

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT SHINYANGA**

PC. CIVIL APPEAL NO. 10 OF 2018

(Arising from Bariadi District court, civil appeal No. 78 of 2017, original Mhango Primary court in civil Cause No. 29/2017)

ABEL MALIGISIAPPELLANT

VERSUS

PAUL FUNGAMEZA.....RESPONDENT

JUDGMENT

18/11/2019&29/01/2020

G.J. Mdemu, J.;

This is a second appeal. In the Primary Court of Mhango, the Respondent sued the Appellant for special damages for costs incurred following breach of wedding agreement. The Respondents claim was such that, the Appellant promised to marry the daughter of the Respondent and paid nine herds of cattle as bride price. Wedding preparation then commenced in which, the Respondent prior invited guests for bride price negotiations and later the so called *Wananzengo* got invited for pre-wedding preparation and he incurred a total of Tshs. 2, 061, 700 being costs of wedding preparation.

All did not go well as the Appellant breached the contract thus following this breach, the Respondent filed a civil suit for special damages. On 5th of October 2017, the trial primary court dismissed the claim for want of proof thereof. He successful appealed to the District Court in which, in its judgment dated 24th of November 2017, the court found that the Respondent herein managed to prove the claim of Tshs.2,061,000/= being expenses incurred for wedding preparation.

The Appellant hereinabove being aggrieved by the judgment and decree of the District court of Bariadi, in civil Appeal No. 78 of 2017, appealed to this court on the following three grounds of appeal;

- (1) That the first Appellant court Magistrate erred both in Law and fact by failure to consider and evaluate the weight of evidence adduced by the Appellant in the trial court as against the Respondent's weak grounds of his appeal.*
- (2) That, the first Appellate court Magistrate erred both in law and fact by granting to the Respondent the reliefs which had not sought by him.*

(3) That, the first Appellant court Magistrate erred both in Law and facts of the case while composing the judgment in appeal.

At the hearing this appeal on 18th of November 2019, the Appellant was represented by Ms. Fransisca Mtemi, Learned Advocate whereas the Respondent appeared in person.

In her submission, the Learned Advocate urged the court to adopt all the grounds of appeal as comprised in the petition of appeal and then, submitted on each of the grounds of appeal seriatim. In ground one, she submitted that, the Learned Magistrate on appeal failed to consider the weight of evidence of the Appellant at the trial court because the Respondent was awarded Tshs. 2,061,000/= without considering the evidence of the Appellant in which, he proved that, the Respondent had no any claim. She continued to argue that, in a trial court, the Respondent did not account on how Tshs. 2,061,700/= reached as the Respondent just listed the amount without any breakdown on how the same got arrived at and who was given the money. She further submitted that, there was no basis as to why the guardian took charge of incurring such costs while her parents were there.

In ground two of the appeal, Ms. Fransisca Mtemi observed that, the Respondent was awarded relief not prayed for. The claim was 2,061,700/= but the court awarded him Tshs. 1,061,000/= not prayed for. As to ground three, the Learned Advocate argued that, the Magistrate introduced new facts that, parties agreed on breach, damages of Tshs, 2,000,000/= be awarded. He submitted that, this fact is nowhere to be seen in the record. She thus underscored that all the three grounds of appeal have merits thus urged me to allow the appeal with costs.

In reply, the Respondent prayed his reply to the petition of appeal be adopted as part of his submission. He also replied in ground one that, the claims are open hence the Appellate Magistrate was right to order for costs of the case because the Respondent is the guardian of the daughter to be married. He added that, him being the guardian was the right person to incur such expenses. He further submitted that, he took the herds of cattle paid as pride price to the nearby village and incurred costs. He alluded also that, the agreement was oral and got witnessed by persons attended the Pre-wedding preparations. He argued further that he prepared invitation cards to that effect which however got misplaced. To him, under the

circumstances, the District court was justified to award Tshs. 2,061,000/= which is less by tshs.700 as is in the original claim of Tshs. 2,061,700/=

In ground two the Respondent replied that there were no new facts introduced in the first appeal, but rather that the Appellant is the one who caused all these to happen, wedding expenses inclusive. He therefore prayed the appeal be dismissed.

In rejoinder, the Learned Advocate rejoined that, costs incurred was part of the Responsibility of the Respondent as a guardian. She further argued that, there was no evidence from the Respondent to the effect that, in case of any breach, the Appellant should pay for any damage arising in consequence thereof. She thus reiterated her previous position to have the appeal allowed.

