

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

PC. CRIMINAL APPEAL NO. 9 OF 2005

*(Originating from District Magistrate Kilosa Appeal No. 20 of 2000,
Criminal Case No. 7 of 2000 Gairo Primary Court)*

LINDA NAFTALI APPELLANT

VERSUS

MIRAJI MRISHO RESPONDENT

Date of last order – 30/10/2006

Date of Judgment – 3/11/2007

J U D G M E N T

Mlay, J.

The appellant was convicted by the Primary Court of Gairo of one count of criminal trespass, contrary to section 299 of the Penal Code. He unsuccessfully appealed to the District Court of Kilosa and being there by aggrieved, he has now appealed to this court.

Upon scrutiny of the proceedings and the judgment of the trial court, it is on record that the land to which the appellant is alleged to have trespassed was sold to her by

the 2nd accused who was acquitted of the charge. The appellant produced documentary evidence of the said sale and a witness of the said sale also gave evidence. The appellants claim was not contested by the 2nd accused. The trial court however convicted the appellant on grounds that subsequent to the sale she was informed that the land was located to a Muslim Community and she signed a document to acknowledge the fact in which he also promised to leave the land.

The appellate District Magistrate in dismissing the appeal made much of the fact that:

"It is wonderful for appellant who is a Teacher and educated person to agree to buy the piece of land which is the property of Mosque. I do not know now days the people are not afraid our lord God. So where are we going now. The trial magistrate was lawful to impose a fine it was better to impose imprisonment

*without fine in order to ensure that,
sentence to be a example those people
who have a behaviour to buy the property
which are used by waumini”*

With respect, the appellate magistrate was carried away by pious sentiments rather than the law relating to the offence of criminal trespass. Section 9 of the Penal Code provides that

“A person is not criminally responsible in respect of an offence relating to property if the act done or omitted to be done by him with respect to property was done in the exercise of an honest claim of right and without intention to defraud”.

In the present case it was not in dispute that the appellant purchased the land in question from the 2nd accused. The claim that the land belongs to a Moslem Community has not been judicially determined and the question of compensation for improvements made by the

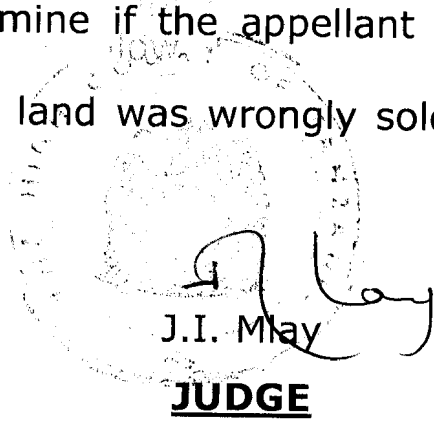
appellant to the land was never considered. The appellant went on to plant trees on the land after she had written the note agreeing to leave the land. I do not think the appellant willingly agree that the land was not legally purchased and she was willing to surrender it even without any compensation being made.

I find that the appellant having purchased the land in the presence of a witness, a fact which was not disputed by the 2nd accused or even the village authorities, the appellant had an honest claim to the land. Since there is a dispute over the land there cannot be trespass to the land by the appellant before that dispute is judicially determined by a competent tribunal.

The conviction of the appellant was unjustified and bad in law. I therefore allow the appeal and quash the conviction of the appellant and set aside the sentence. Any fine paid should be refunded to the appellant.

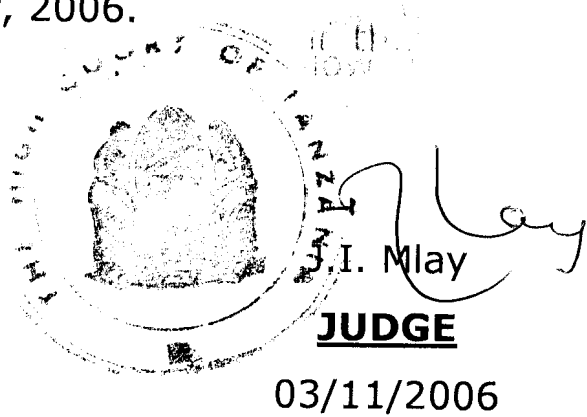
The community claiming the land is advised to have the matter determined by the land tribunal which is also

competent to determine if the appellant is entitled to any compensation if the land was wrongly sold to her. It is so ordered.



J.I. Mlay
JUDGE

Delivered in the presence of the appellant and in the absence of the respondent who had notice, this 3rd day of November, 2006.



J.I. Mlay
JUDGE
03/11/2006