

**IN THE HIGH COURT OF TANZANIA
AT SONGEA**

**PC CRIMINAL APP.NO. 1 OF 2006
(ORIGINAL SONGEA D/C CR.APP.NO.46/2005
MFARANYAKI PR.C.CR.CASE NO.891/2004)**

1.	ISSA AMIDU	}	
2.	HASSANI HAMISI	}APPLICANT
3.	HAMISI KULYUNGA	}	

VERSUS:

YUSUFU SELEMANIRESPONDENT

**19/3/2007 - Hearing Concluded
2/5/2007 - Judgment Delivered**

J U D G M E N T

KAGANDA, J.

The appellants were charged of theft before the Primary Court at Mfaranyaki. The facts disclosed that the appellants stole some fish from the respondents fish ponds. The court of first instance acquitted the appellants and an appeal was preferred at the District Court. The District Court upheld the acquittal by holding that the appellants acted on mistaken belief as such they had no intention to commit the offence they were charged of. The learned District

Magistrate correctly referred to the High Court's decision entered in 1989 over the same subject matter. The appellants argument held that, all decisions for civil cases filed thereafter, were res-judicata including the case at hand.

Having examined the available proceedings, it is very true that the parties and their parents (now in grave) have a long history of litigations and quarrels. The controversy to their litigations is over a piece of land and they tend to challenge each other in every decision of the Lower Courts instead of appealing to the highest Court after this Courts decision made in 1989. Justice Maina (as he then was) declared that, one Selemani Victory was the Lawful owner of the Land in dispute, on 3rd November, 1989 in PC Civil Appeal No. 53 of 1989 referred to, by the Districts Courts decision. By that decision, the Respondent stands to be the natural son of Selemani Victory, the judgment holder. The issue of ownership or title to the disputed land was therefore resolved and out clear. That being the case I am convinced to believe and I do believe that the District Courts decision was erroneously made because the appellants can not be said to have acted under mistaken belief while they knew that the High Court had already resolved that issue. Since they decided to fish from somebody else's ponds without legal permit from the owner then they must have acted

with means rea and they ought to have been convicted for the offence of Stealing. Having entered the conviction, the orders entered could follow i.e. that of stopping them from fishing further from the ponds.

In the event I find that the appellants grounds of appeal have no merit at all and I do not agree with the learned counsel, on that the matter ought to have been dealt by Civil litigation. Finally I analyse that, since the appellants are admitting fishing from the said ponds and there is overwhelming evidence clearly adduced by the complainant, the proper decision is for this court to enter a conviction. I now convict both appellants, Issa Amidu and Hassani Hamisi for the offence of stealing contrary to section 265 of the Penal Code under powers conferred to this court under section 366 (1) (a) (c) of the Criminal Procedure Act. No. 9 of 1985.

S.S. KAGANDA,

JUDGE.

30/4/2007

2/05/2007

Coram: Hon. S.S. Kaganda, J. i/c.

Appellant: Present in person.

Respondents: Both present in person

C/C: Chris.

MITIGATION:

1st Appellant: I have two children who are schooling and my mother is too old and he depends on me. I am first offender

2nd Appellant: I pray for leniency because I have two children who depend on me. My parents are too old and they both depend on me. I am first offender.

Sentence:

The appellants are 1st offenders and were charged before a Primary Court. I will therefore sentence them as per Primary Courts jurisdiction. Each one of them is hereby sentenced to six months jail Imprisonment as from today.

**S.S. KAGANDA,
JUDGE.**

Order: Both are jointly ordered to pay compensation to Yusufu Selemani a total value of the fish stolen from his ponds.

**S.S. KAGANDA,
JUDGE.**

Right of appeal explained.

**S.S. KAGANDA,
JUDGE.**

2/5/2007

I certify that this is a true copy of the original.




**A.M. FUNGO,
DISTRICT REGISTRAR.**

SSK/ESY