

IN THE HIGH COURT OF TANZANIA

AT TANGA [SITTING AT KOROGWE]

CRIMINAL APPEAL NO. 3 OF 2012

[Originating from Korogwe District Court in Criminal Appeal No. 7 of 2012, Originally Criminal Case No. 578 of 2011 in Manundu Primary Court]

LEMI NDENGU.....APPELLANT

VERSUS

OMARI ISSA.....RESPONDENT

JUDGMENT

U. MSUYA, J.

This is a second appeal. The gist of this appeal is based on the following facts. By virtue of special Power of Attorney given to the Respondent, Omari Issa by Zainabu Ally, administratrix of the estate of the late Mariam Kalenzi Kuwini, this court (Teemba, J.) on 18/3/2011 pronounced him as a legal attorney of administratrix of such estate which was confined to two houses situated within Manundu. This

decision was against the appellant, Lemi Ndengu who claimed as administratrix and the owner of the same houses. Following that decision, the appellant forcefully entered in one of the houses. This led the Respondent on 8/11/2011 to institute a complaint of Criminal trespass contrary to section 299 (a) of the Penal Code [Cap. 16 R. E. 2002] in Manundu Primary Court against the appellant. The trial court heard the matter, found the appellant guilty and convicted her. She was subsequently sentenced to pay a fine of Tshs. 50,000/= or to six months in jail in default of fine. The appellant via Exchequer Receipt Voucher no. 40055149 paid a fine, but she was dissatisfied with both conviction and sentence and hence appealed to the District Court of Korogwe at Korogwe. The first appellate court dismissed the appeal for want of merit. Still aggrieved, the appellant preferred the present appeal.

In this appeal, the appellant claims that she had a claim of right over the house in question and that the date on the Commission of Offence reflected in the charge sheet was at variance with the date mentioned in evidence. Therefore, she urged the court that she was wrongly convicted and sentenced.

In his rebuttal, the Respondent insisted that the dispute over the house was determined in his favour and in that regard, the appellant was properly convicted and sentenced for trespassing over it.

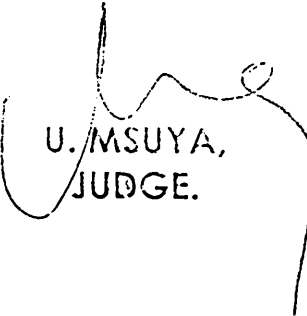
Basing on the evidence on record and the submission of the parties I have observed that in this appeal the appellant is

maintaining that she is the lawful owner of the house and that is why she decided to enter or trespass into the house in question.

Secondly, I have observed that the evidence on record clearly indicates that the dispute over the subject matter was resolved in favour of the Respondent. Now, since there is no appeal or decision which reversed the decision dated 18.3.2011 of this court in respect of the house in question, then it was wrong for the appellant to enter into that house which is part and parcel of the estate of the late Mariam Kalenzi Kuwini.

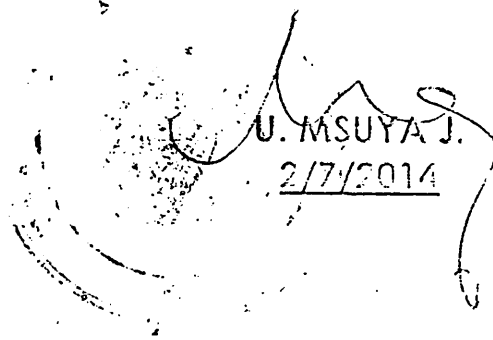
Further to that, the complaint that the charge against the appellant was defective for being at variance with the evidence adduced in respect of the date on which the offence was committed is justified on the ground that the charge sheet reveals that the offence was committed on 18.03.2011 while the evidence of the Respondent, Omari Issa [PW1] on record indicates that the incident happened on 15.02.2008. However, in my considered opinion, this omission or error is no fatal and is curable under the provisions of section 388 (1) of the Criminal Procedure Act Cap. 20 R.E. 2002. This is because the complaint of Criminal trespass against the appellant was filed on 08.11.2011, and this was done after eight months from the date when this court [Teemba, J.] pronounced that the Respondent was a legal attorney of the administratrix of the estate in question.

From the above discussion, there is no any justifiable reason to inter fear with the lower court's decision. The appeal is devoid of merit. It is therefore dismissed. It is so ordered.



U. MSUYA,
JUDGE.

Order: Judgment is delivered on the 2nd day of July, 2014 in the presence of the Appellant in person and the Respondent in person.



U. MSUYA J.
2/7/2014