

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

CRIMINAL APPEAL NO. 17 OF 2021

(From the decision of the District Court of Ukerewe at Nansio in criminal Appeal No. 6 of 2021)

DEUS FOCUS.....APPELLANT

versus

TINDICHEBWA MISANA.....RESPONDENT

JUDGMENT

16th & 30th August, 2021

RUMANYIKA, J.:

With respect to charges of contempt of Bukiko ward tribunal Contrary to S. 114 (1)(b) o the Penal Code Cap. 16 RE 2019, the 2nd appeal arises from conviction, the fine of shs. 150,000/= and order of compensation of shs. 760,000/= imposed on 19/05/2021 by Ukerewe district court in upholding decision of Ukerewe primary court at Ukara (the trial court) dated 03/03/2021. Like Deus Focus (the appellant), Tindichebwa Misana (the respondent) appeared in person.

The grounds of appeal revolve around two points namely: -

- (i) That the criminal charges against the appellant were not beyond reasonable doubts proved.
- (ii) That the 1st appeal court improperly evaluated the evidence on record.

When the appeal was, by way of audio teleconference called on 16/08/2021 for hearing, I heard them through mobile number 0683 802 717 and 0753 601 305 respectively.

In a nutshell, the appellant submitted that the 1st appeal court did not evaluate the evidence on record properly because no single cassava or potato plants were even produced in court that if anything, he was simply suspected as any other ill intent 3rd partly could have had uprooted the crops. That is it.

On his part, having told this court that he was ready for hearing and it was on record when he was questioned for clarity, the respondent made a paradigm u-turn and told the court that he had not been served with a copy of petition of appeal and submitted that having been threatened by the appellant then he found his crops uprooted.

A brief account of the evidence on record reads as follows:-

upon harvesting the cassava and potato he gives vacant possession, surprisingly he was charged and arraigned in the trial court but he did not actually uproot the crops or at all much as it was dark in the night and he was not identified.

Su2 Christina Bulelwa stated that for the previous five (5) years she was wife of the appellant and on the alleged material date the spouses were at home. That is all.


The central issue is whether the charges of court contempt were beyond reasonable doubts proved against the appellant. The answer is no for obvious reasons:-

With regard to the land case the appellant may have had won the war and battle yes, but aggrieved by the suspended vacant possession in favor of the respondent issued by the trial ward tribunal, such that when the latter's crops were uprooted, against the rest of the world reasonably the appellant was suspect number one under the circumstances much as however scanty might be no evidence of visual identification was led against the appellant. Nevertheless, however strong might be suspicion alone could not form basis of conviction (see the case of **Mwingulu**

Madata @ Another v. R, Criminal Appeal No. 257 of 2011 (CA)
unreported irrespective of whether or not the appellant had threatened the respondent.

In the upshot, the conviction and sentence/orders are quashed and set aside respectively. The appeal is allowed. It is so ordered.

Right of appeal explained.



S.M. RUMANYIKA
JUDGE
23/08/2021

The judgment delivered under my hand and seal of the court in chambers this 30/08/2021 in the absence of the parties.



S.M. RUMANYIKA
JUDGE
30/08/2021