

IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL APPEAL NO. 36 OF 2006

BETWEEN

AKIDU SUMAILI APPLICANT

AND

AKUM'DALA ABITI MTOTELA RESPONDENT

CORAM : HON. JUSTICE NYIRENDA

: Counsel for the Applicant, None
Counsel for the Respondent, None
Court Reporter, Mrs. B. Jere
Court Interpreter, Ms L. Msiska

JUDGMENT

The First Grade Magistrate Court at Salima found against the appellant in a claim for two cattle which the appellant contended she left in the custody of the respondent sometime in 2002. It does not say in what capacity the appellant left the cattle with the respondent or on what terms the cattle were left there. It is also not clear what was the relationship between the appellant and the respondent. Be that as it may the fact of the matter is that some cattle were kept with the respondent by the appellant. The respondent did not deny this fact. The

only bone of contention as I see it is whether all the appellant's cattle were collected by her children while she was herself away to Mozambique.

The short story is that in the year 2002 the appellant left for Mozambique but before leaving she left some of her cattle with the respondent. She also left her children behind. While in Mozambique her boys called her for assistance and suggested they collect one of the animals from the respondent. The children were having a difficult time here at home with food. It was agreed that the animal should be collected and the boys indeed went to collect the animal from the respondent. According to the respondent she reluctantly gave back the animal to the boys because she did not get clear instructions from the appellant and moreover the boys were coming alone without an elderly person as should have been the case in such matters.

After the first animal was collected the remaining one gave birth to two calves. According to the respondent the appellant's children gave her one of the calves in appreciation for keeping their animals. A little while later the boys came again and collected the remaining cow leaving one calf. The calf later died according to the respondent. There was therefore no animal left with her.

The appellant says that she left five cattle with the respondent and that her boys only collected four of the cattle and left two with the respondent. One of the appellant's boys was called to testify in the lower court and he too insisted that he left two cattle with the respondent.

Typical of cases from the locality it is the word of one person against another. Unfortunately in the instant case the respondent is a very old woman who is virtually lost in translation and completely confused by the allegations against her. While admitting to some facts she is completely confused and at a loss as regards others. It seems to me it is too late to get a comprehensible response from the respondent. The matter might have been made easier if there had been an independent person who might have witnessed the transaction between the appellant and the respondent. The chief of the village did not speak in support of the appellant. In fact the chief, in the lower court, thought the respondent was too old to properly look after anyone's cattle. He added that she did not have a kraal of her own and any cattle she might have had were most likely being kept in other peoples kraals. In the circumstances anyone could have taken advantage of her including the appellant's boys.

In the judgment of this court it would be unsafe and indeed the evidence is not very strong for the respondent to be found liable for the cattle that might have been left with her. I agree with the findings of the lower court that the respondent's liability has not been established with certainty. The matter is surrounded with lack of clarity on what exactly might have been undertaken between the parties and to what extent the appellant's children might have dealt with the old lady in the absence of their mother

In all therefore the appeal is dismissed.

PRONOUNCED in Open Court at Salima this day of May 2008.

A.K.C. Nyirenda

J U D G E