

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**APPELLATE JURISDICTION**

**PC. CRIMINAL APPEAL NO 10 OF 2016**

*(Original Criminal Case No. 1 of 2016 in the District Court of Bariadi District; Before Mrio, Resident Magistrate)*

**BELLE MSOMI.....APPELLANT**

**VERSUS**

**GITI NG'ABI .....RESPONDENT**

**JUDGEMENT**

Last order: 08.10.2018

Date of Judgement: 14.12.2018

**Ebrahim, J.:**

The appellant, Belle Msomi filed a case at the Primary Court of Luguru, Bariadi District suing the respondent for trespassing into his land, cultivating and uprooting maize plants. The trial court after hearing the evidence of the appellant and the respondent found the respondent guilty and sentenced him to 12 months in prison.

Aggrieved, the respondent filed an appeal at the District Court of Bariadi. The case proceeded ex parte on part of the appellant. The appellate magistrate evaluated the evidence on record and found out that the trial magistrate erred to entertain the matter whilst the issue of ownership is yet to be determined. Thus, the appeal was allowed.

Dissatisfied by the decision of the appellate court, the appellant appealed to this court raising eight grounds of appeal. However going through those grounds they are pegged on complaints that the appellate magistrate considered the matter as a land case whilst it was a criminal matter, hence the issue of jurisdiction. The appellant also faults the appellate magistrate for referring to non-existing cases; and that he was not given right to be heard.

Before this Court, both parties appeared in person, unrepresented.

The Appellant prayed to adopt his grounds of appeal and added that the respondent admitted to destroy the crops at the Primary Court. He stated further that the land is his after getting it from Sayi Dasi and that he has documents from the Ward Tribunal. He stated also that the respondent did not bring any witness at the Primary Court.

The Respondent also adopted his reply to the petition of appeal and claimed that the trial magistrate had relation with the appellant. He prayed for the decision of the District Court to be upheld.

The appellant had nothing substantive to add in rejoinder.

I would argue this appeal generally.

I have thoroughly gone through the records of proceedings from Primary Court to the District Court.

Beginning with the ground that the appellant was not give right to be heard; it reads on the proceedings of the District Court that the appellant stopped entering appearance in court from the last time he appeared on 19.02.2016 when the appeal was scheduled for mention on 26.02.2016 and 04.03.2016, the appellant did not appear no reasons for his absence were recorded. The appellate court then proceeded with the hearing of the case. That being the case therefore, I cannot fault the appellate court on proceeding with the matter considering that the appellant was present when the case was scheduled for another day of which he did not appear and there was no reason for his non-appearance.

The appellant is mainly faulting the appellate court for referring to non-existing cases and treating it as a land case.

Firstly, I must point out on the outset that going through the records at the trial court, I found no where that the witness


testimonies were recorded as referred by the trial Magistrate. This made me wonder as to where he got all the information that he referred from GamadaKasekela, Danny Ntemi, MadidaDindai and Malulu Gegedi. Their evidence taken at the locus in quo was not recorded hence it is not known what they said. More so, the trial magistrate stated at page 2 of his judgement that apart from the fact that the respondent denied to have been involved in cultivating the land, his witnesses whom were mentioned as Gumada Kasekela, Danny Ntemi, Madida Dindai and Malulu Gegedi said they saw the tractor at various times but they did not see the respondent or the person said to have been leased the land by the respondent. This shows that the said witnesses did not confirm the presence of the respondent in cultivating the land. There is no record if such evidence was controverted. The appellant said that he saw the respondent. However, the respondent denied to have been present. As such there was doubt at the appellant's case at the trial court.

More so, the appellant claimed at the trial court that he was the owner of the land; however, there was nowhere that he tendered any document to prove the same; hence the observation by the trial court.

That being said, I find that the appellant's case at the trial court was not proved in the required standard i.e. beyond reasonable doubt. There are lots of doubts on the evidence relied by the trial court to convict the respondent.

From the above observations, I find that the appeal lacks merits and I accordingly dismiss it.

Accordingly ordered.

The seal of The High Court of Botswana is circular, featuring a central figure and the text 'THE HIGH COURT OF BOTSWANA' around the perimeter. A star is positioned at the bottom center of the seal. A handwritten signature is written over the seal, and the name 'R.A. Ebrahim' is printed below it, followed by the title 'Judge'.

**R.A. Ebrahim**  
**Judge**

**Shinyanga**

**14.12.2018**

**Date:** 14/12/2018

**Coram:** Hon. S. P. Mwiseje, DR

**Appellant:** Present in person

**Respondent:** Absent

**B/C:** Raymond, RMA

**Court:** Judgment delivered today 14<sup>th</sup> day of December, 2018 in the presence of the Appellant and Raymond, RMA. In the absence of the Respondent

**Court:** Right of Appeal fully explained.

