

IN THE HIGH COURT OF TANZANIA

AT MBEYA

DC. CRIMINAL APPEAL NO. 42 OF 2002

(Original Criminal Case No. 99 of 2001 of the District

Court of Rungwe)

ANGOLILE S/O MWAKIHABA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

MACKANJA, J.

The appellant was convicted of disturbing a religious assembly c/s 126 of the Penal Code.

The facts are brief indeed. It was the prosecution case that the appellant was a church Minister, a Pastor of the Pentecostal Holiness Church Mission until 4th January, 2000 when, according to Godfrey Mwakanema (PW.1) and David Mwakatungila (PW.2), he was excommunicated both as a Pastor and as a believer. These witnesses went on to testify that while they were assembled in Church for prayers on 1st April, 2001, the appellant entered the Church and conducted a service. It is by reason of that service that the appellant was brought to court to answer these criminal charges.

The appellant denied the charges. He swore that he has never been excommunicated as a Priest. He admitted to have conducted a service in his Church but no disturbance ever occurred. He was convicted of the offence in spite of his protestation.

The Republic has declined to support the conviction. Miss Jambula, learned State Attorney, submitted that there was no proof that the appellant has ever been excommunicated by the Church. She made the point that the prosecution ought to have produced in evidence documentary proof of the alleged excommunication. Omission to do so has rendered proof of the charge improbable.

On his part Mr. Mwangole, learned defence counsel, submitted that

there was no consensus on the allegation that the appellant was excommunicated. For whereas PW.1 alleged that the appellant was excommunicated on 4th January, 2000, PW.2 swore that it was on 4th January, 2001. And although PW.2 alleged that the appellant was served with a letter by which he was informed of the alleged excommunication, no such letter was produced in evidence.

I have myself perused the record of proceedings and I find that there was not even ^{enough} evidence upon which the appellant was required to make a defence. There is no probative evidence which made out a prima facie case to require the appellant to make a defence.

Excommunication is such a serious matter to a believer that Church leaders cannot take it lightly. One would expect that the Board of the Church to which PW.1 and PW.2 referred ought to have issued a written edict to that effect. Instead we have evidence of ordinary members of the Church who went to testify.

Upon the above reasons I am at one with Miss Sambula and Mr. Mwangole that the charges against the appellant were not proved. In the result the appeal is allowed, consequent upon which the conviction is quashed and the sentence is set aside.

Judgment shall be delivered by the District Registrar on 16th April, 2003.

Sgd. J. M. MACKANJA

JUDGE

2/4/2003

Date: 16/4/2003

Coram: S.A. Lila, D.R.

For Appellant: Mwangole, Adv. for

For Respondent: Absent

C/C. Mrs. Mponzi

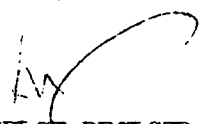
Order: Judgment delivered in the presence of Learned Mwangole
advocate for the Appellant and in the absence of the Respondent.

Sgd. S. A. Lila, D.R.

16/4/2003

Certified true copy of the original Judgment.




DISTRICT REGISTRAR

MBEYA