

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC. CRIMINAL APPEAL NO. 19 OF 2021

(Arising from Criminal Appeal No. 03/2021 in the District Court of Ilemela at Ilemela Originating from Criminal Case No. 03/2021 from Primary Court of Ilemela at Ilemela)

GEOFFREY NGINO.....APPELLANT

versus

BONIVENCHA MADIA.....RESPONDENT

JUDGMENT

13th & 30th September, 2021

RUMANYIKA, J:.

With respect to charges of malicious damage to property (1st count) and stealing (2nd count) contrary to sections 326 of the Penal Code Cap. 16 RE. 2019, the appeal is against decision and orders of 20/4/2021 of Ilemela District court upholding the decision of 14/12/2020 of Ilemela primary court (the trial court).

The 4 grounds of appeal revolved around three (3) points as under:-

- (i) That the 1st appeal court erred in law and fact not holding that the charges of malicious damage to property were not proved.
- (ii) That the 1st appeal court erred in law and fact in holding that the trial court had jurisdiction to entertain the land dispute.
- (iii) That the 1st appeal court erred in law and fact not holding that the trial court improperly evaluated the evidence.

When, by way of audio teleconference the appeal was called on 13/09/2021 for hearing, Messrs Akram Adam and Sijaona Revocatus learned counsel appeared for Godfrey Ngino and Bonivencha Madia (the appellant and respondent) respectively. I heard them through mobile numbers 0753 991 329 and 0762 922 058. I dismissed the appeal but reserved reasons therefor. Here are the reasons:-

Mr. Akram Adam learned counsel submitted that the case of malicious damage to property was not actually proved beyond reasonable doubts because the house belonged to the appellant and the trial court had no powers to order vacant possession save for the courts below also improperly evaluating the evidence.

Mr. S. Revocatus learned counsel submitted that the appeal lacked merits because the charges of stealing were not proved beyond reasonable doubts, notwithstanding the charges of malicious damages to property much as only a land court had jurisdiction and rightly so the trial court issued the subsequent interim eviction order.

The pivotal issue is not whether the prosecution/appellant's case was beyond reasonable doubts proved but rather whether the trial court had jurisdiction.

At least looking at the evidence on record the parties were agreed that between them, with respect to the house there was a land dispute. The respective portion of their evidence reads thus:-

*Tarehe 02/11/2020 majira ya asubuhi 08.00 wakaja vijana watano nikamtambua Hamis na huyo mshtakiwa, Hamis alijitambulisha kuwa ni kamanda wa sungusungu akaniweka chini ya ... ulinzi kuwa mwenyewe ambaye ndo huyu Boviventura (mshtakiwa) **kuwa nitoe vitu vyangu mwenye nyumba anataka vitu vyake nikasema sijawahi kuuza nyumba kwa mtu ... vitu vilivyoibiwa ni bati zote bando tatu, mbao, solar***

...

Meaning that as he was on 02/11/2020 at home, the respondent and company just stormed in and unroofed it because the former claimed title on the house but he (appellant) had never sold it. That at the same the respondent stole an assortment of the items valued at shs. 3,908,000/=. Su2 one Maige Maregesi supported the case.

Moreover it appears for more clarity questioned by a court assessor, the appellant stated that he sold only a bare plot not the house to the respondent.

Then having had denied the charges the respondent stated that having had purchased, he owned the alleged premises and now took over, the appellant resisted and the latter just accused him hence the charges. Sm2 Mussa Joseph Bugali is on record having supported the respondent's case. That is all.

With all the evidence on record it goes without more words that be it for the house and or the plot (the Latin Maxim: Quic Quid Plantatul Solo solo Cedit), the parties had a land dispute much as upon executing the sale, as to what actually was, and what was not sold the parties may have had not agreed each other hence the dispute.

In other words, like it was, precisely so in my view argued by Mr. D. Kahangwa learned counsel one having had removed the iron sheets the issue of malicious damage to property it should not have raised in the first place much as to start with, the issue of ownership should have been determined by civil court, a competent land tribunal for that matter. It is very unfortunate that the trial court, and, at a later stage the 1st appeal court entertained the matter.

Even for the sake of assumption the criminal charges, especially of stealing they were well laid at the respondent's door, the appellant only alleged it the latter did not, by way of evidence show and prove that the items existed and were, during the fracas swept away by no one other than the respondent. There is no wonder the appellant did not at all prefer charges of robbery with violence. After all like the learned trial resident magistrate found it strange and imaginable, I also would wonder how courageous and daring was the respondent removing the iron sheets and perhaps through the roof steal the house hold in public.

Without running risks of preempting the would be land case, should it be determined in favor of the respondent, if at all, the appellant's failure at the earliest to give vacant possession it demonstrated acceptance of the

subsequent injuries. Save for the eviction order issued, as said of which neither the trial court nor the 1st appeal court had jurisdiction whether interim or permanent it was immaterial in my considered opinion.

It is for these reasons that the devoid of merits appeal was dismissed. If the need persisted, the appellant may wish to institute a land case in tribunal of competent jurisdiction. It is so ordered.

S.M. RUMANYIKA

JUDGE

25/09/2021

Judgment delivered under my hand and seal of the court in chambers this 30/09/2021 in the absence of the parties.



S.M. RUMANYIKA

JUDGE

30/09/2021