

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

(PC) CRIMINAL APPEAL NO. 23 OF 2018

(From the decision of the District Court of Musoma at Musoma in Criminal Appeal No. 48 of 2017, original Primary Court Musoma Criminal Case No. 165 of 2017)

ZAITUNI JUMANNE APPELLANT

VERSUS

JOHANES WAMBURA RESPONDENT

JUDGMENT

25/09/2018 & 21/01/2019

RUMANYIKA, J.:

It is against judgment of 14/05/2018 of the District Court Musoma upholding acquittal, judgment and order of the Urban Primary Court Musoma all in favour of Johannes Wambura (the respondent) on the 26/01/2017 charges of injuring animals Contrary to **Section 226 of the Penal Code Cap. 16 R.E. 2002.**

Zaituni Jumanne (the appellant) is aggrieved. Hence the 4 grounds of appeal. Which essentially may boil down to one ground that: **The two courts below improperly evaluated the evidence.**

Parties appeared in person. The appellant had nothing additional to what the petition of appeal contained. The respondent just submitted that the appellant suffered from a mental disease. That the case, and now appeal evidenced the disease. That is it.

The evidence on record, but very briefly runs as follows:-

SM1 Zaituni Jumanne stated that sometimes in January, 2017, the respondent complained against appellant's cow trespassing onto churches land. Then sprayed some poisonous substances around, the cow grazed around and died almost on the spot. That the veterinary officer confirmed it. But respondent denied the allegations.

SMII Evarist Bonga just stated as material as the SM1's. But additionally, that the respondent had threatened killing all the trespassing heads of cattle.

SMIII Samwel Chacha stated that having on 20/01/2017 been duly instructed by the VEO Rwamlimi, he conducted a post mortem and confirmed the the cow died poisoned. That as it was not fit for human consumption, it was deep buried.

SMIV Erick Julius (just supported all the prosecution witnesses).

SU1 Johanes Wambura stated that as had around in the material morning been in church busy, and just as was now done, and back home, the appellant stormed in accusing him of having by poisoned and killed the cow. That the matter was accordingly reported to local leaders.

SUII one Gabriel Youze materially supported the SU1's evidence.

In her decision (rightly so in my view and the 1st appeal upheld it), the trial magistrate held that the charges had not been proved beyond reasonable doubts because:-

1. the eye witness if at all appellant should have raised alarms or immediately report the respondent. But she just waited for the cow to die!
2. admittedly the local VEO following all, detected or smelt no poisonous material around.
3. the cow was not proved as having been grazing around.
4. No poisonous substance was proved as having been sprayed around. Leave alone by the respondent or else body.

Additionally, I will hold that it was not even in the evidence alleged (leave alone proof), that the area had been officially or by practice established a public animal grazing area. Leave alone what kind was the poison and its effects to animals (against all other poisons). The fact was scientific, it also needed consistent evidence and scientific proof other than plain allegations.

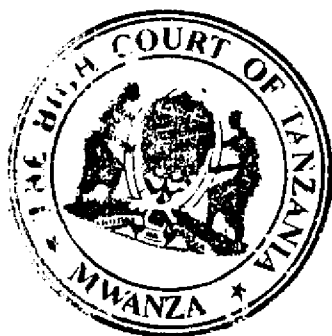
Having said all this, I would have no basis upon which to fault the two courts below (the concurrent findings). Appeal is entirely dismissed. Ordered accordingly.

Right of appeal explained.


S.M. RUMANYIKA
JUDGE

12/01/2019

Delivered under my hand and seal of the court in chambers this 21st day of January, 2019 in the presence of the appellant and in the absence of the respondent.



M.A. Moyo

DEPUTY REGISTRAR

21/01/2019