requirement and it wasn't worth the name

a judgment (**d**) that the trial court decided the case basing on extraneous issues.

When, by way of audio teleconference the appeal was called on 23/08/2021 for hearing, Ms. L. Lugakingira learned counsel appeared for Agness Malikita (the appellant) whereas Jego Musa (the respondent) appeared in person. I heard them through mobile numbers 0766 022 673 and 0752 828 848 respectively.

Ms. Lugakingira learned counsel submitted; **One**, that it was not disputed that for the purposes of repairing it, the respondent had been entrusted the motor vehicle by the appellant much as had it been that much defective that day the appellant could not have driven the motor vehicle to school her work place that indeed pursuant to Section 1 (2) of the Magistrates' Courts Act (Rules of Evidence in primary courts) Regulations GN Nos.22/1964 and 66/1972 the appellant was done. Her case therefore was proved on balance of probabilities. **Two**; that the impugned judgment lacked a concise statement of the case, and issues for determination therefore it was a nullity (see the case of **Tanga Cement Co. Ltd v. Christopher & Sons Company Ltd** (2005) TLR 190. **Three**, that the impugned judgment did not reflect assessors' opinion yes, but on

several demands the respondent just insulted and refused to release the motor vehicle until such time the police had intervened but too late because it had been vandalized, the wind screen damaged, four nozzles, pump, battery, 4 plugs, control box etc were missing hence the claims of shs. 1,135,000/=.

Sm2 Sadiki Mushi a mechanic of Igoma, Ilemela district he stated that with regard to the motor vehicle he was mechanic that the appellant having reported the case but was not readily available, the respondent took up the matter but unsuccessfully hence the case.

Sm3 George Nyoni a peasant of Kisesa, Magu stated that the appellant having had gone to work by the vehicle, but just as she was on the way back home the engine ceased, then she had it dragged to the respondent's garage, the respondent did not fix the defects until such time desperately though the appellant dragged it back home but with a number of parts missing.

Su1 Jego Musa (the respondent) stated that as on 7/6/2020 the appellant had reported the mechanically defective motor vehicle and he dragged it to garage with defective nozzles. She paid shs. 100,000/= only

but the defects persisted. That on further examination, through a computer system he established both poor engine compression, wiring and fuel systems also defective but the appellant had no cash therefore end of the day, but against his will, with aid of policemen the appellant dragged the motor vehicle back home but from his pocket the respondent having had injected money but he wasn't sure how he would the money that except the battery which he would soonest produce in court, generally the motor vehicle was intact.

Su2 Adamu Bakari stated that on 7/6/2020, at the appellant's request for the reason of mechanical defects him and the respondent dragged the motor vehicle from Isangijo school to garage and they fixed the defective nozzles but still the motor vehicle was not ok irrespective of the respondent's request for the money, appellant just abandoned the motor vehicle. That is all.

The issue is whether the appellant's case was on the balance of probabilities proved. It appears that now convinced, in his decision the leaned resident magistrate found nothing to fault the trial court much as it was no longer deniable fact that the motor vehicle's wind screen and battery were damaged /missing much as, as opposed to the appellant only

**Three;** for some reasons the appellant may have had failed or refused to foot the bill of shs. 700,000/= or any other but a lesser amount yes, but if any, the respondent may have had some counter claims, granted but he should not have refused to release the motor vehicle until such time the police had intervened irrespective of the appellant's several and repeated demands that one, in my considered opinion it was inconsistent with any reasonable and innocent mechanic. Ground **(b)** of the appeal is allowed.

**Four;** somebody else may have had, therein between vandalized the motor vehicle yes, but until such time the parties had parted a company and the appellant dragged the motor vehicle back home only the respondent was duty bound. Like the learned counsel for appellant argued, the issue of the motor vehicle having had changed hands of a number of mechanics other than the respondent it was, with greatest respect extraneous, illegal and improper in my view. Ground **(d)** of the appeal is allowed suffice the point to dispose of the appeal.

In the final analysis the appeal is entirely allowed with costs here and at the two courts below for avoidance of doubts therefore, the judgment,

the decree and orders of the 1<sup>st</sup> appeal court are quashed and aside respectively. It is so ordered.

Right of appeal explained.

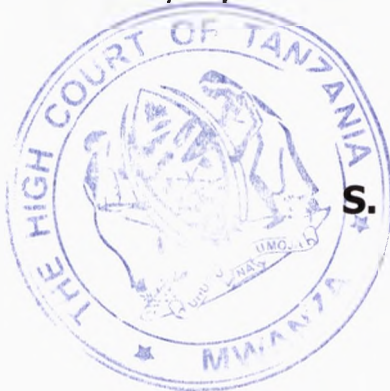


**S. M. RUMANYIKA**

**JUDGE**

**25/08/2021**

The judgment is delivered under my hand and seal of the court in chambers this 30/08/2021 in the absence of the parties.



**S. M. RUMANYIKA**

**JUDGE**

**30/08/2021**