

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT SUMBAWANGA

PC CRIMINAL APPEAL NO. 9 OF 2019

(Originating from Criminal Case No. 15 of 2019 of Matai Primary Court and Criminal Appeal No. 10 of 2019, Kalambo District Court)

1. CHRISANT MWANISAWA APPELLANT
2. GADIEL MKOMBOZI APPELLANT
3. PRIVATUS MATOFALI (MZONDA)..... APPELLANT
4. SIMON NGEMELA APPELLANT
5. JONUEL KASAKI APPELLANT

VERSUS

VIO AND COMPANY LTD
(CLEMENCE A. KABENGWA) RESPONDENT

Date of last Order: 03/09/2020

Date of Judgment: 25/11/2020

JUDGMENT

C.P. MKEHA, J

The present appeal traces origin from the decision of Matai Primary Court whereby the appellants were charged with an offence of criminal trespass c/s 299 (a) and (b) of the Penal Code (RE 2002). Having partly heard the complainant's case, the trial court ruled out that since the appellants were also asserting ownership of the disputed land, it would not be proper for him to proceed hearing a charge of criminal trespass before the ownership dispute is determined by a civil court/tribunal. The trial court dismissed the charge and acquitted the appellant for having no case to answer.

The respondent was dissatisfied by the trial court's finding. He appealed to the District Court of Kalambo which overturned the trial court's decision. The first appellate court found that, it was wrong for the trial court to hold as it did for not allowing the complainant to call witnesses and adduce evidence thereby violating the complainant's right under Article 13 of the Constitution of the United Republic of Tanzania. The District Court remitted back the matter to the trial court with an order of retrial. The appellants have appealed to this court challenging the first appellate court's decision.

Through Mr. Chambi learned advocate, the appellants are challenging the District Court's decision on two grounds of appeal as hereunder:

1. That, the Honourable Magistrate erred in law and fact to decide the matter without considering exclusive jurisdiction of the matter against the court.
2. That, the Honourable Magistrate misdirected himself by citing Article 13 of the Constitution which is irrelevant to the matter brought before the court.

Mr. Chambi learned advocate submitted in the first ground of appeal that, in view of the decision in **Sylivery Nkangaa Vs. Raphael Albeto (1992) TLR 110**, the first appellate court had no jurisdiction to entertain an appeal involving ownership of land. In view of the learned advocate, the trial Magistrate rightly advised the parties to institute a civil suit to determine

ownership of the disputed land. The learned advocate added that in terms of section 4 of the Land Disputes Courts Act ordinary Magistrates have no jurisdiction to try land disputes.

The learned advocate submitted in respect of the second ground of appeal that, it was wrong for the first appellate court to rely on Article 13 of the Constitution of the United Republic of Tanzania as there are specific provisions in ordinary statutes conferring jurisdiction to Land Tribunals to deal with land matters.

The respondent submitted in reply that, the original case was a criminal case hence the trial court was wrong in holding that there was no criminal trespass. The respondent insisted that there was no land conflict. The respondent submitted finally that, the District Court correctly held that the case ought to be heard afresh by Kalambo Primary Court.

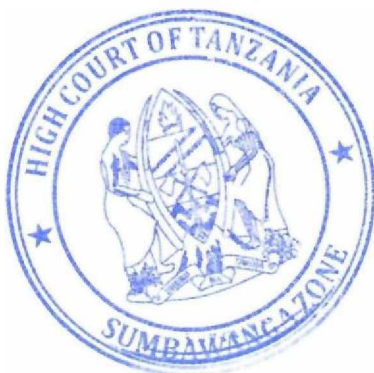
The determinative issue is **whether the District Court was correct in ordering retrial of the present case before the trial court.** There is no dispute that both, the appellant and the respondent asserted ownership of the disputed land before the trial court. The trial court was by then sitting as a criminal court since the case before it was that of criminal trespass. The principle in **Sylivery Nkangaa Vs. Raphael Alberto (Supra)** is that, a charge of criminal trespass cannot succeed where the matter involves land in dispute whose ownership has not been finally determined by a civil suit in a

court of law. A criminal court is not a proper forum for determining the rights of those claiming ownership of land. Only a civil court can determine matters of land ownership.

That being the position, it is the holding of this court that, it was improper for the District Court to order the trial court to retry a matter involving land ownership dispute via a criminal case. In fact, the trial court had correctly advised the parties to institute a civil suit for determination of ownership of the disputed land.

For the foregoing reasons, the first appellate court's decision is quashed. In its place, I restore the decision of the trial court. Appeal allowed

Dated at **SUMBAWANGA** this **25th day of November, 2020.**




C.P. MKEHA

JUDGE

25/11/2020

Date	-	25.11.2020
Coram	-	Hon. W.M. Mutaki – DR
For Appellants	-	Mr. Chambi – Advocate
1 st Appellant	-	Absent
2 nd Appellant	-	
3 rd Appellant	-	
4 th Appellant	-	
5 th Appellant	-	
For Respondent	-	Absent
Respondent	-	
B/C	-	Zuhura
Court	-	Judgment is delivered in the presence of the Mr. Baltazary Chambi – Advocate for the appellant.



W.M. Mutaki
Deputy Registrar
25.11.2020