

IN THE HIGH COURT OF TANZANIA  
AT IRINGA  
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(DC) CRIMINAL APPEAL NO. 41 OF 2012  
(Originating from Criminal Case No. 131 of 2011  
of the District Court of Njombe District  
at Njombe  
Before S.J.K. Hassan – S.R.M.)

ERASTO NZALI ..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

28/4/2014 & 13/6/2014

**JUDGEMENT**

MADAM SHANGALI, J.

The appellant Erasto s/o Nzali and one Constantino s/o Msambwa were jointly and together charged with the offence of Disobedience of lawful Order c/s 124 of the Penal Code, Cap. 16, before Njombe District Court. The particulars of the offence avers that on 21<sup>st</sup> day of July, 2008 at about 13.00 hours at Mjimwema Makambako within Njombe District the accused persons disobeyed the order of the Njombe District

Court to handover Mjimwema Plot house No. 484 to one Atukumbwisye D/o Bohela.

After hearing the prosecution evidence and defence evidence, the trial District Court convicted the appellant and sentenced him to pay fine of T.Shs.100,000/= or in default to suffer two years imprisonment. The other accused person Constantino s/o Msambwa was found not guilty and acquitted.

Aggrieved by that decision against him, the appellant has filed this appeal mainly on four grounds as follows;

1. That the trial Resident Magistrate erred in law and fact in passing the sentence against him that was not supported by the charge.
2. That the trial Resident Magistrate erred in law and fact in convicting him on the basis of contradictory evidence.
3. That the trial Resident Magistrate erred in law and fact in entertaining and deciding the case as criminal even though the matter was substantially civil in nature.
4. That the trial Resident Magistrate erred in law and fact

in entertaining and deciding the case in which the court has no jurisdiction.

In the conduct of this appeal the appellant advocated himself while the respondent/Republic was represented by Mr. Mwenyeheri, learned State Attorney.

In his short submission in support of his grounds of appeal, the appellant strongly claimed that the first issue is the fact that the charge sheet is far different from the facts of the case. He argued that he was charged for disobeying order of the court concerning with House on Plot No. 484 which was in his possession but according to the evidence adduced and the Judgement of the trial District Court he was ordered to release House No. 682 which is unknown to him. He further stated that he has never occupied or claimed ownership of House No. 484 because the house is the property of their late father Lamack Nzali and now it is a family house. He claimed that his own house is on Plot No. 642 rented to his co-accused Constantino s/o Msambwa who was acquitted.

The appellant submitted further that the main case was on the issue of inheritance and notably civil in nature. That he has never refused to obey any lawful order of the court because he was not in occupation of the houses Plot No. 484 or Plot 682. The appellant stated that he was wrongly convicted and sentenced on the weak and insufficient

prosecution evidence inspite the fact that he raised sound defence before the trial District Court. He prayed this court to allow his appeal with costs.

In response Mr. Mwenyeheri, learned State Attorney opted to support the appeal. He gave a short summary of the case to the effect that the matter started in the Civil Case No. 9/2007 in which it was ordered that all properties of the deceased be handed to the deceased widow Atukumbwisye Bohale (PW.3). Then the appellant was charged for disobeying the lawful order of handling the properties i.e. house No. 484 to PW.3. Mr. Mwenyeheri submitted that there was no evidence whatsoever to show that the said house was occupied or rented to other people by the appellant. The available evidence indicate that the appellant was in occupation of his own house No. 642 and several exhibits were produced to establish that position. The learned State Attorney submitted that even the trial District Court had an opportunity of visiting the locus in quo with the parties but the complainant (PW.3) showed house No. 682 as the one in conflict instead of No. 484. As a result the trial District Court gulped that new house number, No. 682, discussed it and ruled upon it against the appellant.

Having closely and anxiously given consideration to the grounds of appeal raised by the appellant and the submission made by both sides and in addition, having gone through the