

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(ARUSHA DISTRICT REGISTRY)**

**AT ARUSHA**

**H.C. CRIMINAL APPEAL NO.48 OF 2017**

*(Originating from Criminal Case No. 44/2014 at Mbulu District Court)*

**LUCAS S/O BURA @AMNAAY..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

**MAIGE, J**

At the District of Mbulu, the appellant was convicted of criminal trespass contrary to section 299 (a) of the Penal Code and contempt of court contrary to section 114(1) of the Penal (Cap. 16, RE, 2002). On the first count, he was sentenced to pay a fine of TZS 80,000 and in default two months imprisonment. On the second count, he was sentenced to pay a fine of TZS 70,000/= and in default two months imprisonment.

The appeal though criminal, traces its genesis from primary court civil case number 29 of 2016 wherein the appellant lost a case for ownership of the land in dispute as against Shauri Ngandi, henceforward, "the complaint". The latter was given a decree of vacant possession of the disputed land.

The appellant was not pleased with the decision. He thus filed a civil appeal number 8 of 1987 at Mbulu District Court wherein he came out unsuccessfully. Once again aggrieved, he appealed to the High Court vide (PC) Civil Appeal No. 45 of 1988, the appeal of which was dismissed, by Madame judge Oriyo J, as she then was, and the decision of the trial court upheld (exhibit **PEI**).

While the criminal appeal was still pending at the High Court, it would seem to me, the appellant attempted to take possession of the suit property notwithstanding the concurrent decisions of both the primary court and the district court decreeing him to vacate the same. In reaction, the complainant, in his individual capacity, instituted a criminal case number 22 of 1992 at the **trial court** against the appellant, for contempt of court contrary to section 114 (b) of the Penal Code, Cap. 16, R.E., 2002. He was successfully and the appellant was convicted of the offence (exhibit **PEII**). He was sentenced to pay fine and to immediately vacate the **suit property**. The conviction remained the same despite the attempt by the appellant to reverse it vide criminal appeal number 5 of 1993 which was concluded on 28.04.1993 (exhibit **PE III**). There was a variation of the quantum of fine however. The appellant, it would appear, never appealed against the decision of the district court afore stated.

On 8<sup>th</sup> July 2014, the dispute erupted again. This time around, the appellant entered into the suit property with intent to retake possession.

This necessitated intervention by the Republic through Criminal Case No. 44 of 2014 at the **trial court**. In his testimony in defense, the appellant did not deny the fact that he was in possession of the suit property notwithstanding courts decisions against him. His line of defense was that the decree of the court on vacant possession had not been executed and as such the suit property had in no time been handed over to the complainant. The **trial court** did not accept the defense. In its view, there being courts judgments that the suit property belongs to the complainant, what was done by the appellant amounted to criminal trespass as well as contempt of court. In the memorandum of appeal, the appellant has raised the following grounds;-

1. That the trial magistrate erred in law and facts to declare PW3 the owner of the land alleged to have been trespassed by the appellant by virtue of the High Court of Arusha in (PC) Civil Appeal No. 45 of 1988, delivered sometimes in 1992 without proof of handing over of the suit land to PW3 from the appellant.
2. That the trial magistrate erred in law and facts to convict and sentence the appellant with the offence of trespass to land subject of unexecuted judgment and decree in the High Court (PC) Civil Appeal No. 45 of 1988.
3. That the trial magistrate erred in law and facts to convict and sentence the appellant with the offence of contempt of court

without the prosecution proving the offence beyond reasonable doubt.

4. That the trial magistrate erred in law to proceed with a ruling on no case to answer without vacating an order for submissions.
5. That the trial magistrate erred in law and facts when it refused to visit the locus in quo and see whether the previous suit land i.e. the subject matter of unexecuted judgment and decree in the High Court at Arusha (PC) Civil Appeal No. 45 of 1988 is the same as alleged to have been trespassed by the appellant.

By the leave of the Court, the appeal was argued by way of written submissions which were timely filed. For the appellant, the submissions were filed by Mr. John Lundu, learned advocate and for the respondent Mr. Kagilwa, learned state attorney.

The joint submissions of Mr. Lundu in respect of the first two grounds is that as the complainant had not executed the decree of the High Court in exhibit PEI since 1992, and, for the reason of the appellant being in possession of the same until 2014 when the criminal proceedings at the **trial court** was initiated, the appellant had become the owner of the suit property. He submitted further that the complainant was for the same reason, barred by the express provision of item 20 of the schedule to the law of limitation Act from enforcing the decree.

The submissions of Mr. Kagilwa in rebuttal was that according to the evidence in exhibit PEI, the complainant was the lawful owner of the suit property. Whether the decree was executed or not, the counsel submitted, was not within the domain of a criminal court.

I have considered the counsel submissions and examined the evidence. According to exhibit PEI, the suit property was declared the property of the complainant and a decree of vacant possession was granted in his favour. The decision in exhibit PEI was in confirmation of the concurrent decision of the primary court as upheld by the district court. The evidence in exhibits PEII and PEIII establish of there being a previous attempt to reposes the suit property after the decree of vacant possession. This would imply that the complainant was in the possession of the suit property after the pronouncement of the civil judgment. On top of that, in the criminal decision of the primary court convicting the appellant of contempt of court, the appellant was ordered to immediately vacate the suit property. The said order was not reversed on an appeal to the district court. In its judgment, the **trial court** considered both the criminal and civil judgments. There is no time limit for enforcing a criminal judgment to the best of my understanding. The provision of the Law of Limitation Act cited by the counsel for the appellant does not apply in criminal proceedings.

On the third ground, the trial magistrate is blamed in holding the appellant culpable of the offence of contempt of court while there was not adduced any evidence of an order compelling the appellant to vacate the suit property. The counsel, it would seem to me, did not carefully read the judgements in exhibits PEII and PEIII which also formed the basis of the decision of the **trial court**. It is manifestly apparent in exhibit PEII that the appellant was ordered to vacate the suit property under the supervision of the ward secretary. It is further express in exhibit PEII that the appellant was warned that he would be punished if he did not vacate the suit property. The ground of appeal in so far as the offence of criminal trespass may be concerned is hopeless. I would have held similarly in respect of the offence of contempt of court but for want of evidence to the effect that the ward secretary had supervised the eviction of the appellant from the suit property.

On the last ground, the **trial court** is faulted for declining to visit the *locus in quo* when it was so requested by the appellant. The visiting of the *locus in quo*, the counsel submitted, was very important in ascertaining whether the land alleged to have been trespassed is that which was declared to be of the complainant. I find the contention useless because the substance of the defense by the appellant at the trial court which has been repeated in his submissions was that for the reason of the omission of the respondent to execute the decree notwithstanding lapse of more a number of years, the property had vested in the appellant. That assertion in my humble view, could not be verified by inspecting the *locus in quo*.

For the foregoing reasons and to the extent as afore stated, this appeal shall fail. The conviction and sentence of the appellant by the **trial court** in respect of the offence of criminal trespass is upheld but in respect of contempt of court quashed and set aside.

It is so ordered.

  
**MAIGE**

**JUDGE**

**13/11/2018**

Judgment delivered this 13<sup>th</sup> day of November 2018 .



  
**MAIGE**

**JUDGE**

**13/11/2018**