

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

PC. CRIMINAL APPEAL NO. 36 OF 2007

(From the decision of the District Court of Geita at Geita in Criminal Appeal No. 4 of 2007. Original Primary Court Bukoli Criminal Case No. 49 of 2006)

SHABANI KITUNDU APPELLANT

Versus

FATUMA JOSEPH RESPONDENT

23.03.2009 – 27.03.2009

JUDGMENT

G. K. RWAKIBARILA. J

This is a second appeal by **Shabani Kitundu** who was the complainant in Bukoli Primary Court Criminal Case No. 49 of 2006. In that case **Fatuma Joseph** who is now the respondent was charged of malicious damage to property c/s 326 (1) of **The Penal Code, Cap. 16 (Vol.1, R.E.2002)**

It transpired in proceedings of that criminal case in the primary court how complainant (**Shabani Kitundu**) and accused (**Fatuma Joseph**) were by 11.04.2006 involved in a quarrel over ownership of a strip of land with millet plants. In order to solve that contest, they referred it to some local government organs and the police. When efforts to reconcile them were still underway, Fatuma Joseph slashed those millet plants whose value was estimated at Shs 15,250/= by the ward agricultural officer for Bukoli ward in Geita District. Fatuma

was charged but later acquitted of the said offence by the primary court after it was found out, **inter alia**, that Shabani did not satisfy the court whether he owned the plot where the millet was slashed.

- Shabani's first appeal in Geita District Court Criminal Appeal No. 4 of 2007 was dismissed after the first appellate court opined how the dispute over ownership of the strip of land where the millet plants were slashed is still pending. The district magistrate there ultimately advised the contesting parties, i.e. Shabani or Fatuma, to refer this matter to their respective Village Land Tribunal which has jurisdiction over land related matters similar with this one.

In his memorandum of appeal, this appellant raised three grounds to connote that the District Court Magistrate (Hon. Kesase, DM) did not evaluate properly evidence which was adduced in the primary court and that the judgment in that first appellate court did not comply to provisions of section 312 (I) of **The Criminal Procedure Act, Cap. 20 (Vol, 1, R.E. 2002)**.

The said section 312 (I) of the Criminal procedure Act (supra) which the appellant referred to in his memorandum of appeal provides that:

"Every judgment under the provision of section 311 shall, except as otherwise expressly provided by this Act, be written by or reduced to writing under the personal direction and superintendence of the presiding judge or magistrate in the language of the court and shall contain the points for determination, the decision thereon and the

reasons for the decision, and shall be dated and signed by the presiding officer as of the date on which was it pronounced in open court"

It is opined that the judgment on appeal should not strictly follow the entire procedure which ^{ought} to be followed by trial courts under section 311 of **The Criminal Procedure Act (supra)**. That is why section 312 (I) of that Act which appellant relied upon uses, **inter alia**, the phrase: "**Every judgment under the provisions of section 311**" and at the same time section 311 (I) uses, **inter alia**, the phrase: "**The judgment in every trial in any criminal court**". It follows therefore that the styles of writing judgments ^{on} an appeal should not be strictly confined to the procedures enumerated under sections 311 and 312 of that Act because there are no trials during hearing of appeals.

The remaining issue to consider from the other two grounds of appeal is whether the district court on appeal evaluated the evidence of the trial primary court properly. To that respect, the gist in this appeal was whether an offence of malicious damage to property c/s 326 (I) of **The Penal Code (supra)** was properly proved by the prosecution during trial of respondent in the primary court.

There is, in fact, overwhelming evidence from records of both two lower courts to show that both appellant and respondent are in a hot contest for ownership of the strip of land where the millet plants were slashed. In a brief but clear judgment, the first appellate court drew to the attention of the contesting parties in this matter the need

to sort out a solution over ownership of the said strip at their respective village land tribunal. Before determining a solution for that renders it difficult to invoke the criminal proceedings to implicate appellant in an offence of malicious damage to property.

For the purpose of this case this appeal is therefore dismissed to wit, decisions of the two lower counts are confirmed.

G.K. Rwakibarila
JUDGE
23/03/2009

Date: 27/3/2009

Coram: Hon G.K. Rwakibarila, J

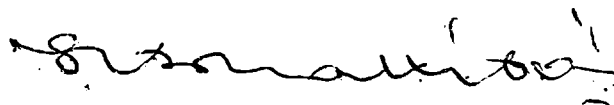
Appellant: Present in person

Respondent: Absent

B/C: A. Kaserero.

COURT

Judgment delivered in open court this 27th day of March, 2009 and right to appeal in time to the Court of Appeal (T) -has been explained thoroughly.



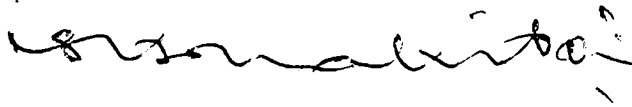
G.K. Rwakibarila
JUDGE

AT MWANZA

27.03.2009

Court:

Judgment delivered at Mwanza this 24th day of April, 2009||
and right to appeal in time has been explained thoroughly.



G. K. Rwakibarila
JUDGE

At Mwanza
24.04.2009