

**IN THE HIGH COURT OF MOSHI  
AT MOSHI**

**DC CRIMINAL APPEAL NO. 15 OF 2005**

**ORIGINATING FROM CRIMINAL CASE NO. 372 OF 2004**

**ELIAKIMU KUSARINDAWA.....APPELLANT**

**Versus**

**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

**S. E. MUGASHA, J.**

The appellant in this appeal was charged with malicious damage to property contrary to section 326(1) of the Penal Code, Cap 16 of R.E of the Laws of Tanzania. The particulars of the offence are that, the appellant on 13<sup>th</sup> August, 2004 at about 11.00 hrs at Mungushi Village , Hai District in Kilimanjaro region, did wilfully and unlawfully destroy 3 and ¼ at acres of a plantation of beans valued at 304,000/= the property of Ebenezer s/o Winyael @ Mbasha. The appellant did not plead guilty to the charge and the trial Magistrate relying on the adduced evidence which is available on record acquitted the appellant. However the Magistrate ordered the appellant to pay to the complainant a sum of Tshs. 304.000/= as compensation to the destroyed beans.

The appellant aggrieved with that order has appealed to this court contending that the trial Magistrate having acquitted him on the charge of malicious damage to property erred in ordering the appellant to pay compensation to the appellant.

On the other hand, the State Counsel supported the appeal arguing that, the Magistrate having acquitted the appellant ought not ordered the appellant to pay compensation.

The ground of appeal and the submission by the learned State Counsel raise one point for the determination of the court and the same is whether the Magistrate faulted in ordering the appellant to pay compensation after he had acquitted the appellant.

It is evident that the trial Magistrate made a finding in his judgment that the case was not a criminal case and circumstances sufficed for the complainant to file a civil suit and consequently acquitted the appellant. However surprisingly, the trial Magistrate made a following order and I quote:

Order:

*"The accused to pay complainant beans destroyed by cattle worth Tsh 304,000/= willingly or by civil litigation"*

To start with this was not an order because an order is supposed to be clear and it is supposed to indicate what a person is obliged to do. There was no command in the purported order but an option to the

appellant to pay the compensation if he so wished. Notwithstanding the aforesaid the order was uncalled for as it had no basis because the appellant was acquitted. As such the trial Magistrate faulted in ordering the appellant to pay compensation because his guilt was not proved and that is why the trial Magistrate acquitted the appellant.

In the circumstances, I allow the appeal, and quash the order by the trial Magistrate that the appellant pay compensation.

Right of appeal explained

**S. E. MUGASHA**

**JUDGE**

**7/12/2007**

Judgment delivered in the presence of the appellant, Mr. Maugo, learned Counsel and the complainant.

A handwritten signature in black ink, appearing to read 'Mugasha', is written over the printed name 'S. E. MUGASHA'.

**S. E. MUGASHA**

**JUDGE**

**7/12/2007**