

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

**PC. CRIMINAL APPEAL NO. 04 OF 2018**

*(Arising from Criminal Appeal Case No.3 of 2017 of the District Court of Kahama at Kahama)*

**FAIDA CHASAMA.....APPELLANT**

**VERSUS**

**TABU CHASAMA.....RESPONDENT**

*Date of Last Order: 04/05/2020*

*Date of Judgment: 16/07/2020*

**JUDGMENT**

**C. P. MKEHA, J**

Before Kahama Urban Primary Court, the appellant was prosecuted and convicted of an offence of criminal trespass contrary to section 299 of the Penal Code.

He was conditionally discharged, not to commit any offence for a period of twelve months. The appellant's first appeal to the District Court of Kahama was unsuccessful. He has preferred the present appeal consisting of the following grounds of appeal:

- (1) That, the lower courts strayed into an error in law and facts in entertaining the case as a criminal matter whilst there is a land ownership dispute of which the lower courts lacks jurisdiction to hear and determine.
- (2) That, the trial court strayed into an error in entertaining the matter which originates from land of which the respondent ought to be directed to refer it to the District Land and Housing Tribunal so as to execute its orders by issuing eviction order against the appellant, if actually he remained in the respondent's land.
- (3) That, the trial Magistrate erred in law and facts in convicting and sentencing the appellant for the offence of criminal trespass whilst the evidence adduced against him does not constitute the essential ingredients of the offence he was charged with.
- (4) That, the learned Resident Magistrate erred in law and fact in not putting into account the fact that the appellant asked the trial court to visit the locus in quo so that to be satisfied that the land handled to the respondent was quite different from the complained one.

The parties appeared unrepresented. When the appellant was invited to address the court, he was brief that, the appellate court did not visit the

disputed land. In his view, the case of criminal trespass was not sufficiently proved. He then asked the court to consider all his grounds of appeal.

The respondent's reply was to the effect that after they had divided the inherited land among themselves, the appellant started trespassing upon her land.

Considering the first three grounds of appeal, they all revolve around one main complaint that, the trial court had no jurisdiction to entertain a land dispute as a criminal case. The appellant concludes that, that is why, the respondent failed to prove the necessary ingredients of the offence of criminal trespass. On the other hand, the respondent insists that, after they had divided the inherited land among themselves, the appellant started trespassing upon her land.

The evidence on record tells a different story from the one told by the appellant. The record indicates that, the land dispute between the parties was determined by Nyahanga Ward Tribunal in Land Case No.20 of 2013 in the respondent's favour. The appellant never appealed against the said decision. Even after the said decision, the appellant went on cultivating the respondent's land without permission. That is what criminal trespass entails.

Copies of decision resolving the land dispute between the parties were tendered into evidence at the trial court without the appellant's objection.

**See:** Pages 4 and 5 of the trial court's record.

As to the fourth ground of appeal, while it is true that the appellant had moved the trial court to visit the locus in quo, the trial court assented to the said request placing liability to the appellant to enable the court visit the disputed land by leading it to the said land. However, later on, the appellant opted to close his defence case without the said visit to the disputed land. The trial court can not be blamed for that. **See:** Pages 10 and 11 of the trial court's typed proceedings.

For the foregoing evidence on record, the appellant was rightly convicted of the offence of criminal trespass by the trial Primary Court. The first appellate court either, rightly upheld the appellant's conviction and sentence. I see no justification of disturbing correct findings of the two courts below. I hold that, the appeal is without merit. The same is dismissed.

Dated at **SHINYANGA** this **16<sup>th</sup> day of July, 2020.**

