

IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA
PC CRIMINAL APPEAL NO 20 OF 2020
BETWEEN

ABDI MASWI _____ **APPELLANT**

VERSUS

RAPHAEL DANIEL _____ **RESPONDENT**

(Arising from the decision and orders of the district court of Tarime at Tarime, Hon. Mzava SRM, in criminal case no 41 of 2020 dated 07.08.2020)

JUDGEMENT

9th & 27th November 2020

GALEBA, J.

The appellant, **MR. ABDI MASWI** a resident of Nyarero village in Tarime district was charged with malicious damage to property contrary to **section 326 of the Penal Code [Cap 16 RE 2019]** (the Penal Code) at Tarime urban primary court and was convicted of the offence. As the appellant was 86 years of age at that time, he was sentenced to offer community service for three months and to refund Tshs. 986,000/= to the respondent in compensating him for the destroyed trees. The appellant's appeal to the district court of Tarime to challenge the above conviction and sentence of the primary court was dismissed. This appeal is seeking to challenge the decision of the district court.

The appellant filed 6 grounds of appeal but when he appeared before this court, he prayed that all his grounds be consolidated into one ground of complaint "***that the district court erred in law when it confirmed the findings of the primary court that the appellant destroyed 34 trees worthy Tshs 986,000/=.***" As the respondent had no objection to the prayer and as the same issue had been raised before the district court and also still a subject of complaint at ground 5 in this appeal, I allowed the appellant to submit on that single ground of appeal.

In supporting his complaint Mr. Maswi submitted that although in the charge sheet it was alleged that he destroyed 34 ***grevillea*** trees by cutting them using a machete, but the evidence of **RAPHAEL DANIEL MAKENA** was that the trees were uprooted by using hands. He bitterly complained about the authenticity of the valuation document which was tendered as **EXHIBIT P1** in the primary court. He submitted that, ***first*** the document was not read for him to know what was its contents and ***secondly*** the person who prepared it did not come to court so that he could ask him questions, relating to the size of the trees if he could really uproot them by hand and also the size of the farm where they were growing. If I

understood the appellant well, he was complaining that his trial was not a fair hearing.

In reply to the appellant's complaint, the respondent submitted that the valuation document was made in the presence of many people including the appellant but he did not know why the ward officer who prepared the valuation would not come to tender it in court. Before getting to the real argument, the substance of the document under scrutiny reads;

'...Eneo hilo la shamba lipo kitongoji cha senta kijiji cha Nyarero. Miti iliyong'olewa ni miti 34 aina ya Ndege Chai. Kutokana na waraka wa tathmini wa mazao wa mwaka 2013, kila mti mmoja aina ya Ndege Chai (Grevillia) ukikua na kuvunwa una thamani ya shilingi za kitanzania 29,000/=. Kwa hiyo miti 34 ina thamani ya shilingi $34 \times 29,000 = 986,000/=$. Kutokana na uharibifu huo Mkulima ndugu Raphael Daniel Makena amepata hasara ya shiling 986,000/=.'

According to the evidence on record the trees which were damaged in April 2020 were two months seedlings as they had been planted in February 2020. According to the report, the value of Tshs 29,000/= is the value of a fully grown tree ready for harvesting. There was no evidence showing that the trees which were destroyed were ready for harvesting and in any case, it is unlikely that such trees would have been ready for harvesting in two months of planting them.

The respondent did not tell the court the price at which he bought the seedlings of trees in February 2020 and the cost for management of the farm between February and April 2020 for the court could to be able to reach at an appropriate assessment of the value of the trees in April.

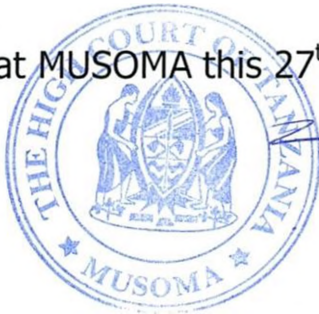
Finally, a close scrutiny of **EXHIBIT P1** shows that the document does not bear the name of its maker and it is addressed to whomever is concerned. In such circumstance, it was appropriate that a person who prepared it was to be called as a witness to tender it so that he could give necessary clarifications relating to the valuation being a document of an expert.

In this case, the value of two months old *grevillea* trees was not proved; the valuation document tendered as **EXHIBIT P1** related to fully grown and mature *grevillea* trees ready for harvesting. In the circumstances the claim of Tshs 986,000/= was not proved.

Based on the above reasons, pursuant to the provisions of section **29(c) of the Magistrates' Courts Act [Cap 11 RE 2019]** this court orders that;

1. The order for payment of Tshs 986,000/= by the appellant to the respondent as passed by Tarime urban primary court in criminal case no 521 of 2020 and confirmed by Tarime district court in criminal appeal no. 41 of 2020, is hereby quashed and nullified.
2. The said order for payment of Tshs 986,000/= by the appellant to the respondent shall not be enforced.
3. Except the above order for payment of Tshs 986,000/= which has been set aside, all other orders of the primary court and of the district court remain valid, sound and enforceable if they have not been enforced yet.

DATED at MUSOMA this 27th November 2020



Z. N. Galeba
JUDGE
27.11.2020

Parties have a right of appeal to the Court of Appeal of Tanzania as per the law.



Z. N. Galeba
JUDGE
27.11.2020