

IN THE HIGH COURT OF TANZANIA
AT TANGA

PC CIVIL APPEAL NO.3 OF 2010

*[Originating from District Court of Lushoto Civil Appeal
No.4/2009 Primary Court Mlalo Civil Case No. 3 of 2009]*

AHAMADI A. SHEMKAI.....APPELLANT

VERSUS

MKAI HASSANI MANG'ENYA.....RESPONDENT

Date of last order: 16/9/2011

Date of Judgment: 04/11/2011

JUDGMENT

Teemba, J;

The respondent Mkai Hassan Mang'anya, filed a claim of Tshs.4,035,000/= at Mlalo Primary Court in Lushoto District against the appellant for false imprisonment and other incidental costs. The trial court received evidence and determined the matter in favour of the respondent. The trial court ordered the appellant to pay the respondent Tshs.3,000,000/= as damages. Dissatisfied, the appellant appealed to the District Court at Lushoto. The District Court upheld the decision of the Primary Court. Still dissatisfied, the appellant decided to lodge this second appeal under the following grounds:

1. That the Resident Magistrate grossly erred in law and fact in admitting and deciding the appeal in favour of the Respondent.
2. That the Resident Magistrate grossly erred in law for awarding Tshs.2,000,000/= to the respondent for false imprisonment without considering that the Primary Court had no jurisdiction to entertain the suit.

3. That the Resident Magistrate erred in law for granting costs determined by the Primary Court of Mlalo without observing that it has no jurisdiction to entertain it.
4. That the Resident Magistrate grossly erred in law for observing that there was no record to support the appeal as the record files have been called at Tanga where there were other appeals.

Briefly, these are material facts which gave rise to this appeal. The appellant vide Criminal Case No.104 of 2007 complained at Mlalo Primary Court that the Respondent maliciously destroyed his cassava and banana plants. The respondent was kept in the lock up at Mlalo Primary Court. The court received evidence and found the respondent not guilty and set him free. The appellant was dissatisfied and appealed to Lushoto District Court vide Criminal Appeal No.11 of 2007. In determining the appeal the District Court upheld the decision of the trial court. Following such decisions, the respondent filed a suit against the appellant for false imprisonment at Mlalo Primary Court. The court granted him a relief of Tshs.3,000,000/= of which the appellant is challenging in this second appeal.

At the hearing of this appeal both parties appeared in person – unrepresented.


The appellant adopted his grounds of appeal and urged this court to consider the evidence on record and determine the appeal in his favour.

In reply, the respondent strongly opposed this appeal and urged the court to consider his reply to the memorandum of appeal and determine this appeal fairly.

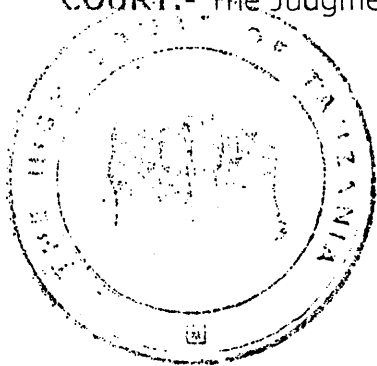
I have carefully read and considered the evidence on record. This being a second appeal, I will consider and determine the second and third grounds of appeal which are on points of law. Other grounds of appeal are based on facts. In the second and third ground of appeal the appellant complains that the Primary Court at Mlalo had no jurisdiction to hear and determine the matter in dispute. The appellant's contention is solely based on the pecuniary jurisdiction of the trial court. I have observed that the respondent instituted a claim of total Tshs.4,085,000/= at Mlalo Primary Court. The court proceeded to hear and determine it in favour of the respondent. The trial court awarded the respondent Tshs.3,000,000/= as damages. The question posed here is; was the subject matter within the pecuniary jurisdiction of Mlalo Primary Court. In view of **section 18 of the Magistrate Courts Act, Cap.11 R.E. 2002**, the Primary Court can entertain a claim which does not exceed shillings five million. In this matter, the claim presented to the trial court was of Tshs.4,035,000/= which was within the jurisdiction of that court.

That being said, I am of considered opinion that this appeal has no merit and it hereby dismissed with costs.

It is so ordered.


R.A. TEEMBA, J.
4/11/2011

COURT:--The Judgment is delivered in the presence of both parties.



R.A. Teemba
R.A. TEEMBA, J.
4/11/2011