

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

PC CRIMINAL APPEAL NO 30 OF 2020

LEONIDA SAGWE AJELEAPPELLANT

VERSUS

TOM OOKO ORWA1ST RESPONDENT

OLUOCH OOKO ORWA2ND RESPONDENT

(Arising from the Criminal Appeal No 46 /2020 of Tarime District Court. Originating from Criminal Case No. 139/2020 of the Primary Court of Tarime District at Shirati)

JUDGMENT

23rd April, 2021

Kahyoza, J

Leonida Sagwe Ajele instituted Criminal proceedings in the primary Tom Ooka Orwa (Tom) and Oluoch Ouko (Oluoch) for criminal trespass **Contrary to section 299 (a) of Penal Code.** Tom and Oluoch denied the charges. The trial court found Tom and Oluoch not guilty and acquitted them.

Aggrieved, Leonida Sagwe appealed to the District Court where she lost the appeal. She lodged a second appeal in the effort to see justice is done against the respondent.

The background of this matter is that Leonida sued successfully Nyangi Ooko, Sabina Ooko and Ochieng' Ooko for trespass in the Ward Tribunal. Leonida won the suit. She enforced the decree. Later, Leonida instituted Criminal trespass proceeding against Tom and Oluoch contending

that they trespassed to the land which the tribunal declared to belong to her. After hearing the evidence, it was found out that the land the ward tribunal declared to belong to Leonida was different from the land occupied by Tom and Oluoch.

It is against the above background, I have to decide this appeal. This is a second appeal. Basically, all grounds of appeal are faulting the District Court for relying on the respondents' evidence. I wish to point out that, it is an established principle that a second appellate Court can only interfere with concurrent findings of the two courts or tribunals below where, it is satisfied that the courts or tribunals have misapprehended the evidence in such a manner as to make it clear that their conclusions are based on incorrect premises. **See Salum Bugu vs Mariam Kibwanga** Civ. Appeal No. 29/1992. The Court of Appeal in another case of **Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores Vs. A.H Jariwalla t/a Zanzibar Hotel** [1980] T.L.R pg 31 where at page 32 the Court of Appeal stated:

"Where there are concurrent findings of facts by two courts, the Court of Appeal, as a wise rule of practicing should not disturb them unless it is clearly shown that there has been a misapprehension of evidencing a miscarriage of justice or violation of some principle of law or procedure."

I scrutinized the evidence on record and findings of the two courts below, and found that there is no ground for interfering with the finds. I support the finding that the land the ward tribunal declared to belong to

Leonida is different from the land Tom and Oluoch are occupying. Leonida's, (the appellant's) evidence given by Mathias Magera (Pw2) was that the land the tribunal declared that it belonged to Leonida was different from the land the Tom and Oluoch were occupying. It should be remembered that Leonida instituted criminal proceedings of trespass against Tom and Oluoch basing on the decision of Ward Tribunal.

Given the fact that Leonida's witness deposed that Leonida was not the owner of the land Tom and Oluoch alleged they criminal trespassed onto, a conclusion that Leonida failure to prove her case beyond reasonable doubt is inescapable. The offence of Criminal trespass cannot be proved without proving first undisputed ownership of the land in question. It is trite law 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. See **S. Mkanga V. Alberto** [1992] TRL 110.

In the upshot, uphold the decision of the two courts below that Leonida, the appellant failed to establish the offence of Criminal trespass beyond reasonable doubt. Consequently, I dismiss the appeal.


It is ordered accordingly.



J. R. Kahyoza, J.

23/4/2021

Court: Judgment delivered in presence of the parties at Shirati. B/C Catherine.



J. R. Kahyoza

JUDGE

23/4/2021

Court: Right of further appeal explained after obtaining a certificate on the point of law from the High Court within 30 days from today. The application for certificate on point of law should be preceded by lodging a Notice of Appeal as per the Court of Appeal Rules.



J. R. Kahyoza

JUDGE

23/4/2021