

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

PC. CRIMINAL APPEAL NO. 15 OF 2021

(From Criminal Appeal No. 05 of 2021 of the District Court of Kwimba at Ngudu, Original
Criminal Case No. 09 of 2020 of Kwimba primary court)

JOSEPH SHINENKOAPPELLANT

Versus

MUSA BUZINZARESPONDENT

JUDGMENT

17th & 30th August, 2021

RUMANYIKA, J.:

The 2nd appeal arises from the decision of Kwimba district court dated 25/05/2021 which quashed/set aside a conviction and an order of 3 month's conditional discharge dated 25/02/2020 of Nyambiti primary court with respect to the charges of malicious damage to property C/s 326 (1) of the Penal Code Cap 16 RE. 2019 laid at the door of Mussa Buzinza (the respondent) on 03/12/2020. That the latter did on 29/09/2020 at about 17:00 hours at Maligisu village, Kwimba district Mwanza maliciously damage 195 trees valued at shs. 6,970,750/= the property of Josephat Shineneko (the appellant).

The 5 grounds of appeal may boil down only to one point namely the 1st appeal court erroneously raised the issue of ownership of the land **sua motu** but on that one he did not hear the parties.

When the appeal was, by way of audio teleconference called on 17/08/2021 for hearing, the parties appeared in person. I heard them through mobile numbers 0782 897 735 and 0657 556 130 respectively.

The appellant had nothing additional to the petition of appeal just as the respondent had nothing to add to his reply to the petition of appeal.

The evidence on records reads as under: -

Sm1 Josephat Shineneko stated that on the very date having had learnt about the incident from the local cluster chair, he reported it to the local VEO and the Forest officer but the instant respondent also claimed title.

Sm2 Michael Lukala stated that upon arriving home late on 18/09/2020 with regard to the incident his family members narrated the story but the respondent claimed ownership over the said trees but in fact the tress belonged to the appellant.

Su1 Mussa Buzinza denied the charges completely. That is it.

In its decision, the trial court took cognizance of the mere prosecution hearsay evidence but he justified it just for the reason that due to long illness the eye witnesses proper could not have had appeared in court which decision, but for a different reason namely from its inception it was a land dispute, the district court ruled that the trial court had no jurisdiction therefore it quashed the conviction and set him free.

The central issue is whether the charges of malicious damage property were beyond reasonable doubts proved against the respondent. The answer is no. At least none of the two prosecution witnesses (Sm1 and Sm2) eye witnessed the incident. If anything, they learnt about the incident only from the local cluster chair and Sm2's members of the house hold respectively. It is very unfortunate that neither the local cluster chair nor any one of the alleged members of the family (leave alone the nondisclosure of the names or reasons therefore) appeared in the trial court. It could be for the reason of long illness of the intended witnesses yes, but the records were silent and, if anything all members of the house and cluster chair missing? What a coincidence! Sufficed the point to dispose of the appeal.

S. M. RUMANYIKA
JUDGE

30/08/2021

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