

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

PC CRIMINAL APPEAL NO. 10 OF 2020

***(Arising from Criminal Appeal No.20 of 2020 in the District Court of
Mbarali at Rujewa)***

Between

LUSAJO MWESI..... APPELLANT

VERSUS

SEKELA MBONGE..... RESPONDENT

JUDGMENT

A.A. MBAGWA J.

This is a second appeal which initially originated from the Primary Court of Igurusi. The appellant herein was charged with and subsequently convicted of Assault Causing Actual Bodily Harm contrary to section 241 of the Penal Code. Consequently, he was sentenced to pay a fine of Tanzanian shillings two hundred fifty (Tshs 250,000/=) or imprisonment of three months in default

The facts which led to the appellants arraignment and subsequent conviction go as follows;

It was alleged by the complainant that on the 3rd day of July, 2020 at Lusese within Mbarali district in the region of Mbeya, the appellant caused actual bodily harm to the complainant by slapping her.

The complainant Sekela Mbonge and the appellant are relatives. It appears that the duo had longstanding dispute over a piece of land. On the fateful day, the complainant (PW1) went to the scene of crime to wit, a piece of land under dispute and found DW2 and DW3 making bricks therein. Upon asking them, they told her that they were making bricks for the appellant. The complainant thus told them to stop the exercise as the land did not belong to the appellant. DW2 and DW3 informed the appellant of the stop order who immediately arrived at the scene. According to the complainant (PW1), the appellant ordered her to leave the premises but she refused. As such, the appellant slapped her.

The complainant reported the matter to Igurusi Police Station where she was issued with a PF3. She thus went to Igurusi Health Centre. According to the PF3 which was tendered and admitted as prosecution exhibit 1, the complainant was attended and prescribed the anti-pain medicine

During defence, the appellant testified and called other two witnesses namely, DW2 Oscar Mwampashi and DW3 Thobias Mwampashi. DW2 and DW3 are the ones whom the complainant found making bricks. All the defence witnesses confirmed what the complainant said except that the appellant did not assault her. It was the defence evidence that upon arrival of the appellant at the scene, he told the complainant to leave the place and the complainant complied.

Upon closure of the case for both complainant and the appellant, the gentlemen assessors and the trial magistrate were of the unanimous findings that the case against the appellant was proved beyond reasonable doubt. Consequently, the trial Primary Court entered conviction against the

appellant and subsequently sentenced him to pay a fine of Tshs 250,000/= or imprisonment for three months in default.

The appellant was not satisfied with the findings and sentence hence he appealed to the District Court of Mbarali which upheld the conviction and sentence.

Still discontented with the decision of the District Court, the appellant has come this Court to protest his innocence. He filed a petition of appeal comprising the following grounds;

1. That the appellant court erred in law and fact to uphold the trial court judgment which has a lot of irregularities
2. That the appellate court erred in law and fact in not taking into account that the matter at the trial court was never established to the standard as required in criminal cases
3. That the appellate court erred in law and fact for not giving the parties opportunity to be heard contrary to the principle of natural justice.
4. That the appellate court erred both in law and fact for misdirecting himself on declaring that the trial court was correct to order the appellant to pay fine of Tsh. 250,000/= or serve three months imprisonment in default while there was un sufficient evidence to prove the same.

At the hearing of this appeal, the appellant appeared in person to prosecute his appeal whilst the respondent did not appear. The appellant simply reiterated the grounds of appeal and prayed the court to allow his appeal.

I have keenly gone through the lower courts record as well as the grounds of appeal. The thrust of his complaints is that the first appellate court erred

in law and facts to uphold conviction and sentence imposed by the trial court. The appellant contends that there was no sufficient evidence to warrant conviction.

It is a trite law that the second appellate court cannot interfere the concurrent findings of lower court unless there are misapprehension of evidence or wrong application of principles of law. See the case **Lista Chalo vs the Republic**, Criminal Appeal No. 220 of 2017, **Salum Mhando v. Republic** [1993] TLR 170 and **Wankuru Mwita v. Republic**, Criminal Appeal No. 219 of 2012.

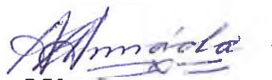
In this appeal, the trial Primary court heard the witnesses of both sides and at the end believed the complainant testimony thereby arriving at guilt findings. Thereafter the first appellate court upheld the decision of the trial Primary Court. Further, both parties were heard because the complainant testified as PW1 whereas the appellant testified as DW1 and, in addition, he called two more witnesses namely, DW2 and DW3. Throughout the record, I was unable to note any misapprehension of evidence or application of wrong principle.

In the circumstances, I do not find any justification to interfere with the concurrent findings of the two lower courts.

That said and done, I find this appeal without merits and consequently dismiss it.


It is so ordered

Right of appeal is explained


A.A. Mbagwa
Judge
06/12/2021

Judgment has been delivered in the absence of both of the appellant and respondent this 6th day of December, 2021




A.A. Mbagwa
Judge
06/12/2021