

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT SUMBAWANGA

CONSOLIDATED DC CRIMINAL APPEALS NO.05 & 06 OF 2021

(Originating from Kalambo District Court at Matai in Criminal Case No. 93 Of 2020).

1. GODFREY SAMWEL @ SOKONI APPELLANTS

2. PETRO SAMWEL @ SOKONI

VERSUS

THE REPUBLIC RESPONDENT

DATE OF LAST ORDER: 26/05/2021

DATE OF RULING: 24/08/2021

JUDGMENT

C. P. MKEHA J,

The two appellants were charged before the District Court of Kalambo with an offence of arson contrary to section 319 of the Penal Code. The specific allegation was to the effect that on the 14th day of August, 2020 at about 11.00 hours at Mkombo village within Kalambo District in Rukwa Region, the appellants wilfully and unlawfully set fire on two dwelling houses the property of MAHONA s/o KABAMBASI MAHON A valued at TZS. 8,553,000/=. In addition, the two appellants were also charged with an offence of assault causing actual bodily harm contrary to section 241 of the Penal Code.

The allegation in the second count was that, on the same day at the same place, at about 11.15 hours, the appellants, did wilfully and unlawfully assault one MAHONA s/o KABAMBASA MAHONA on his head by using an axe. At the end of trial, both appellants were convicted of the offence of arson. They were sentenced to be imprisoned for four (4) years. The second appellant was also convicted of the second count to which he was sentenced to be imprisoned for three years. They were both condemned to jointly compensate the complainant to the tune of TZS. 8,553,000/=.

In the present appeal, the conviction, sentences and compensation order are being challenged. Despite the fact that the two appellants preferred distinct appeals, since the same originate from the same case, similar grounds of appeal being raised, the same were ordered to be consolidated and be heard together hence, the present decision.

In both appeals, the main complaint is that the case against the appellants was not proved to the required standard. On the hearing date, the two appellants had nothing to add rather than adopting their grounds of appeal.

Mr. Peres learned State Attorney submitted in respect of all grounds of appeal. Throughout his submissions, he maintained that the case against the appellants had been sufficiently proved. Reference was made to the testimony of PW1 (complainant) who was the eye witness of the two events.

The only determinative issue is **whether the trial judgment was compliant with what the law requires.**

It is the law that in writing a judgment, a court has to consider not only the evidence in support of one party in a case and completely ignore the evidence for the other party, however worthless it may be . Failure to consider defence evidence constitutes a fatal error. See: BARUANI HASSAN VS. THE REPUBLIC, CRIMINAL APPEAL NO. 580 OF 2017, CAT, AT MWANZA.

The present judgment suffers from an infirmity of not considering the defence case at all. Without considering the defence case, in no way could the trial court rightly arrive at the conclusion that a case had been proved against the appellants.

For the foregoing reasons, the trial court's judgment is set aside with all the resultant orders. It is directed that, a fresh judgment be composed by another magistrate of competent jurisdiction in which positions of both sides will have to be considered as the law requires. The appellants to remain in custody as they await fresh judgment to be composed.

Date at **SUMBAWANGA** this 24th day of **AUGUST**, 2021.




C. P. MKEHA
JUDGE
24/08/2021

Date 11/08/2021
Coram Hon. W.M. Mutaki - DR.
1st Appellant
2nd Appellant Absent
Respondent
B/C Mr. A. Chitimbwa

Order: Notice for Judgment to the parties on 12/08/2021

Sgd: W.M. Mutaki Deputy Registrar
11/08/2021

Date - 12/08/2021
Coram - Hon. W.M. Mutaki - DR.
1st Appellant - Absent
2nd Appellant - Present
Respondent - Ms. Marietha Magutha State Attorney
B/C - Mr. A. Chitimbwa

Court: Judgment delivered in the presence of the 2nd Appellant and State Attorney Marietha Magutha in the absence of the 1st Appellant




W.M. MUTAKI
DEPUTY REGISTRAR
12/08/2021