This court, after having gone through the submissions of both parties and the record as a whole of the two courts below have noted that, there was an agreement on marriage and the process towards that marriage commenced in which 9 herds of cattle got paid as dowry. However, the Appellant then he breached that contract. According to the law of contract, there was a contract of marriage and under the circumstances stated above,

there was a breach of contract. **The Law of Contract Act Cap. 345**, under the provisions of **section 73 (1)** provides that;

"When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it."

From the above legal position, the question is whether the Respondent suffered any specific damage following that breach and if at all the same has been proved specifically through the evidence as was at the trial court.

Coming to the evidence on record the Appellant incurred Tshs. 618,700 for invitation cards, to collect herds of cattle paid as a bride price to the nearby village and he also used Tshs. 270,000 being expenses on taking care of cattle from July 2017 up to December 2017 and also Tshs. 270,000 paid to a person who was taking care of herds of cattle and also Tshs.

120,000 for other expenses. Therefore, the total claim amounts to Tshs. 2,061,700/=.

Were such damages specifically proved? It is trite law that, for this court to grant specific damages claimed by the Appellant, there are two conditions which has to be met. **One** is that such damages must be specifically pleaded and **two** that they must also be specifically proved.

What I have noted in the record is that the Respondent just mentioned or listed the figures without proving how the same got arrived at. At page 4 of the proceedings he testified to have used Tshs.618,700 for wedding preparation in the first day. He however does not go an extra mile to state activities led to such expenses bearing in mind that even the bride price had been paid by the Appellant at that time. The Appellant also does not state who was keeping the herds of cattle and if at all the stated amount of Tshs.270,000/= got paid to that person. Again, there is no evidence that the Appellant hired the grazing yard to any person for grazing as neither the herdsman nor the owner of the grazing yard got assembled in evidence.

It is further on record according to SM 2 and SM3 that, *Wananzengo* also contributed some cash and rice to facilitate the preparation of the

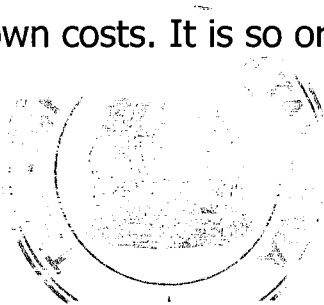
wedding. As it is, it is not easy to determine which costs *Wananzengo* incurred and what got borne by the Respondent. Again according to SU1, the Appellant also at his house prepared a party on the same event and also that the Respondent has exaggerated the number of participants. In this latter, the Respondent did not cross examine the Appellant. As to preparation of the wedding invitation card, the Respondent has not specifically proved number of cards, the place such cards got prepared and if at all those to be invited were to be invited through invitation cards.

I am mindful that, this being a civil suit, proof of the claim has to be on balance of probabilities. This however does not mean, as in this appeal that, the Respondent should just list the claims without proving it. This also being a claim for specific damages, I did not observe in the record of the trial court where specifically the Respondent pleaded for such damages leave alone the fact that the same has not been specifically proved.

Before I conclude, I have noted, as the learned Counsel for the Appellant did that, the Magistrate on appeal introduced a new fact that whoever breaches the marriage contract will pay damages of Tshs.2,000,000/=.This fact is nowhere to be found on record of the trial court. This is bad in law. More so, as the damages were not specifically

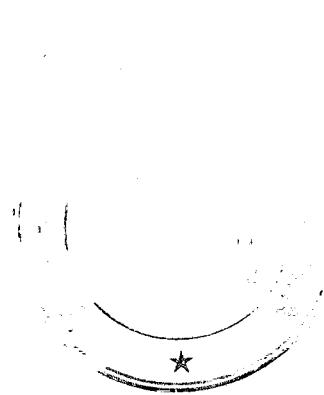
pleaded, it is correct as observed by the learned counsel that the learned Magistrate on appeal granted reliefs not prayed for. Again this also is bad in law.

In view thereof, the Respondent has not managed to prove his claim at trial court on the standard required. Accordingly, this appeal is hereby allowed. The decision of District Court is hereby quashed and set aside and consequently the decision of Primary Court is thus restored. Each party to bear own costs. It is so ordered.



Gerson J.Mdemu
JUDGE
29/1/2020

DATED at SHINYANGA this 29th day of January, 2020



Gerson J.Mdemu
JUDGE
29/1/2020