

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

PC. CRIMINAL APPEAL NO. 50 OF 2008

*(From the decision of the District Court of Nyamagana at Mwanza in
Cr. Appeal No. 18 of 2007. original Primary Court Ilemela Cr. Case No.
127/2007)*

STEPHEN s/o SIMBA APPELLANT

Versus

1. YASIN HUSSEIN
2. MOSHI MUSSA
3. SELEMANI MUSSA

..... RESPONDENTS

17.08.2009 - 19.08.2009

JUDGMENT

G. K. RWAKIBARILA. J.

Respondent No. 1 Yasini s/o Hussein, Respondent No.2 Moshi s/o Mussa, and Respondent No.3 Selemani s/o Mussa were acquitted in Ilemela Primary Court Criminal Case No. 127 of 2007 of the offence of malicious damage to property c/s 326 of The Penal Code, Cap. 16 (R.E. 2002). The complainant in that case Stephen s/o Simba was dissatisfied by that acquittal and lodged an appeal in Ilemela District Court Criminal Appeal No. 18 of 2007, which was dismissed. This is therefore, the second appeal by this Stephen s/o Simba who featured in the district court and this court as an appellant.

It transpired in evidence of the trial primary court that on 13.11.2006 at around 11 am, a group of about seven people were seen by appellant and his relative Sm2 Agnes Simba on a

surveillance mission in part of appellant's plot situated in Pasiansi suburb within Mwanza City. Two of them had the status of Counsellor and Village Executive Officer (V.E.O) in that vicinity. Some of the said people had survey equipments and were searching for beacons. Two of them proceeded to slash several banana and maize plants which they opined that were obstructing those people in the exercise of tracing the beacons. But appellant and Sm2 in their evidence stated how appellants were not among the two people who physically took part in the exercise of slashing those banana and maize plants.

Both appellant and respondents' sides did not summon any Local Government leader in Pasiansi vicinity to clarify on whether during the visit by the counselor and V.E.O at the material site, there were alteration or confirmation of owner at the location where the beacon was traced. Evidence of such leaders could have revealed whether appellant had the right to plant banana and maize plants there. And on their part, respondents did not narrate anything which tend to show that they had any claim around that site. Their role there when the Councillor and V.E.O were performing their functions did not extend beyond participation in the gathering.

Section 326 (1) of The Penal Code (op. cit) under which respondents were charged provides, *inter alia*, that:

"Any person who willfully and unlawfully destroys or damages any property is guilty of an offence...."

In view of what were exposed on how respondents merely attended at that site without assisting the Counsellor or V.E.O to slash the banana and maize plants adjacent to the beacons, an inference of “*willfully and unlawfully*” can’t be construed against them. The trial primary court therefore correctly acquitted them. And the district court during the first appeal correctly dismissed it. This appeal was, on that basis, lodged without sufficient reasons and it is dismissed too.

Sgd: G. K. Rwakibarila
JUDGE
18.08.2009

Date: 19.08.2009

Coram: Hon. G. K. Rwakibarila, J

Appellant: Present in person

Respondents: 1st }
2nd } Also present in person
3rd }

B/S: A. Kaserero.

Court:

Judgment delivered at Mwanza this 19th day of August, 2009 and right to appeal in time has been explained thoroughly.



G. K. Rwakibarila
JUDGE